

(2016) 02 KAR CK 0066

In the Karnataka High Court

Case No : WP No. 113587 of 2015 and W.P. Nos. 113945-113946 of 2015 (GM-RES)

Ramappa Pandappa Maradi

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 02 KAR CK 0066

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sunil S. Desai, Advocate, for the Appellant; K. Vidyavati, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. It is surprising to note that the petitioner has filed instant petitions for the second time for the very same relief.

2. The petitioner in the above said writ petitions sought for the following prayer:

"(i) Issue a writ of Certiorari quashing the license No. 033 dated 04/03/2013 in favour of 9th respondent as per Annexure-D, licence No. 017 dated 07/10/2013 in favour of 10th respondent as per annexure-B and license No. 027 dated 07/10/2013 in favour of 11th respondent as per Annexure-C issued by the Deputy Commissioner, Bagalkot/respondent No. 4 as arbitrary, illegal and void and in violation of the provisions of the "Karnataka Regulation of Stone Crushers(Amendment) Act, 2013" and also the provisions of Environmental Protection Act, 1986 and AIR(Prevention and Control of Pollution Act, 1981, in the interest of justice and equity.

(ii) Issue a writ of mandamus directing the respondents to consider the representation submitted by the petitioner at Annexure-F and G dated 11/11/2014 and 04/02/2015 respectively as per the direction of this Hon"ble

Court in W.P. No. 106374/2014 as per Annexure-E in the interest of justice and equity.

(iii) Issue direction to respondents to compensate the petitioner for having caused damage to the tune of Rs. 30 lakhs to the crops of the petitioner in R.S. No. 255/1 and 255/2A measuring 2 acres 20 guntas situated at Teggi Village, Bilgi taluk and Bagalkot district and to pass appropriate and suitable orders.

(iv) Issue direction to respondents to stop carrying out crushing of stones, blasting of stones and other mining operation to the respondent Nos. 9 to 11 and action taken only after identification of the safety zone in Teggi village, Bilgi taluk and Bagalkot district."

3. It is the case of the petitioner that he is the owner in possession and enjoyment of land bearing R.S. No. 255/1 and 255/2A measuring 2 acres 20 guntas situated at Teggi Village, Bilgi taluk, Bagalkot district. He is raising groundnut and wheat successfully for many years. He has also planted mango and teak saplings in the land. There was no obstruction or impediment much less any pollution problem affecting the grapes. Respondent Nos. 9 to 11 without obtaining necessary permit and clearance from the concerned authority, have installed stone crushing machines and are also carrying on mining business in the name of Somalingeshwar Stone Crusher. The respondents have not installed machines in the specified zones. They are blasting and removing the stones and are transporting them in land bearing R.S. No. 256/1B. Crushing of stones has seriously damaged the crops and trees in the land of the petitioner. The distance between the said crushing unit and the land of the petitioner is just 30 metres. Therefore, the petitioner gave a complaint to the Deputy Commissioner on 26/02/2012 specifically mentioning in detail about the illegal activities of respondents 9 to 11 which is seriously affecting the crops raised by him. The Deputy Commissioner in turn communicated to the Pollution Control Board, Deputy Director of Mines and Geology on 29/03/2012 to take action in accordance with law. Thereafter, the petitioner made an application to the Tahsildar under RTI Act seeking action taken details on 08/08/2012. The Deputy Commissioner has transferred the RTI application to the District Pollution Control Officer, Bagalkot, Deputy Director, Mines and Geology, Ilakal and Tahashildar, Bilagi on 24/08/2012 to take action. The Deputy Director, Mines and Geology, Ilakal informed the petitioner on 13/08/2012 about his visit to sites of respondents 1 and 10. Since no action was taken by the concerned authorities, and the illegal activities continued to operate as before and the petitioner continued to suffer loss of crops, made a representation to the Joint Director to take action in accordance with law and also specifically mentioned about the blasting of stones carried out in the place due to which his land is in danger and the internal water resource is also damaged due to the said blasting in October 2013, He made another representation to the Tahsildar. The petitioner further contended that the respondents have not followed any of the provisions of the Karnataka Regulation of Stone Crushers(Amendment) Act, 2013. Since the

respondents have not redressed the grievance of the petitioner and respondents 9 to 11 have perpetuated the illegal activities and violations of the provisions of various Acts and Rules and consequently caused damage to crops in the land of the petitioner in collusion with respondent Nos. 3, 6 and 8, he was constrained to file writ petition before this Court in W.P. No. 106374/2014. This Court issued direction to the petitioner to submit a representation to the concerned authorities and directed the authorities to look into the matter and in spite of the representation being made by the petitioner in pursuance of the order of this court to the concerned respondents, they have not taken any action. Therefore, he is before this court.

4. I have the learned counsel appearing for the parties to the lis.

5. Sri. Sunil S. Desai, learned counsel for the petitioner strenuously contended that respondents 1 to 4 have not acted in accordance with law while issuing licence with reference to crushing and mining operation to respondents 9 to 11 thereby causing damage to the land of the petitioner and respondents are carrying on stone crushing operation without obtaining proper licence under the provision of the Karnataka Regulation of Stone Crushers Act, 2011 and there is also violation of provisions of Air(Prevention and Control of Pollution) Act, 1981. The petitioner has a right to protect his land from the damage being caused due to the illegal activity by respondents 9 to 11. He also contended that respondents 9 to 11 are carrying out their illegal activity by manipulating the documents and they have obtained licence and the conditions imposed therein have not been properly followed and respondents 1 to 4 are under legal obligation to ensue that safety zones are demarcated and surveyed and thereafter to issue licence relating to installation of stone crushing machine etc. sought to allow the writ petitions.

6. Per contra, Smt. Vidyavati, learned Additional Government Advocate for respondents 1 to 8 contended that the official respondents have granted licence to respondents 9 to 11 after following all the procedure as contemplated and they have not violated any of the provisions of the Act as alleged by the petitioner. She further contended that the petitions filed by the petitioner is not maintainable since earlier the very petitioner had filed a petition in Writ Petition No. 106374 of 2014 before this Court for the very same relief and this Court by order dated 25/09/2014 has disposed of the writ petition and the licence granted in favour of respondents 9 to 11 was not at all disturbed or cancelled and further directed the petitioner to make a representation to the concerned authorities who in turn shall look into the matter. In pursuance of the order passed by this court on 25/09/2014, the authorities have considered and issued an endorsement to the petitioner as long back as on 30/05/2015. The licence granted in favour of respondents 9 to 11 will expire on 31/03/2016. Therefore, the said fact has been suppressed by the petitioner in the present petition filed on 20/11/2015. Therefore, she submits that the petitions may be dismissed by imposing exemplary cost.

7. Sri. Ananth Hegde, learned counsel appearing for respondents 9 to 11 sought to justify the impugned action. He submits that the petitions filed by the petitioner is without any basis and the respondents have not violated any of the provisions of the Act. He further contended that the official respondent after following all the procedure as contemplated under the provisions of Act have granted licence and that the land of the petitioner is away from 100 meter to 130 meter from the crushing unit and it no way affects the petitioner. Taking into consideration all the circumstances and the provision of the relevant act, the authorities have granted licence and the licensee will expire on 31/03/2016. Therefore, he sought for dismissal of the writ petitions.

8. I have given my anxious consideration to the arguments advanced by the learned counsel appearing for the parties and perused the material on record.

9. It is an undisputed fact that the very petitioner earlier had filed a writ petition before this Court in W.P. No. 106374 of 2014 challenging the very license Nos. 017 and 027 dated 07/10/2013 in the impugned writ petition. This court considering the entire case on merits disposed of the writ petition with an observation that the petitioner can very well approach the respondents 9 to 11 expressing his grievance to stop nuisance being caused on his properties and crop grown or else can file a suit for damages. At most if any such genuine grievance is there, the petitioner can very well give a representation to the concerned authority and concerned authority would look into the matter. The matter was disposed of after considering the contention of both the parties on merits and no liberty was reserved to the petitioner to challenge the very licence dated 07/10/2013 in the present writ petitions which was subject matter of previous writ petition. Knowing fully well, the very same prayer is sought in the present writ petitions which was sought in the previous writ petition and failed to succeed in the said writ petition, the petitioner has filed the present writ petitions for the very same relief in the absence of any liberty being reserved by this court.

10. It is not in dispute that in pursuance of the order passed by this Court on 25/09/2014 giving an opportunity to the petitioner to make a representation to the concerned authority and directed the concerned authority to look into the matter. The official respondents considering the entire material on record and after inspecting the disputed area on 24/12/2014 in the presence of the petitioner has issued an endorsement stating that the license granted is in accordance with law and the license granted in favour of respondents 9 to 11 will expire on 31/03/2016 the said endorsement is not challenged.

11. Knowing fully well, the petitioner has filed this second round of litigation on the very same grounds which were urged earlier which amounts to res judicata and nothing but daring ride on the court and the constant interference with the administration of justice, the same cannot be encouraged. It is surprising to note that the very same advocate who had appeared for the petitioner in the earlier round of litigation could have advised his client but instead he had encouraged his client to file the present writ petition by wasting precious time of the Court

which amounts to professional misconduct on the part of the advocate. In pursuance of the order passed by this Court, the petitioner had made a representation to the concerned authorities. The concerned authorities have passed orders and the present petitions are filed on 20/11/2015. The petitioner has not stated anything about the same in the present writ petitions.

12. At this juncture, Sri. Sunil S. Desai, learned counsel for the petitioner submits that it was not communicated to the petitioner. The fact remains that the official respondents have considered the representation of the petitioner issued an endorsement on 24/12/2014 much before filing of the present writ petition on 25/09/2014. In view of the same, prayers 1 and 2 in the present writ petitions amounts to res judicata and the same cannot be granted.

13. Insofar as prayers 3, 4 and 5 are concerned, this court while deciding the writ petition has taken into consideration the arguments advanced by the learned counsel for the petitioner and the respondents and has observed that if any damages is caused to the properties and the crop grown, the petitioner can very well approach respondents 9 to 11 or can file a suit for damages. The said finding holds good and the prayer sought claiming Rs. 30,00,000/- as damages is without any basis. The same is disputed by the respondents stating that the prayer was made in the previous writ petition which is nothing but repetition in the second round of litigation. This Court by exercising powers under Articles 226 and 227 of the Constitution of India cannot decide the damages. It is for the petitioner to file a suit. Though there was an observation by this court till today, no material is produced before this Court to show that any suit is filed seeking damages. However, the respondents have considered the representation made by the petitioner in pursuance of the order of this Court and have issued an endorsement after holding spot inspection of the land in the presence of the petitioner.

14. In view of the aforesaid reasons, the writ petitions are liable to be dismissed imposing exemplary cost considering the conduct of the petitioner in filing the second round of litigation for the very same relief against the same persons and represented by the very same counsel.

Accordingly, writ petitions are dismissed imposing cost of 1Rs. 5,000/- to be deposited before the registry within a period of one month from the date of the receipt of copy of this order.

BVJ: 22.02.2016

ORDER ON "BEING SPOKEN TO"

This Court by an order dated 05.02.2016 dismissed the writ petitions observing the conduct of the petitioner as well as the counsel and imposed costs of Rs. 25,000/-. Today the matter is posted for being spoken to.

After hearing the learned counsel for the parties, taking into consideration the young age of the learned counsel for the petitioner and the circumstances under

which he argued the matter, this Court feels that the adverse remarks made against the counsel for the petitioner has to be expunged and the imposition of costs should be reduced to some extent.

Taking into consideration the entire facts and circumstances of the case, the remarks made against the learned counsel for the petitioner is expunged and the costs of Rs. 25,000/- is reduced to a sum of Rs. 5,000/-.

Ordered accordingly.

1Corrected vide Court Order dated 22.02.2016 Sd/- (BVJ)