
(1995) 07 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 27954 of 1991

Rajagopalaiah

APPELLANT

Vs

Chief Officer

RESPONDENT

Date of Decision : 21-07-1995

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 179, 180, 87 (f), 87 (i)

Citation : (1995) ILR (Kar) 2451 : (1995) 4 KarLJ 570

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : C. Papireddy and B.K. Chandrasekhar, for the Appellant; S.V. Jagannath, for R1 and Ashok N Naik, HCGP for R-2, for the Respondent

Judgement

Eswara Prasad, J.—This Writ Petition is filed by one of the citizens of Doddaballapur Town, questioning the action of the first respondent - Doddaballapur Town Municipality, in converting the footpath and the main road running South to North upto T. Siddalingaiah Circle, into shopping complex. Considering the fact that the Writ Petition is filed in public interest, three more citizens of the town were impleaded as petitioners by an order dated 5.1.1993 in I.A.No. IV.

2. It is stated in the Writ Petition that the road in question is a main road in the Town with existing footpaths which were in use by the general public from the year 1928. It is alleged that at the instance of the local political leaders, the authorities of the first respondent-Municipality decided to contract shops measuring 8" x 6" on either side of the road, without caring for the needs of the general public and started to construct 13 shops resulting in lessening the width of the road, which has the effect of obstructing the traffic on the Main Road. They say that the road is a thoroughfare, which is busy round the clock and the construction of the shops would put the general public to great inconvenience. The authorities have yielded to the pressure of the politicians without caring for the welfare of the general public. Representations made to the respondents

requesting them to drop the proposal met with no response. The action of the Municipality contravenes the provisions of the Karnataka Municipalities Act, 1964 and the Rules and Regulations made thereunder. The existing trees on the road side were being cut and removed, thereby causing air pollution. The Municipality has no right to construct shops by encroaching on the footpaths. So saying the petitioners have sought directions to the Municipality, not to convert the footpaths on the main road into shopping complex.

3. In the Objection Statement filed by the first respondent, it is stated that the Main Road starts from Siddalingaiah Circle and runs in front of Rajkamal Talkies from North to South and the width of the road measures 20" near the Circle and tapers down at the other end of the road. Some bunk shops were in existence on the road sides for a very long time and the Municipality was collecting rents from the occupiers of the bunk shops. By a Resolution dated 30.9.1991 it was decided to remove bunk shops that were in existence and in that place to construct new shops and to lease them in favour of the persons who were doing business; There was no footpath nor any road margin in existence. The existing drain was repaired and the road was widened to T. Siddalingaiah Circle to a width of 29" and the width of the road got increased from 20" to 29" by removing the old bunks and by constructing new shops. The object of the Municipality was only to remove the shabby old bunks and to replace them by new shops, which would enable the Municipality to earn an income of Rs. 20,000/- p.m. by leasing out the shops. It is further stated that the petitioners are politically motivated and the Writ Petition is not filed in public interest and that no inconvenience will be caused to the public by the construction of the shops.

3A. The construction of the shops was stayed by an Interim Order dated 20.12.91. Alleging that the first respondent is proceeding with the construction in spite of the order of stay, I.A.I. was filed for injunction restraining the first respondent not to allot or lease the shops in question, pending disposal of the Writ Petition. No Orders were passed on the said I.A., recording the assurance of the learned Counsel for the first respondent that no allotment or leasing of the shops in question will be made during the pendency of the Writ Petition. I.A.II was filed by the first respondent for vacating the Interim Stay Order and the same was rejected. It is not disputed that the shops were partly constructed but were not allotted or leased to any one pursuant to the undertaking given to the Court.

4. At the outset, Sri Jagannath, learned Counsel for the first respondent raised an objection with regard to the maintainability of the Writ Petition on the ground that disputed questions of fact arise for consideration, which cannot be resolved in these proceedings and that the remedy of the petitioners is only by approaching the Civil Court for relief.

5. The learned Counsel for the petitioners submitted that based on the provisions of the Act and the undisputed facts, a decision can be arrived at and that it is not necessary to drive the parties to the Civil Court. As the matter involves the

interest of general public and a perusal of the sketches and the photographs of the half constructed shops filed by the parties prima facie reveal that the constructions are being made on the foot paths and the road margins of the road in question, this Court felt that it is necessary to appoint a Commissioner to make an inspection and submit a report. With the consent of both the Counsel, the Assistant Director of Town Planning, Bangalore Rural District was appointed as a Commissioner by Order dated 15.2.1995 to inspect the main road and to measure the actual width of the road from either side of the road i.e., from the outer edges of the road on both the sides, at the place where the shops are being built by the Municipality. He was also directed to measure the width and length of the shops, distance between the two rows of shops which is formed for being used as road. He was directed to measure the width of the road at different points, away from the shops under construction and to prepare a sketch, making markings of the shops. He was further directed to note as to whether provision is made for laying foot paths on either side, of the road. Accordingly, the Commissioner made inspection on 1.3.1995 in the presence of the petitioners and respondents and submitted a Report dated 6.3.1995 together with an Addendum dated 14.3.1995.

6. After the submission of the Report of the Commissioner together with the plans prepared by him, the picture is clear and I do not consider it necessary to drive the parties to a Civil Court. The jurisdiction of the Municipality to construct shops on the road margins and foot paths can be decided with reference to the Rules and the Act. The material on record is sufficient to arrive at a decision in these proceedings and hence I overrule the preliminary objection raised by the learned Counsel for the first respondent.

7. It is not disputed that the street in question together with foot paths is in existence from the year 1928 and is a main road in Doddaballapur Town. The street is vested in the respondent-Municipality by virtue of Section 81(2)(f) of the Karnataka Municipalities Act, 1964 ("the Act" for short). It is obligatory on the part of the Municipality to maintain the public streets and to remove obstructions if any, under Clauses (f) and (i) of Section 87. Chapter IX of the Act deals with the powers of the Municipality in respect of streets. It is lawful for the Municipality to make public streets, to widen, open, enlarge, or otherwise improve any such streets under Sub-section (1) of Section 175. Under the Proviso to Sub-section (1), no public street vested in the Municipal Council can be diverted, discontinued or closed without publication and calling for objections and obtaining the approval of the Government. Regular line of public street can be prescribed by the Municipality u/s 179 with the sanction, of the Government and can be substituted by a fresh line, in accordance with the procedure laid down thereunder. Construction of buildings can be made only within the regular line of streets as laid down u/s 180.

8. On a perusal of the aforementioned provisions of law, it is clear that the Municipality can lay out and make new public streets, widen, open, enlarge or

otherwise improve any such streets. The power to divert, discontinue or close the public street can be exercised only after calling for objections and obtaining approval of the Government. It is open to the Municipality to improve any public street by widening, opening and enlarging. No power is vested in the Municipality to lessen the width of any public street. It is therefore to be seen whether the respondent has lessened the width of the street by constructing shops on either sides of the street.

9. The Assistant Director of Town Planning who was appointed as the Commissioner submitted his Report dated 6.3.95 together with the sketch and an Addendum dated 14.3.95 with a revised sketch. The respondent did not file any objections to the Report, Addendum and the sketch filed by the Commissioner and therefore they can be relied as undisputed documents. Reading the Report and the Addendum together, it will be noticed that the width of the street at the southern most point is 21' 0". As the street proceeds to the north, the width of the street increases gradually from 28' 6", 39' 6", 49' 6" and 45' 9" near the northern most end of the street near T. Siddalingaiah Circle. By the construction of the shops on either sides, the street is narrowed down from 49' 6" at points DC to 33' 6", at points RQ and is further reduced to 29' 3" at point NM to 45' 9" at point AB. It is therefore to be noted that the width which was 49' 6" is reduced by 16" at point RQ and the width of 45' 9" is reduced by 16" at point NM. Admittedly, the width of the shops is 8" on either sides and therefore the width of the road is reduced by 16" by the construction of the shops. The general public are deprived of the use of 16" width of the road by the erection of the shops. The road should be wider at the intersection of streets at T. Siddalingaiah Circle. On the other hand, the street is narrowed down by the action of the respondent, which would cause great inconvenience to the general public.

10. The petitioners have filed photographs which are not disputed. The photographs marked as Annexure-F, which were taken prior to the construction of the shops, would clearly reveal that the construction of the shops was commenced right on the foot paths, making the trees to come in the middle portion of the shops. The photographs filed on 27.9.94 along with a Memo dated 2.2.93 make it clear that the shops are constructed right on the road, leaving little or no space for the use of the public. It would be practically impossible for the vehicular traffic and pedestrians to make use of the streets, if the shops are allowed to stand. Once the construction of the shops is completed and are let out for business purpose, there will be regular market in the middle of the street, which will practically have the effect of closing down the street.

11. Apart from the fact that the Municipality is not empowered to reduce the width of the street by narrowing it down by putting up any constructions as noticed earlier, human rights under Part III of the Constitution have to be respected, as observed in *Municipal Council, Ratlam Vs. Vardichan and Others*, . The general public have a right to use all the streets without any obstruction. It is obligatory on the part of the Municipality to provide public streets; atleast

the main streets of the Town without hindering traffic by narrowing it down at junction point like Siddalingaiah Circle.

12. In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , it was held by the Supreme Court as follows:

"In the first place, foot paths of pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements".

12. A contention was raised by Mr.Jagannath that some bunks were existing on either side of the road and they were removed and new shops are erected with a view to accommodate the persons who are displaced by the removal of the bunks. As rightly pointed out by the learned Counsel for the petitioners, no material was placed before this Court to show that any assurance was given to the persons said to have been displaced. In the objections filed on behalf of the respondents, no mention of the names of any such persons is made. It is to be noted that none of the so called displaced persons have come forward to contest the claim of the petitioners. The Resolution dated 30.9.91 signed by the Chairman alone cannot be relied on. As held in *Olga Tellis (supra)*, public streets, of which pavements form a part, are primarily dedicated for the purpose of passage and, even the pedestrians have but the limited right of using pavements for the purpose of passing and repassing. So long as a person does not transgress the limited purpose for which pavements are made, his use thereof is legitimate and lawful. But, if a person puts any public property to use for which it is not intended and is not authorised so to use it, he becomes a trespasser. But, if a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his user of the pavement would become unauthorised. Following the said principles, it has to be held, that even the Municipality has no right to construct shops for private use on pavements and public streets.

13. The object of the respondent in constructing the shops is only to augment its income. However laudable the object may be, it cannot be done at the cost of the general public, especially in view of the fact that the Municipality does not have statutory powers to reduce the width of the road. In *Ratlam Municipality (supra)* it was held as follows:

"A responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self governing bodies.

Similarly, providing drainage system-not pompous and attractive, but in working condition and sufficient to meet the needs of the people-cannot be evaded if the municipality is to justify its existence".

14. A fair study of the statutory provisions makes it clear that a duty is cast on the Municipality to maintain the public streets, and to widen them, which implies that the streets cannot be narrowed down and pavements cannot be converted into shops. The mere plea that the Municipality has to earn more income from constructing shops on pavements and streets by letting them out, cannot be countenanced when it runs contrary to public interest.

15. For a growing Town, wider streets are absolutely essential. Instead of widening the street which is essential for the future growth of population and traffic, it is surprising that the Municipality which is obliged to provide better amenities to the citizens, has thought fit to reduce the width of the road by constructing shops right on the foot paths on a busy street, which is the main road of Doddaballapura Town. Such a high handed action, if done by private individuals has to be frowned upon by the Municipality and action should be taken for removal of such encroachments, In the present case, the Municipality itself assumed the role of an encroacher, unmindful of the hardship that its action would cause to the general public, and has to be deprecated.

16. This Court stayed the putting up of construction on the footpaths by order dated 20.12.91. It was thereafter stated that the construction of the shops was commenced even prior to the issuance of the stay order. Thereafter an undertaking was given by the respondent on 30.7.92 that it shall not allot or lease the shops in question until further orders and the said order is in force. The structure so far put up requires to be removed and the footpaths should be cleared to enable the vehicular traffic and the general public to move about without causing any obstruction.

17. The Writ Petition is allowed and the respondent is directed not to convert the footpaths of the main road running south to north up to Siddalingaiah Circle into shopping complex and to remove within 2 weeks the unfinished shops put up on either sides of the footpaths and on the main road.

18. No order as to costs.