

(2011) 02 KAR CK 0170
In the Karnataka High Court
Case No : Writ Petition No. 60976 of 2011

Smt. Satyavva

APPELLANT

Vs

Hubli Dharwad Municipal Corporation

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 288 D
Slum Area (Improvement and Clearance) Act, 1956 — Section 3, 3 (1)

Citation : (2011) ILR (Kar) 2004 : (2011) 61 KarLJ 2004 : (2011) 4 KCCR 2844

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : V.M. Sheelavant, for the Appellant; G.I. Gachchinamath, for the Respondent

Judgement

Abdul Nazeer, J.—Since common question of law and fact are involved in all these cases, they are clubbed together, heard and disposed of by this common order.

2. The petitioners contend that they are occupying different portions of land bearing Sy.No.36A of Unkal Village, Hubli Taluk, Dharwad District. They have put up small sheds/huts on the said land and have been residing in those sheds for the past 30 to 35 years. The Hubli-Dharwad Municipal Corporation (for short the "Corporation") has assigned corporation number to their huts and it has been collecting taxes from them. The area in question has been declared as a slum area u/s 3 of the Slum Area (Improvement and Clearance) Act, 1956. The petitioners have produced the tax paid receipts issued by the Corporation. The Forest Contractors and Timber Merchants' Association Limited, Hubli, filed a petition before this Court in Writ Petition No. 12420/2006 for a mandamus directing the Corporation to develop the said land reserved for park and to establish fire brigade as per the approved plan bearing No.DEV.ACQ.SR.52 dated 20/12/1970 (for short "the Layout Plan") and to prevent the 3rd parties from encroaching the said land. Though the petitioners are in possession of different portions of the said land, they were not made parties to the said writ petition.

This Court by an order dated 22/02/2010 directed the Corporation to develop the land within a period of six months from the date of receipt of copy of the order. On the basis of the said order, the Corporation has issued notices to the petitioners to demolish the sheds/huts and vacate the land. It is further stated in the notices that if the petitioners fail to demolish the sheds/huts and vacate the land, the same will be demolished by the Corporation. Therefore, the petitioners have filed these writ petitions for quashing of the said notices.

3. The Corporation has filed its statement of objections contending that it has not assigned any permanent numbers to the hutments. The number given to the hutments is to facilitate the conducting of the census; the land in question is earmarked for park and open space in the comprehensive development plan. Unless there is a change of the land use, no person can lay a claim to the said land. The notice issued u/s 3(1) of the Slum Area (Improvement and Clearance) Act 1956 is without notice to the Corporation. Though the said notice was issued on 19/12/2001, no further steps have been taken so far. The Corporation has taken steps to demolish the sheds/huts in view of the direction of this Court in Writ Petition No. 12420/2006 dated 11/02/2010. It is further contended that immediately after the receipt of the order, the Executive Engineer of the Corporation, has directed the Assistant Commissioner, Zonal Office to conduct survey of the area, in order to implement the said order. In furtherance of the said order, the Assistant Commissioner, Zonal Office No.5, along with his team has visited the spot and demarcated the encroached area so as to demolish the unauthorised sheds/huts constructed thereon. Thereafter, an order was passed by the Commissioner of Corporation dated 27/01/2011 u/s 288-D of the Act for demolition of the unauthorised sheds/huts put up on the lands. Pursuant to the said order of the Commissioner, impugned notices have been issued to the petitioners calling upon them to demolish the sheds/huts unauthorisedly put up by them and to vacate the said land.

4. I have heard the Learned Counsel for the parties.

5. Learned Counsel for the petitioners would contend that though the land was earmarked for park and open space in the Comprehensive Development Plan, the petitioners/their predecessors have put up sheds/huts on the said land long ago and they have been residing in their respective sheds/huts for the past 30-35 years. The Corporation has assigned numbers to their sheds/huts and it has been collecting tax from them. The petitioners are not made parties to the Writ Petition No. 12420/2006, though they are in possession of the land. The petitioners are from weaker section of the society and they are not in a position to make any alternative arrangement for their residence. They were not heard before passing of the impugned orders. If the petitioners are rehabilitated elsewhere, they are ready to vacate their respective sheds/huts.

6. On the other hand, Learned Advocate appearing for the respondent submits that the land in question was reserved for park in the Comprehensive Development Plan. It cannot be used for any other purpose without there being

an order for change of land use in accordance with law. The petitioners have unauthorisedly put up sheds/huts. The numbers assigned by the Corporation to the sheds/huts of the petitioners is temporary in nature in order to facilitate conducting of census. The respondents have no other option but to implement the order passed by this Court in Writ Petition No. 12420/2006 dated 22/02/2010. That is why the Commissioner of Corporation has passed an order u/s 288-D of the Act dated 27/01/2011 for demolition of the sheds/huts. In furtherance of the said order, the impugned notices have been issued to the petitioners.

7. I have carefully considered the arguments of the Learned Counsel made at the Bar and perused the materials placed on record.

8. It is evident from the materials on record that under the Comprehensive Development Plan dated 20/12/1970 at Annexure R-7, the land in question has been reserved for park. It is also not in dispute that the petitioners have unauthorisedly occupied the said land, put up the sheds/huts thereon and have been living in those sheds/huts. The petitioners contend that they have been living in their sheds/huts for the past 30 years. However, the contention of the respondent is that the encroachment has taken place subsequent to the year 2000. Be that as it may. The petitioners have produced materials to show that the Corporation has assigned corporation numbers to the sheds/huts in question and it has been collecting tax. Some of the petitioners have produced the tax paid receipts issued by the Corporation evidencing payment of property tax. It is also clear that the Slum Clearance Board has issued a Notification u/s 3(1) of the Act dated 19/12/2001 declaring the area in question as a slum area. However, no further proceedings have been initiated pursuant to the said Notification. Thus, it is clear that the petitioners have been in possession of the land in question for the past several years. The petitioners were not made parties to Writ Petition No. 12420/2006. In the said case, the Corporation has sought reasonable time to develop the area. On the basis of the submission made on behalf of the Corporation, this Court has passed an order directing it to develop the area in question for the purpose for which it was reserved. In pursuance to the said order, the Commissioner has passed an order as per Annexure R-6 u/s 288-D of the Act for demolition of the sheds/huts in question on the basis of which the corporation has issued the impugned notices to the petitioners to demolish their huts/sheds without granting them any opportunity to show cause as to why their huts should not be demolished.

9. Section 288-D of the Act authorises the Corporation to remove encroachment without notice. It is as under:

Section 288-D: Commissioner may without notice remove encroachment.- Notwithstanding anything contained in this Act, the Commissioner, may, without notice, cause to be removed.-

(a) any wall, fence, rail step, booth or other structure or fixture which is erected

or set up in contravention of the provisions of Section 288-A;

(b) any stall, chair, bench, box, ladder, bale or any other thing whatsoever, placed or deposited in contravention of Section 288-B;

(c) any article, whatsoever, hawked or exposed for sale in any public place or in any public street in contravention of Section 288-C and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed, or kept for the purpose of sale.

10. The above provision is not applicable to the present case because the petitioners are not in occupation of any wall, fence, rail, step, booth or other structure or fixture which causes obstruction in public streets or any stall chair, bench, box ladder, bale or any other thing whatsoever prohibited under Sections 288-A and 288-B of the Act. Sub-Section (c) of Section 288-D has also no application to the facts of this case. The petitioners are in occupation of the land reserved for park. Section 288-D of the Act cannot be pressed into service for taking possession of the land in unauthorised occupation of the petitioners. Thus, the order at Annexure-R-6 dated 27.1.2011 and the impugned notices have been issued without jurisdiction. Though the Slum Clearance Board has issued notices u/s 3(1) of the Slum Area (Improvement and Clearance) Act, 1956 dated 19.12.2001, no further action has been initiated in furtherance of the said notice. Thus, the said notice has lost its efficacy.

11. The fact remains that the petitioners are in possession of the area reserved for development of a park in a Comprehensive Development Plan. No one has the right to make use of a public property for a private purpose without the requisite authorisation. When the land is earmarked for a particular purpose, it cannot be used for any other purpose. Though the Comprehensive Development Plan is of the year 1970, it is not understandable as to why the authorities responsible for implementing the plan, have not taken steps to develop the park. Explanation is not forthcoming from the respondent as to why it has allowed the said area to be occupied by the petitioners which has virtually become a slum. It is not in dispute that the petitioners belong to the weaker section of the society and their eviction would result in deprivation of roof over their head. Even if the petitioners are granted an opportunity of being heard, no useful purpose will be served because admittedly, they are in unauthorised occupation of the civic amenity site meant for a public purpose. The said land is meant for creation of convenience to the public at large. We have to find a solution to the problem. Human compassion must soften the rough edges of justice in all situations. In *OLGA TELLIS AND OTHERS vs. BOMBAY MUNICIPAL CORPORATION AND OTHERS*¹, the Apex Court was considering the action of the Bombay Municipal Corporation to remove encroachments on foot-path, pavements and open space over which the public have a right of passage or access. In the said decision, the Apex Court has held as under:

However despite holding Section 314 valid, in terms of the assurances given by

the State Government in its pleadings before the Court, it is directed that the pavement dwellers who are censused or who happened to be censused in 1976 should be given though not as a condition precedent to their removal, alternate pitches at Malavani or, at such other convenient place as the Government considers reasonable but not further away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternate sites for their re-settlement before eviction; slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purpose, in which case, alternate sites or accommodation will be provided to them; the "Low Income Scheme Shelter Programme" which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and the "Slum Upgradation Programme (SUP)" under which basic amenities are to be given to slum dwellers will be implemented without delay. Highest priority must be given by the State Government to the re-settlement of these unfortunate persons. In order to minimize the hardship involved in any eviction, it is directed that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31, 1985 and, thereafter, only in accordance with the present judgment. If any slum is required to be removed before that date, parties may apply to the Supreme Court. Pavement dwellers, whether censused or uncensused, will not be removed until the same date, namely, October 31, 1985.

12. The State Government has been implementing various schemes for the poor and the downtrodden such as Ashraya scheme, Aasare scheme and Rehabilitation scheme Flood Victims etc. The intention behind all these schemes is to alleviate poverty and to provide shelter to the needy. This is a fit case where the respondent and other concerned authorities have to take steps to rehabilitate the slum dwellers like the petitioners. There is no point in summarily evicting them and demolishing their sheds/huts which will only aggravate the problem. At the same time, we cannot lose sight of the fact that the planned development of the city is imperative. Therefore, I am of the view that the petitioners have to be rehabilitated in some other place. Learned Counsel for the petitioners has no objection for the same.

13. Therefore, I direct the Commissioner of the respondent-Corporation to convene a meeting of the Commissioner, Hubli-Dharwad Development Authority, Chairperson, Dharwad of the Zilla Panchayat, Dharwad, the Corporator who represents the area, the Mayor of Hubli-Dharwad Municipal Corporation. The elected representatives of the people from Hubli-Dharwad should also be invited to the meeting so that effective steps can be taken to solve the problem at hand and to take steps to rehabilitate the petitioners and other similarly placed persons occupying the land in question. The respondent is directed to identify the lands for the rehabilitation of the petitioners and shift them to the said place. Till the alternative arrangement for re-habilitation of the petitioners as above is

made, they shall not be evicted from their sheds/huts. The meeting as above shall be convened by the respondent within three months from the date of receipt of copy of this order. Re-habilitation of the petitioners and other similarly placed persons residing in Sy.No.36A of Unkal Village shall be completed within a period of six months from the date of receipt of a copy of this order. The order dated 27.1.2011 (Annexure-R6 in W.P.No.60976/2011) and the impugned notices in all the cases are hereby quashed. Writ petitions are disposed of accordingly. No costs.