

(1995) 07 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 24321 of 1995

Prathima S. Bhat

APPELLANT

Vs

Uppinangadi Grama Panchayath

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Citation : (1995) ILR (Kar) 2476 : (1995) 6 KarLJ 136

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : A. Keshava Bhat, for the Appellant; G.S. Visveswara, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Saldanha, J.—The petitioner in this case had been awarded a contract for a Bus Stand Hotel at Uppinangadi in June 1994 pursuant to an auction held by the Gram Panchayat under whose jurisdiction the Bus Stand comes. She had entered into an Agreement to run the hotel for this period of time on certain terms and conditions which we are not immediately concerned with. The Agreement however specifies that it shall be in operation for a period of one year, that it will expire on 30.6.95 and that the petitioner undertakes to restore possession of the premises of the Gram Panchayat who is respondent No. 1 on the expiry of that period of time. As normally happens, the Panchayat re-auctioned the rights in 1995 and several persons including the petitioner took part in the auction. The highest bid was of Rs. 68,150/- and the petitioner was the second highest at Rs. 68,000/-. The respondents accepted the highest bid after which that person defaulted. According to the respondents' learned Counsel, the petitioner being the second highest was asked as to whether she was interested in accepting the contract at Rs. 68,000/- which she declined to do and similarly, her brother who was the 3rd highest bidder also declined to accept the offer. As a result of this, the respondents re-auctioned the rights and the highest bid received was in the vicinity of Rs. 37,000/-. The respondents contend that since the licence period is

over, that the new auction purchaser is entitled to run the Hotel. The petitioner, on the other hand, has approached this Court by way of this Petition whereunder, she contends that the respondents are threatening to dispossess her forcibly and that the auction should be stopped. On this ground, the petitioner has asked for a Writ whereby the respondents are restrained from auctioning the Canteen rights and restrained from dispossessing her except in accordance with law. An ad-interim order was passed at the initial stage principally because the petitioner contended that the Petition involves certain malafides insofar as the respondents were accused of highhandedness and certain other illegalities in respect of which it was necessary to hear them.

2. After the service of notice, the respondents have appeared. It is their case that the rights that are conferred on any of the successful bidder are limited to a period of twelve months only and that on the expiry of that period, a fresh auction is held where everybody including the person who previously ran the Canteen is eligible to bid and that the respondents award the rights to the highest bidder. It is their case that the right to run the Canteen stood extinguished on 30.6.95 and that the Canteen being located in the Bus Stand, after awarding of a new contract that the petitioner has no right to continue there and must make way for the new person.

3. Petitioner's learned Advocate initially contended that this Court must construe the Agreement entered into by his client as conferring tenancy rights. According to him, clauses requiring the occupant to surrender at the end of a prescribed period of time are always incorporated in such Agreements and it is open to a Court to ignore that clause and construe the Agreement as one of tenancy. He submits that his client has paid an amount which must be treated as the rent of those premises and that his client has continued paying similar rents and that she cannot be dispossessed save and except through due procedure of law which the learned Advocate contends would involve an order of a competent Court and nothing else. Alternatively, he submits that if it is contended that the premises are public premises, that the provisions of that Act and the procedure prescribed thereunder would still have to be resorted to.

4. As far as this argument is concerned, this Court needs to lay down that there is a very clear and distinct distinction in law between the concept of tenancy and that of a licence. It is true that in certain cases an arrangement between parties regardless of what it is called or defined as, has been construed by a Court to be one that confers tenancy rights particularly in cases where the person has been in occupation for a long period of time. Various circumstances attendant in each of such cases must unmistakably indicate that the contract was one of tenancy and that in order to deprive the occupant of the benefits and protection of the statute, the document was given a different colour. The first essential requirement is that these circumstances must be present but more importantly, it is for the party claiming those benefits to aver very specifically that the Agreement was one of tenancy and thereafter to establish this to the satisfaction

of the Court. I do not need to labour on this aspect of the matter because in this case we effectively have a public authority on one side and a private citizen on the other. The arrangement emanated from the usual auction of conducting rights for a period of one year and therefore even to set up a plea of tenancy would be extremely far fetched. That apart however, the Petition does not state anything to this effect nor is there any material placed before the Court on the basis of which such a plea is tenable. More importantly, the execution of the Agreement which is quite clear and explicit is admitted. There is no challenge to that Agreement even as of today and the Agreement very clearly specifies the status and the conditions. To my mind, the Agreement only conferred a licence for a period of twelve months and nothing else and further more, what needs to be taken cognizance of is the fact that the Agreement and its execution itself are unchallenged. In these circumstances, the petitioner herself would be virtually estopped from even pleading any status other than that of a licensee.

5. The main contention put forward by the petitioner in the pleadings as also on her behalf by her learned Advocate is with regard to the aspect of forcible dispossession. The petitioner apprehends that extra legal steps will be used and she has therefore asked for protection from this Court. Her learned Advocate drew my attention to a couple of Decisions which I shall refer to presently wherein the Courts in this Country right upto the Supreme Court have not only deprecated the use of extra legal methods in cases of disputes relating to property and possession but have also held that where a Rule of Law exists, that such methods cannot be resorted to. The underlining feature in all those Cases was that there existed a subsisting right and the offending party had resorted to the use of force or extra legal methods in order to bypass a legal adjudication which the party was normally obliged to do. It was for this reason that the Court was quick to point out that the procedure prescribed by law has not been followed.

6. As far as the Decisions are concerned, reliance was sought to be placed in the first instance on a Decision of the Supreme Court reported in Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, The dispute related to a restaurant and it was pointed out to the Court that forcible dispossession had taken place prior to the expiry of the licence period. It was this last aspect of the matter that the Court took special note of and the entire Judgment proceeds on the footing that the action was downright illegal insofar as it was during a period of time when the licensee was still entitled to continue in possession. The Decision has absolutely no application to the facts of the present case and is clearly distinguishable, The Decision relied on is another Decision of the Supreme Court reported in State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others, wherein again, the Development Authority sought to resume certain premises and the Court observed that even as far as a public authority is concerned, the actions must conform to the test of a "legal pedigree". The Court had pointed out that possession can be resumed in a manner known to or recognised by law and that this cannot be done otherwise

than in accordance with law. There is no quarrel with regard to the proposition laid down in this Decision which in fact aptly states the law on the point. On the other hand, if public authority is acting within the framework of law, the action would as well have to be saved and therefore cannot be questionable.

7. Thirdly, the petitioner's learned Advocate relied on a Division Bench Decision of this Court reported in *Patil Exhibitors (Pvt.) Ltd. Vs. The Corporation of the City of Bangalore*, That was a case between the landlord and tenant and the Court was concerned with certain forcible acts where the Court was quick to remind the parties that actions even in relation to restoration of possession must conform to the procedure prescribed by law.

8. Coming to the facts of the present case, I have already held that the status of the petitioner was that of a licensee simpliciter. By virtue of her own Agreement, she was required to surrender the premises to the respondents on 30.6.95. Undoubtedly, she could have continued thereafter if they had permitted her or if her licence was either renewed or extended. The facts of the case indicate that this was not the position. The grounds on which the petitioner seeks right to continue are hopelessly untenable in so far as she has pleaded tenancy rights for which I do not see even the slightest justification. On the other hand, what needs to be examined is as to whether the respondents have acted in conformity with the requirements of law. I need to answer that question in the affirmative because it has been demonstrated to this Court that the respondents did hold the auction, they did afford the petitioner an opportunity to take part in it and even though they were not obliged to do so, they offered the petitioner the rights to continue when the highest bidder had backed out, On the expiry of the earlier period, a deadlock had arisen in so far as nobody had come forward to run the Canteen in keeping with the terms and conditions at the auction and therefore it was obligatory to hold a fresh auction. I am informed that the fresh auction has in fact been held and that the contract has been awarded to the successful bidder. Under these circumstances, the respondents who are the authority in charge of the premises would be justified in removing anybody including the petitioner, if such persons come in the way of the party to whom the contract has been awarded from functioning there. This would not constitute either an illegality or an act outside the framework of the procedure prescribed by law but, on the other hand, the respondents in that eventuality would be coming within their rights and within the framework of the law and therefore cannot be restrained from doing so. The legal position being as it is, the petitioner is disqualified from claiming any reliefs against the respondents.

9. In the result, the Petition fails and stands dismissed. At this stage, the petitioner's learned Advocate submits that his client should be given some reasonable time in the event of her having to remove her possessions from the premises, but the second ground on which the extension of the Interim Order is sought is that the petitioner would like to consider carrying the matter higher. The respondents' learned Advocate submits that in the light of the findings

recorded by this Court, that the petitioner has no locus standi to continue in the premises for a single day when another party had been awarded the contract, under these circumstances, time should not be granted.

10. To my mind, the petitioner desires to consider her position with regard to an Appeal, she should not be disqualified from doing so. For this purpose, the Interim Order shall continue until 2.8.1995. The respondents shall be entitled to commence the new contract with effect from that date. It also made clear, that since the petitioner desires to continue until 1.8.95, that she shall be liable to deposit with the respondents a prorata licence fee calculated at Rs. 2000/- to cover the month of July 95 within a period of seven days from today. In the event of default, the Interim Order to stand vacated. Petition to stand disposed of. No order as to costs.