

**(2004) 07 KAR CK 0048**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 29748 and 29749 of 2004

Speedway Impex and Another

APPELLANT

Vs

Bangalore Mahanagara Palike and Others

RESPONDENT

**Date of Decision :** 22-07-2004

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2004) 6 KarLJ 611 : (2004) 3 KCCR 1900

**Hon'ble Judges :** D.V. Shylendra Kumar, J

**Bench :** Single Bench

**Advocate :** Sundaraswamy Ramadas and Anand, for the Appellant;

**Final Decision :** Dismissed

## Judgement

D.V. Shylendra Kumar, J.—Petitioner who is carrying on his business of running studio in a rented premises wherein he had displayed a name board prominently in front of his shop, has approached this Court praying for issue of mandamus or certiorari directing the respondents, their workmen, servants, agents henchmen and/or any person/s claiming through or under the respondents etc., from in any manner interfering with petitioners peaceful possession and enjoyment of the premises bearing No. 7/3, Bull Temple Road, Shankarapuram, Bangalore. Petition averments are that the Revenue Inspector, 2nd respondent, working in the 1st respondent-Bangalore Mahanagara Palike had acted in a high handed manner and had helped petitioner's rival in getting the board removed.

2. It is the plea of the petitioner that there was a dispute between the petitioner and another tenant in the same building in the first floor, on the question of the petitioner displaying his trade name and board and in view of certain objections and interference by the said person who is impleaded as 4th respondent to this petition, petitioner was compelled to file a civil suit O.S. No. 3111 of 2004 and in that suit, the Civil Court has granted an order of temporary injunction restraining the 4th respondent from obstructing or removing the plaintiffs trade name board displayed in front of his shop and that order was in operation till the next date of

hearing i.e., 1-6-2004. It is the averments of the petitioner that immediately the passing of this order, the 4th respondent in a high handed manner removed the board forcibly on 26-4-2004. It is in such circumstances petitioner has approached this Court.

3. Sri S.S. Naganand, learned Senior Counsel appearing for the petitioner submits that the 2nd respondent had acted in a high handed manner, that he has acted forcibly and removed the display board of the petitioner only because of the power and authority vested in him as an official of the 1st respondent- Mahanagara Palike and that it is a case of gross misuse of his official power, that exercise of such power by the 2nd respondent virtually helped the 4th respondent who was otherwise bound by the Court order to get over the injunction that had been granted by the Civil Court and in such circumstances it is very necessary for this Court to interfere with the same even in the exercise of writ jurisdiction under Article 226 particularly for ensuring that the rule of law prevails and the high handed action is frowned upon. Learned Counsel submitted that the impugned action is not proceeded with by any notice or opportunity of hearing and as such petitioner is entitled to invoke the writ jurisdiction.

4. There is nothing on record to show that the alleged action purporting to have been committed on the part of the 2nd respondent was in the exercise of his statutory power. A mere collusion by a person who incidentally happens to be an official of the 1st respondent with the 4th respondent and to the detriment of the petitioner and to the advantage of the 4th respondent in itself cannot be lend a statutory-flavors to the illegal action if any committed by the 2nd respondent. The Us is between the petitioner and the 4th respondent and civil in nature; as to who has a better right to display the board, whether the board is within the precincts of the shop of the petitioner or it projects into the area occupied by the 4th respondent etc.

5. The Civil Court has already seized of the matter. In such circumstances it is necessary that the petitioner to work out his remedy before the Civil Court itself. In the absence of exercise of any statutory power by any statutory functionary which can be characterised as one in contravention of the statute or one which is an illegal act per se there is no occasion for this Court to exercise writ jurisdiction under Article 226 or even Article 227 of the Constitution. A writ can be issued against any illegal acts of the statutory functionary. The power and jurisdiction of this Court to issue a writ is one which is required to be exercised for the purpose of constitutional and statutory violations and not for the purpose of disciplining every errant employee in any organisation.

6. If the 2nd respondent has used or abused his power it is a case for bringing such gross misconduct on the part of the 2nd respondent to the superior officer within the organisation. If the 2nd respondent has committed any civil wrongs or even a criminal offence it is always open to the petitioner to pursue his remedies against the 2nd respondent either as an individual or even in the capacity of the official of the 1st respondent before the Civil or Criminal Court.

7. Leaving open all such remedies to the petitioner and reserving such liberty these writ petitions are dismissed as one not warranting exercise of jurisdiction by this Court under Articles 226 and 227 of the Constitution of India. It is always open to the petitioner to approach the proper forum if the petitioner is able to point out any statutory violations by any public authority in the course of exercising its power or authority. It is also open to the petitioner to work out his remedy, if any, in the pending civil suit as well.