
(2017) 02 KAR CK 0052
In the Karnataka High Court
Case No : Writ Petn. No. 15862 of 2016

Nagesh Sheregar

APPELLANT

Vs

Town Municipal Council, Kundapura

RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 — Section 3, Section 5

Citation : (2017) 2 AirKarR 382

Hon'ble Judges : A. S. Bopanna, J.

Bench : Single Bench

Advocate : Sri Chandkanth Ariga K, Advocate, for the Petitioner; Sri Ananda Shetty A, Advocate, for the Respondent No 1 and 2; Served, Unserved, for the Respondent No. 3 and 4

Final Decision : Disposed Off

Judgement

A. S. Bopanna, J.—The Petitioner's is before this Court assailing the order dated 20.08.2015 in case No.1/2015-16 and the order dated 04.02.2016 in M.A. No.6/2015 which are impugned at Annexures-L and M to the petition.

2. The Petitioner's is in occupation of the shop premises bearing Door No.415/II belonging to first respondent-Municipal Council. In respect of the said shop premises, the respondents have initiated action under the provisions of the Karnataka Public Premises (Eviction of Un-authorised Occupants) Act, 1974 ("the Act" for short). Thus having issued notice to the Petitioner's, the proceedings in Case No.1/2015-16 was initiated and the order dated 20.08.2015 is passed directing the Petitioner's to vacate from the shop in question.

3. The Petitioner's claiming to be aggrieved filed an appeal in M.A. No.6/2015. The learned Appellate Judge through the order dated 04.02.2016 has dismissed the appeal. The Petitioner's therefore being aggrieved by the same is before this Court.

4. Heard the learned counsel for the parties and perused the petition papers.

5. The contentions put forth on behalf of the Petitioner's is essentially the very same contentions which had been urged before the learned Appellate Judge in Misc. Appeal No.6/2015. The Petitioner's contends that the entire proceedings initiated and concluded is vitiated for the reason that the very same Officer who had issued the notice directing the Petitioner's to vacate from the shop premises has conducted the proceedings and therefore he could not have acted as a Judge in his own case. Further contention is that the Petitioner's did not have sufficient opportunity to defend himself before the competent authority in the proceedings in question.

6. Firstly, insofar as the contention relating to the proceedings held before the competent authority being vitiated, as already noticed, it is initiated under the provisions of Section 3 of the Act which provides for notifying the competent authority to take action under the said Act. In fact, the learned Appellate Judge has referred in detail to the said contention, extracted the provision contained in Section 3 of the Act and in that light, on taking note that the competent officer in the instant case has been appointed by issue of the notification as provided therein, has arrived at the conclusion that the contention put forth in that regard cannot be accepted which cannot be found fault.

7. Insofar as the contention that the Petitioner's did not have the opportunity, learned Appellate Judge has referred to the proceedings which was conducted before the Appellate Authority and in para 13 of the judgment has referred to different hearing dates on which the Petitioner's was granted opportunity to appear and the proceedings that had taken place before the competent authority. In that light, based on the records available, learned Appellate Judge has arrived at the conclusion that the Petitioner's cannot make out any grievance as sufficient opportunity had been granted to him.

8. Having noticed these aspects of the matter and having referred to the eviction order passed by the competent authority, I am of the opinion that the procedure has been duly complied and the eviction order has thereafter been passed. The Appellate Authority while considering all these aspects of the matter has appropriately dealt with the matter which does not call for interference.

9. At this stage, learned counsel for the Petitioner's would contend that since this Court has arrived at the conclusion that the order impugned does not call for interference, the Petitioner's be granted reasonable time to vacate and hand over possession of the shop premises in question.

10. Learned counsel for the respondents would submit that though some time could be granted to the Petitioner's to vacate, the same be limited to the maximum of three months from this date.

11. Having taken note of the contentions on this aspect and also taking note of nature of the premises that is in occupation of the Petitioner's and the same

being a small shop from which the Petitioner's would have to eek out his living and also taking into consideration that the Petitioner's is aged about 66 years at this point as indicated in the petition, reasonable time to make alternate arrangement will have to be granted.

12. Therefore taking into consideration all these aspects of the matter, the Petitioner's is granted six months time from this date to voluntarily vacate and hand over possession of the premises. This is however subject to the condition that the Petitioner's shall file an undertaking before this Court within four weeks from the date of receipt of a copy of this order stating therein that the Petitioner's would voluntarily vacate from the premises without driving the respondents to initiate action to take possession. Needless to mention that if the undertaking is not filed by the Petitioner's within the time indicated above, the respondents would be entitled to implement the eviction order after expiry of the said period.

The petition is disposed of accordingly.