

(1989) 06 KAR CK 0026
In the Karnataka High Court
Case No : W.P. No. 3791/1989

Sayyad Umar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 KarLJ 188

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-The petitioner who was unemployed, applied to the City Municipality of Davangere to allot him a place on the side of the road of a specific place and in response to that application the city municipality sanctioned a place measuring 5" x 6" to erect, the shed and carry on trade therein. The municipality leased the property as above on a monthly rental of Rs. 60/- which he was required to pay in advance every month. He deposited the rent in advance and executed a lease deed on stamp paper for a period of eleven months from 1-12-1988. Thereafter he was issued the endorsement permitting him to keep his shed in the place allotted to him on lease. He was carrying on business there investing about Rs. 5000/-. He was paying the rent regularly. However, on 25-2-1989 at about 3 p.m., the petitioner was removed from the place and the shed was taken away by the second respondent-administrator of the city municipality, Davangere, who had replaced the elected civic administration carried on by the earlier municipal council the term of office of which had come to an end.

2. Despite service of notice and granting time on the last date, no objections have been filed denying the assertions made by the petitioner. Petitioner has alleged that he had kept pan materials, cigarettes; biscuits etc., worth Rs. 2,000/-, wires, chairs worth about Rs. 2,000/- when the workers under the instructions of the second respondent-administrator carried away the shed and its contents. If those allegations go undenied by the respondents, this Court has to accept the assertions made by the petitioner. The act is absolutely high-

handed, unauthorised and uncalled for. Provisions are made in the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 for eviction of any person who is authorisedly occupying any property which belongs to the state or the local authority specified in the Act. Without having recourse to the procedure provided therein, without notice despite the endorsement as at Annexure-A, the administrator has done what is alleged to have been done. This Court cannot be an idle spectator to such executive excesses.

No statement of objections has been filed denying the allegations. Therefore, accepting the case made out by the petitioner, writ as prayed for be issued including a direction to the respondents to pay a sum of Rs. 10,000/- by way of damages in addition to restoring the shed to the petitioner in obedience to the mandamus directed.

The first respondent will be free to recover the damages from the second respondent, whose act has caused this loss to the exchequer. This Court cannot be an idle spectator when citizen's fundamental rights are trampled by executive officers, that too rights guaranteed under Articles 19 and 21 of the Constitution as well as the right under Act 300-A.

The second respondent will also pay the costs of this petition and advocate's fee is fixed at Rs. 500/-.

Writ petition allowed with costs.