
(1990) 02 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 3575 of 1990

New Cement Concrete Works

APPELLANT

Vs

Additional Superintendent of Police

RESPONDENT

Date of Decision : 22-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) ILR (Kar) 1276 : (1990) 1 KarLJ 350

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : Suman Hegde, for the Appellant;

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—Petitioner, admittedly, is a tenant of the second respondent Loka Shikshana Trust. It appears that there exist disputes between the petitioner and other tenants on the one hand and the trustees of the Trust on the other hand in regard to ingress and egress to their respective premises in having the gate closed. In that connection, civil suits are pending in the Court of the Munsiff at Hubli. A temporary injunction has also been obtained by the petitioner, that pending disposal of the suit, none should restrict the petitioner to have access to his premises. The second and third respondents are defendants in the said suit. It is further averred by the petitioner that the obstruction caused by respondents 2, 3 and persons claiming and acting on their instructions, is such which impairs their rights as tenants as they are required to produce identity cards and passes etc., to pass through the gate. It is further alleged that adjacent to the old gates, new gates have been constructed by the 2nd and 3rd respondents and the new gate has been closed. No-where, it is stated that the old gates are also closed and access through old gate is denied to the petitioner.

2. In that circumstances, petitioner approached first respondent Additional Superintendent of Police, Hubli for assistance to use the new gate. He, in turn, has issued endorsement as at Annexure "B" stating that the petitioner is

informed that the nature of dispute complained of is civil in character and as such, petitioner must approach Civil Court for appropriate relief. Aggrieved by the same, present Writ Petition is preferred seeking a Mandamus to compel the respondents to keep the gates open between 7 a.m. and 10 p.m. on all days.

3. In the complaint before the first respondent, the allegations made are identical with the statement of facts before this Court. They have brought to the notice of the Superintendent, pendency of the Civil Court and the fact that injunction has been granted by the Principal Munsiff. The injunction order itself is not produced before this Court. Only complaint copy is produced. Therefore, this Court is not apprised of the language and terms in which the temporary injunction has been granted. If there is disobedience of the injunction operative against respondents 2 and 3, adequate provision is made under Rule 2A of Order 39 of C.P.C. to compel obedience. Therefore, the Superintendent of Police was correct in issuing the endorsement that the matter must be agitated before the Civil Court where the dispute is already pending in litigation.

4. However, Smt. Suman Hegde drew the attention of the Court to a Division Bench decision of this Court in S.K. Sharma Vs. Corporation of the City of Bangalore, . That case explains the principle underlying Article 226 of the Constitution and the orders made by this Court. When that has been brought to the notice of the Police authorities, they should enforce the same. That decision, in my view, is not of any assistance because on the facts of that case, this Court was dealing with the order passed by this Court not under provisions of C.P.C., but under Article 226(3) of the Constitution. When the CPC specifically provides a remedy and a machinery for enforcement of the injunction, this Court under Article 226 ought not to supplement it under Article 226. The petitioner must approach the Civil Court where the litigation is pending for appropriate directions and consequential penal orders against those who have disobeyed the injunction. Question of disobedience is a question of fact which should be ascertained judicially and that cannot be done by a Police Officer on a complaint made by one of the parties to the suit. If that power is given to the Police authorities in the State, then that will amount to sitting in judgment over the orders of the Civil Courts and therefore, such possibility should be avoided.

Court is the best Judge of whether its order has been obeyed or disobeyed and not other authorities.

Therefore, this petition is misconceived and it is rejected.