

(2013) 11 KAR CK 0288

In the Karnataka High Court

Case No : Writ Petition No. 32816 of 2012 (GM-RES)

Sri V.N. Lakshmikanthappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0288

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : S.V. Prakash, for the Appellant; Laxminarayan, AGA for R1 to R8 and Sri B.J. Eswarappa, for R9, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—This petition has been filed to declare the action of respondents in the matter of demolition of portion of House No. 160 carved out of land in Sy. No. 181 of Halesorab measuring East to West 9 1/2 ft. and North-South 30 ft. described in the petition schedule as one without jurisdiction and authority of law and forbid the respondents from demolishing the said house without due process of law. Sri S.V. Prakash, learned advocate for the petitioner submitted that in response to the notice as at Annexure-G, petitioner submitted the relevant documents and despite such compliance, the respondents are threatening to demolish the Mangalore Tiled roofed house bearing property No. 160 carved out of Sy. No. 181 of Halesorab. Learned counsel submitted that the impugned action being arbitrary and illegal, interference in the matter is warranted. Learned counsel referred to an Order passed on 24.11.2011 in W.P. No. 43779/2011 as at Annexure-K and the Judgment dated 25.08.2004 passed in W.P. No. 142/1998 as at Annexure-M.

2. Learned Government counsel, on the other hand submitted that Annexure-G is a notice issued to the petitioner, to produce the documents relating to the petition schedule property in his possession, for necessary action. He submitted that, if any relevant documents are produced, the same would be taken into

consideration by the authority concerned and the matter would be dealt with in accordance with law.

3. Perusal of the writ petition shows that the property is owned and enjoyed by one Smt. Kulusumbi, wife of Peer Sab. According to the petitioner, he entered into an agreement with Kulusumbi to purchase the petition schedule property and he was put in possession of the same, in part performance of the contract. Petitioner has stated that he has lost the original copy of the agreement and according to him, that on 10.05.1983, another portion of the house was alienated in favour of one Afzal Khan by Smt. Kulusumbi and that he has been running a soda factory in the house existing on the petition schedule property. From the averments made in the writ petition, it is clear that the property in question belongs to Smt. Kulusumbi, wife of peer Sab. The petitioner has not produced either the original agreement of sale. Petitioner, if has been put in possession of the property as part of the contract should seek specific performance by instituting a suit in Civil Court. The objection, if any, for the threatened action of the respondents can be by Smt. Kulusumbi and not by the petitioner, who has not acquired any title to the property shown in the schedule of the petition.

4. Undisputedly, the petitioner being not the owner of the property, respondents are justified in issuing the notice as at Annexure-G. If the petitioner were to produce the documents, respondents have to examine the same, in view of the notice as at Annexure-G. Keeping in view the undisputed fact that the petition schedule property does not belong to the petitioner, he being an alleged agreement holder and having not sought specific performance by his vendor, who has not questioned the alleged acts of the respondents, I do not find justification to entertain this writ petition.

Writ petition is rejected with no order as to costs.

However, it is made clear that, if the petitioner or Smt. Kulusumbi were to produce the relevant records before the authority concerned, the same shall be examined and decision taken without any delay.