

(2015) 08 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No. 106849 of 2015 (GM-RES)

Ravalu

APPELLANT

Vs

Assistant Commissioner and Sub-Divisional Magistrate, North
Kanara

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2015) 4 AKR 307

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Vishwanath Hegde, for the Appellant; M. Kumar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—Sri. M. Kumar, learned Addl. Government Advocate is directed to take notice for the respondents. The petitioner's grievance is that his representation dated 21.10.2013 (Annexure-B) demanding eviction of the encroachers from the land in question has remained unconsidered.

2. Sri. Vishwanath Hegde, learned counsel for the petitioner submits that under Section 133 of the Code of Criminal Procedure, 1973, the revenue authorities are obliged to take the steps for removal of encroachment.

3. Sri. M. Kumar, learned Addl. Government Advocate appearing for the respondents submits that going by the very contents of the petitioner's representation, it becomes clear that the petitioner himself is an encroacher. The petitioner and some others have occupied the Government Land and that they have not even made any application for grant of the said land or for the regularization of their unauthorised occupation.

4. This petition is liable to be dismissed for more than one reason. Firstly, the alleged encroachers are not made the parties to this petition. Secondly, this

matter involves resolving the disputed questions of facts. Thirdly, writ cannot be issued unless it is established that there is an existing legal right of the applicant or an existing duty of the respondent. In saying so, I fortified by the Apex Court's judgment in the case of The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, . Para 21 of the said decision reads as follows:

"21.....The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justitiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal."

5. It is also profitable to refer to the Apex Court's judgment in the case of Mani Subrat Jain and Others Vs. State of Haryana and Others, , wherein it is held that no one can ask for a writ of mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a writ of mandamus.

6. As held by the Apex Court in the case of Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, , a writ of mandamus will not lie where the duty is clearly discretionary.

7. In the case of State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, , it was held that the existence of a legal right is the foundation for the institution of a writ petition. For the aforesaid reasons and following the Apex Court's judgments referred to hereinabove, I dismiss this petition. No order as to costs.