

(1999) 06 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 3111 of 1997

Shanthi Vidya Kendra, Bellary

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Constitution of India, 1950 — Article 225, 226, 227
Karnataka Conduct of Government Litigation Rules, 1985 — Rule 30, 4

Citation : AIR 2000 Kar 131 : (1999) 6 KarLJ 104

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri P.R. Ramesh, for the Appellant; Sri M.N. Ramanjaneyagowda, A.G.A. and Sri K. Gopal Hegde, for the Respondent

Judgement

1. The petitioner herein being a Society registered under the Karnataka Societies Act was running an educational institution under the name and style "Shanthi Vidya Kendra" situated at Parvathinagar, Bellary, and it had filed the instant writ petition as against the respondents 1 to 4. As could be made out from the cause title, the respondent 1 is the State and the respondent 2 is the Assistant Director of Land Records, whereas the respondent 3 is the Principal District and Sessions Judge, Bellary and the respondent 4 is the Bellary Urban Development Authority; of course the respondent 4 subsequently was given up by the petitioner by filing a memo on 30-5-1997.

2. I heard the learned Counsel for the petitioner Sri P.R. Ramesh and the learned Counsel for the respondent 3 Sri K. Gopal Hegde. The respondent 1-State and the respondent 2-Assistant Director of Land Records are represented by the learned Additional Government Advocate Sri M.N. Ramanjaneyagowda.

3. In filing the writ petition, the petitioner-Society had sought for the following reliefs:

"(i) Issue a writ of certiorari or any other appropriate writ, order or direction to

quash the endorsement No. CTS:HB:26/95-96, dated 14-6-1996 issued by the second respondent vide Annexure-K.

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 2nd respondent to measure the land granted to the petitioner pursuant to grant certificate vide Annexure-A,

(iii) Issue an appropriate writ, order or direction, directing the third respondent not to interfere with the peaceful possession and enjoyment of the land granted to the petitioner under Annexure-A and

(iv) Grant all other consequential reliefs including exemplary costs deemed fit in the circumstances of the case".

4. However, on filing the detailed objection statement by the respondent 3, the petitioner herein had filed a rejoinder thereto and in doing that, the petitioner had given up the prayers at (i) and (ii) above, addressed as against the respondent 2 and as such, for all purposes the instant writ petition is now only for the purpose of grant of prayers at (iii) and (iv) above as against the respondent 3 alone.

5. The petitioner-Society's case is that it was running an educational institution for betterment of the women and children of the area and in consideration of their educational and social activities, the Tahsildar, Bellary in Order No. THS. 139/70.B-3 had sanctioned Government land measuring 50 cents or 2,000 square yards in Sy. No. 11/2 of Bellary Village and the same was granted to it under the Standing Order No. 21. The land was situated by T.S. No. 11/1 all around and the same was sold to it for a sum of Rs. 1,277.50 ps. and accordingly assigned to it as per the provisions of Board's Standing Order No. 21 subject to certain conditions, more fully set out in the order, copy at Annexure-A to writ petition. That, the petitioner-Society had constructed a school building and was also running the educational institution by obtaining a duly sanctioned plan from the local Municipal Authority. That, subsequently, the petitioner had extended the building without there being any plan for the reason that the society was exempted from paying taxes to the Municipality and that the local authority had demolished that additional construction as the same was without sanctioned plan. That the petitioner-Society thereafter approached the respondent 2-the Assistant Director of Land Records (henceforth in brief as the "ADLR") for measuring of the land of the society assigned to it as above and the respondent 3-District Judge intervened by writing to the ADLR that the entire land bearing T.S. No. 11/2 belonged to the Government, i.e., the Judicial Department, Bellary and that the petitioner-Society had illegally built a school by encroaching the land belonging to his Department and therefore requested the said Survey Authority to reject the request of the petitioner-Society to measure the land. It is also alleged that the District Judge had also objected the petitioner for running the institution in and around the month of July 1996.

6. It is further alleged in the writ petition that despite the petitioner being a

grantee in possession of the land in T.S. No. 11/2, the District Judge had consistently been objecting to the petitioner-Society to carry out their activities in the premises building and that he was also threatening of forcible eviction of the petitioner-Society and according to it, the demolition of the building was consequent to the interventional action on the part of the District Judge. That, the District Judge was holding out threat as against the proposed construction by the petitioner-Society for running the school and therefore the petitioner had filed the instant writ petition seeking the prayer No. (iii) as against him. It was also stated therein that the respondent 3 being not an ordinary official, but was heading the District Judiciary, the petitioner-Society thought that it would not get justice in the event suits were to be filed as against him before the Court at Bellary and that it is for that reason it was compelled to approach this Court for the above relief under extraordinary jurisdiction conferred under Article 226 of the Constitution.

7. The respondent 3 in filing a detailed objection statement had denied the allegations made against him. He had also contended in the objection statement that the Government of Madras originally acquired 118.36 acres of land in Sy. No. 506/2 and Ryotwar Sy. No. 432/5 including a bungalow for the residence of the District Judge and the District Collector, Bellary under Gazette Notification dated 4-4-1911 and subsequently in the year 1912, the Government of Madras assigned 22 acres and 20 acres 9 cents of land in Block No. 1, Ward No. 16 in T.S. No. 11/1. It was further contended that besides the assignment of 20.20 acres, the then Government of Madras had also assigned 28 acres 8 cents in T.S. No. 601, 20 acres 22 cents in T.S. No. 12 and 11 acres 32 cents in T.S. No. 14, in all 81 acres and 82 acres 9 cents. It was further contended that there was no divesting of the lands so vested in them by the Government to make a claim by the petitioner-Society to say that it was assigned with 50 cents 2,400 sq. yards of land in Sy. No. 11/2 or in other words to say that the respondent 3 had pleaded complete ignorance of the assigning of the said piece of land to the petitioner. It was further contended by the respondent 3 that the petitioner-Society had put up illegal construction by making illegal encroachment of the lands granted to the Judicial Department in T.S. No. 11/1. He had also disputed as to the correctness of the boundaries as set out in the subsequent order No. 29, copy at Annexure-A to writ petition, wherein the petitioner-Society had claimed right, title and interest on the said 50 cents of land in Sy. No. 11/2.

8. The petitioner-Society had also filed a rejoinder to meet the above contentions of the respondent 3 in his objection statement and further to give up the relief it had prayed for at prayers (i) and (ii) as against the respondent 2.

9. The learned Counsel for the petitioner Sri P.R. Ramesh had taken me through the backdrop of the case and further the grounds set out in the writ petition.

10. In his argument, he had restricted himself as to the prayer at (iii) as against the respondent 3-the District Judge. Before addressing himself on the main contentions of the petitioner-Society, Sri Ramesh had also taken up at the first

instance a sub-issue that had cropped up in the mid. That issue is with regard to engaging the services of a private lawyer in Sri K. Gopal Hegde, the learned Counsel who had put appearance for the respondent 3, while the learned Additional Government Advocate in consonance with the authorisation under the relevant G.O. issued by the Law Department of the State, already filed a memo of appearance for the respondents 1 to 3 on 23-12-1997. In this connection, Sri Ramesh had argued that the District Judge being the Government Servant had to be defended only by the Law Officer appointed under Karnataka Conduct of Litigation Rules, 1985, for that purpose by the Government and therefore, it was totally impermissible for him to engage the services of a private Advocate. He further pointed out that under Article 225 of the Constitution, the District Judge as that of the respondent 3 is not a Constitutional Authority and his service conditions are controlled by the High Court and that he was only a Government Servant for all purposes, no matter that as per his service conditions he is under the control of this Court. He further pointed out that as per Chapter V of the Karnataka High Court Rules, 1959, without there being any no objection by the Counsel on record, i.e., the Additional Government Advocate, it was totally impermissible for a private Counsel to put his appearance for the respondent 3 as it had been done in the instant case by filing power or Vakalath name for the respondent 3 by Sri K. Gopal Hegde. He had also drawn my attention to Rule 30 of the Karnataka Law Officers (Appointment and Condition of Service) Rules, 1977, wherein it was also available for a Government Servant to engage the services of a special Counsel. He further pointed out that the same could be with the prior consent of the Advocate General.

11. In substance, the argument of Sri Ramesh on that sub-issue is that the District Judge was at folly in engaging the services of a private Counsel as that of Sri K. Gopal Hegde to defend him before this Court in the instant writ petition. Though there is some force in the argument of Sri Ramesh in this regard, I have to point out at this stage that, normally for defending the High Court or any of its Officers including the Judicial Officers, the Registrar General addresses a letter to the Government in the Law Department to authorise a Law Officer to defend it or its Officers and it is upon that request, the Government in the Law Department issue proper authorisation by way of a G.O. authorising a Law Officer to appear for the High Court or its Officer or Officers. As I understand, it is in that way, the Government at the first instance had issued an authorisation to the learned Government Advocate to appear for and on behalf of the respondent 3 and it is thus, he had put his appearance for the respondents 1 and 2 as well as the District Judge, respondent 3 in the writ petition by filing Memo of Appearance on 23-12-1997. I do find such a memo of appearance on the records. But it is brought to the notice of this Court by the learned Counsel for the petitioner in filing a memo on 5-4-1999 that the Registrar General of this Court had authorised the respondent 3 to engage the services of a private Counsel to defend him in the writ petition on the ground that there is conflict of interests between the respondent 1-State on the one side and the respondent 3-the

District Judge on the other in view of the claim made by the petitioner-Society that in the very same land that was originally granted to the Judicial Department of the respondent 3, the Tahsildar, an Officer of the respondent 1-State had yet again assigned 50 cents of the land and this is how, the respondent 3-the District Judge had engaged the services of Sri K. Gopal Hegde to defend him in the writ petition. In this context, I feel it appropriate to quote what the Registrar General of this Court had written to the respondent 3-District Judge in letter dated 21-9-1998. The body part of the said letter reads as here under:

"With reference to the above subject, I am directed to state that you are permitted to engage a private Advocate to appear on behalf of you and contest the writ petition bearing No. 3111/97 (KLR) regarding encroachment of land belonging to Judicial Department by Shanthi Vidya Kendra, Parvathinagar, Bellary, in view of the conflicting interest involved between the 2 respondents and the 3rd respondent and the Government Advocate is appearing for all the respondents 1 to 3. Further, I am to state that you are authorised to make payment to the Advocate as appointed from out of your office contingency. You are also authorised to come over to Bangalore to instruct the Advocate in the above said behalf and to get the interim stay vacated".

12. Thus, as I further see, engaging the services of Sri K. Gopal Hegde is for a very good reason that he has got rich experience both in the Bench as well as in the Bar as he is a retired District Judge and also held the Office of Law Secretary in the Government for considerably long time and further that he was also Presiding Member of Income Tax Appellate Tribunal. No doubt there is a small hitch for him to represent the respondent 3 before this Court in view of the circumstances that the learned Additional Government Advocate who had appeared for and on behalf of the respondent 3 in filing the memo of appearance, had not retired from appearance and that the authorisation to enable the respondent 3-District Judge to engage the private services of a Counsel, Sri Hegde had put his appearance before this Court for the respondent 3-the District Judge. But according to me that itself cannot be a good reason for depriving the respondent 3 from engaging the services of a private Counsel, particularly, when the High Court had permitted him to do in view of the conflicting interest between the respondent 1-State and himself. Furthermore, I have to state that Sri K. Gopal Hegde had also filed an application under Rule 4 of Chapter V of the Karnataka High Court Rules for permitting him to appear for the respondent 3. In consideration of that application, I am but to entertain his representation, more so, when he had since filed the Vakalath for the respondent 3. That being the position, discussion on that sub-issue may be a purely of academic interest and relegate to the background and as such, I do not feel it necessary to deal with that issue any further.

13. While turning to the main issue, vis-a-vis the prayer for injunctive relief as against the respondent 3, Sri Ramesh argued that the petitioner honestly felt that, had he filed a suit seeking injunctive relief by way of a suit before the

proper Civil Court in Bellary, he would not have got justice in the hands of that Court when the Presiding Officer of that Court was a Judge subordinate to the respondent 3 and it is for that valid reason, the petitioner on proper advice to him had resorted to the instant writ petition before this Court. According to him, the jurisdiction vested in this Court under Articles 226 and 227 is too wide and all-pervading even to grant the injunctive relief the petitioner had sought for in the writ petition in the peculiar facts and circumstances of the case. He had also argued that the District Judge had no good reason to interfere with the possession and enjoyment of the 50 cents of the land that was assigned by the Government and meddle with the affairs of the petitioner in the matter of possession of the same and further the construction of the building thereon totally overlooking the circumstance that the petitioner-Society was doing public good by running educational institutions. In this context, he has pointedly drawn my attention to what the respondent 3 did in writing to the respondent 2-ADLR not to hold survey of the land of the petitioner on the plea that the same belonged to the Judicial Department and that the petitioner-Society had no right thereon. It was also argued by him that in the peculiar facts and circumstances the petitioner-Society was placed, it was its lot to approach this Court by filing the instant writ petition seeking injunctive relief as against the respondent 3. He had also added that the petitioner-Society has got all respect for the Judiciary and its Officers and it is because of that, the petitioner-Society was also prosecuting its eviction cases also in respect of the building situated on the subject land before one of the Courts in Bellary city.

14. Sri Ramesh, to sum up, submitted that this Court be pleased to allow the writ petition granting relief sought for as against the respondent 3-District Judge.

15. On the other side, Sri Hegde on the above sub-issues raised by Sri Ramesh with regard to engaging the services of a private lawyer in him, counter argued that the respondent 3 had engaged the services of a private Counsel in him in view of the permission that was given by the Registrar General in addressing a letter to him on 20-1-1998, more particularly, in the circumstances that there was conflict of interest between the State on the one side and the respondent 3 on the other. Even otherwise, according to him, the petitioner cannot make out a grievance for engaging the services of a private Counsel, for according to him, it was not his business in what mode or in what manner the respondent 3 chose to defend himself before this Court. He further argued that the procedural law is only a guide and that cannot prevent a party before Court to defend himself by engaging the services of a Counsel of his discretion. Incidentally, he had also pointed out that he had also filed an application before this Court requesting this Court to permit the respondent 3 to engage the services of a private lawyer as contemplated under Rule 4 of Chapter V of the High Court Rules. I have adverted to the same and since extracted the same in para 11, supra. He had also pointed out the above objections raised by the petitioner is only a technical objection and as such is not of great relevance to the main issue to be decided in the case.

16. Sri K. Gopal Hegde with all vehemence argued that the instant writ petition as against the respondent 3-District Judge is not at all maintainable since the relief what had been sought for against him at prayer (iii) in the writ petition is more in the nature of a relief a Civil Court has to grant after entering into a detailed enquiry, which includes recording of evidence, both oral and documentary to be produced by the respective side and therefore according to him, that rowing enquiry cannot be made in the instant writ petition before this Court to grant the injunctive relief prayed for. He had also argued that in filing the instant writ petition before this Court, the petitioner had also made disparaging allegations against the District Judiciary by contending in the writ petition that it would not get any justice at the hands of the Court in Bellary and that in filing the instant writ petition before this Court, the petitioner had also made a choice of a Forum to get his grievance redressed. The said course according to Sri Hegde is not at all available, for a litigant public. While advertng to the petition averments, Sri Gopal Hegde had also pointed out that the same is not in good taste as the petitioner made an attempt to point out motives, mala fides and bias on the part of the District Judiciary.

17. In the light of the above submissions, I have carefully gone through the petition averments and the Annexures thereto to the writ petition. The points at controversy are very clearly set out in paras 19, 21, 22 and 24 of the writ petition on the one side and paras 3 and 4 of the objection statement filed by the respondent 3. I feel it appropriate to quote the above, so that one is in a position to appreciate what the parties hereto have taken stand as against each other. The averments in paras 19, 21, 22 and 24 in the writ petition read as hereunder:

"19. In view of the fact that the threat to the construction made by the petitioner and running of the school is not by an ordinary official but by the Head of the Judicial Wing of the District, the petitioner was advised to seek relief directly from this Hon''ble Court as it would be futile to seek an order of injunction from the very Judge or his subordinate Judicial Official in the District. It is in this context, the petitioner was contemplating to file a petition before this Hon''ble Court. At that stage, petitioner became aware of the fact that the then incumbent-Sri Shankar Murugod will be retiring by the year end and is likely to proceed on a long leave prior to retirement. Petitioner then refrained from moving the matter even before this Hon''ble Court with the hope that the next incumbent of the office of the District Judge will see the realities.

21. Instead of complying with the just demand of the petitioner, the second respondent surprisingly sought the opinion of the third respondent. A copy of the said communication addressed to the third respondent from the office of the second respondent marked to the petitioner is herewith produced and marked as Annexure-M.

22. When the matter stood thus, to the shock of the petitioner, the officials of the fourth respondent demolished several encroachments in Bellary City from 16-10-1996 to 18-10-1996. The major casualty was the building constructed by

the petitioner. Newspaper article as contained in this regard in the Indian Express dated 20-10-1996 is herewith produced and marked as Annexure-N. The photo taken after the demolition is herewith produced and marked as Annexure-P.

24. The then incumbent of the office of third respondent Sri Shankar Murugod retired from service and with the fond hope that the new incumbent of the said office may not interfere with the exercise of official duty by the second respondent, the petitioner gave one more representation to the second respondent on 26-11-1996 and in spite of the said representation, no action has been taken till date. Petitioner is thus compelled to approach this Hon"ble Court, seeking relief under the extraordinary jurisdiction conferred on it under Article 226 of the Constitution of India".

18. Paras 3 and 4 of the objection statement filed by the respondent 3 read as follows.--

"3. This respondent submits that from the records available, it is seen that the then Government of Madras acquired 118.36 acres of land in Sy. Nos. 506/2 and Ryotwar Sy. No. 432/5 including a Bungalow for the residence of the District Judge and District Collector of Bellary. Copy of the Gazette Notification dated April 4th, 1911 is produced herewith and marked as Annexure R-1. Subsequently in the year 1912 the then Government of Madras had assigned to the judicial department 22 acres and 20.9 cents in Block No. 1, Ward No. 16 in T.S. No. 11/1. Besides this assignment of 22.20 acres the then Government of Madras also assigned 28.08 acres in T.S. No. 601, 20.22 acres in T.S. No. 12 and 11.32 acres in T.S. No. 14, in all 81 acres and 82.9 cents. It is settled law that when lands were assigned to a particular department the lands so assigned vests with the said department. The revenue authorities will have no power or jurisdiction either to divest the lands so vested or authority or power or jurisdiction to grant or assign any portion of the land vested in the judicial department. Any divesting of the land can be made by the State Government and that too after the concurrence and approval of the head of the judicial department. To the best of the knowledge of this respondent, there has been no divesting of the lands assigned to the judicial department.

4. The inquiry made by the judicial department reveals that the Secretary of the Society who has sworn to the affidavit in support of the writ petition is a very influential woman having considerable political clout. She appears to have misrepresented and misled the revenue authorities and managed to get an assignment of 50 cents from the Tahsildar. It is significant to note that according to the Annexure-A the order of assignment reveals that 50 cents or 2,400 sq. yards in Sy. No. 11/2 of Bellary Village was assigned to the Secretary of Shanti Sishu Vihar. In the grant, the boundaries given is not survey numbers but T.S. numbers on all the four sides. Therefore the assignment could not have been in portion of T.S. No. 11/1. But the sketch produced by the petitioner Annexure-C amply establish that the petitioner has put up construction in T.S. No. 11/1 which is wholly unauthorised".

19. If one carefully reads prayer 3 in the above writ petition as against the respondent 3, vis-a-vis the respective pleadings of the parties quoted above, it is clear that the petitioner in filing the instant writ petition had sought for injunctive relief which the petitioner had to obtain by filing a regular suit before the Civil Court of proper civil jurisdiction. The petitioner when under advice of learned Counsel should be knowing fully well that this Court could not make a roving enquiry in a writ petition when basic facts were disputed and complicated questions of law had to be decided based on the evidence, both oral and documentary in the case. I do not think that the petitioner in filing the instant writ petition had opted the right course for the kind of relief he sought for in the hands of this Court. Both the Apex Court as well as the High Court have consistently held that question of title to properties when disputed, the same cannot be satisfactorily gone into and decided in a writ petition.

20. The learned Counsel for the petitioner Sri Ramesh tried to convince me that the facts and circumstances are peculiar to the case in hand and it is because of that situation the petitioner was obliged to file the instant writ petition. That argument of Sri Ramesh did not move me to accept the same. Even if it is the case that something was lurking in the minds of the petitioner that he would not get justice in the hands of a Court in Bellary city in the circumstances that the District Judge was the head of the District Judiciary, nothing prevented him to file a civil suit with a prayer as he had made out in the instant writ petition and thereafter got the same transferred from that Court to any other Civil Court of his choice, if necessary outside the District by filing a transfer petition before this Court for transfer of that suit to some other Court; probably this is the right and the honourable approach the petitioner would have opted to do instead of filing the instant writ petition before this Court.

21. I have to add in this context that in the event this Court were to entertain the instant writ petition and grant the relief, probably that is a bad precedent this Court sets, for this Court may be flooded with similar writ petitions overlooking the procedural law in instituting the suits before the jurisdictional Court of appropriate Civil jurisdiction. I do not think this Court can allow that alarming situation to come on.

22. The learned Counsel appearing for the contesting parties Sri Ramesh as well as Sri Hegde produced good number of authorities on the sub-issue as to whether a Government Officer or official be defended by a private Counsel. But I did not feel it necessary to refer to them here, for, as I see, the set of facts therein in most of the decisions and the set of facts in the case in hand are distinct and different.

23. In that view of the matter, I do not find any merit in the instant writ petition. The writ petition therefore stands dismissed. In the peculiar circumstances, I direct the parties to bear their respective side of the cost. Rule issued stands discharged.