

(2017) 01 KAR CK 0094

In the Karnataka High Court

Case No : Writ Petition No. 53083 of 2016(LB-RES)

Umadevi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), Article 19(2)

Citation : (2017) 2 AirKarR 45

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri Vishwajith Shetty , Advocate, for the Petitioner; Sri A.K. Vasanth, AGA, for the Respondent No. 1; Sri Ashok N. Nayak, Advocate, for the Respondent No. 2; Sri Ajit Anand Shetty, Advocate, for the Respondent Nos. 4, 6 to 9; Sri. A.S. Mahesh, Advocate, for the Respondent No. 3

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—This writ petition was filed by the petitioner with the following prayers:

(a) Call for the records from the 2nd respondent which ultimately resulted in issuing impugned order Annexure "A" dated 24.09.2016 made in Appeal No. Meimanavi/TaPamU/02/2016-17 by the second respondent.

(b) Issue writ of Certiorari or any other appropriate writ quashing the impugned order Annexure "A" dated 24.09.2016 made in Appeal No.02/2016-17 by the second respondent.

(c) Issue such other relief/s as it deems fit to grant in favour of the petitioner by this Hon'ble Court in view of the facts and circumstances of the cases, in the interest of justice.

2. The petitioner felt aggrieved by the impugned order, Annexure - "A" passed by the Executive Officer of the Taluk Panchayath, Udupi, in Appeal No.2/2016-17 (Dennies D'Souza and others v. Umadevi and Panchayath Development Officer)

which was an order passed on 24.09.2016 setting aside the license No.34/2015-16 dated 11.11.2015 issued in favour of the petitioner, Smt Umadevi, Wife of Keshava Kundar, for construction of building structure for fish cutting and fish waste powder in 0.31 acres in Sy. No. 71/3 of Balkudru Village, Irodi Grama Panchayath, Udupi Taluk and hence, filed this writ petition before this Court.

3. The learned counsel for the petitioner, Mr. Vishwajith Shetty, submitted that for setting up of the fish cutting and fish powdering Unit, the petitioner, Umadevi had obtained the due clearance from the State Pollution Control Board and the Grama Panchayath and therefore, the Appellate Authority, namely, Executive Officer of Taluk Panchayath had no jurisdiction to set aside that construction permission itself, as was done by him by the impugned order, Annexure - "A" dated 24.09.2016.

4. While issuing notices in the present writ petition vide order dated 20.10.2016, an undertaking was given by the husband of the present petitioner Mr. B. Keshava Kundar that his unit which was located near the Primary School, would be shifted to the new industrial Unit for fish cutting and fish powdering, which was being constructed by his wife.

5. Later on, in the order dated 25.01.2017, it was recorded, as stated before the Court by the learned counsel for the petitioner, Mr. Vishwajith Shetty, that the Sub-Divisional Magistrate of Kundapur Sub-Division has passed an order on 19.01.2017 to close the new unit of the petitioner Umadevi for fish cutting and fish powdering without seeking leave of this Court though the petitioner's husband unit was shifted to the new unit set up by the petitioner/wife, Umadevi.

6. Accordingly, the Sub-Divisional Magistrate of Kundapur Sub-Division was directed to remain present before this Court.

7. Smt.Shilpa Nag, IAS, Assistant Commissioner and Sub-Divisional Magistrate, Kundapur Sub-Division, Udupi is present before this Court, who has explained to the Court about the ground situation of the said site in question. She has stated before this Court that she had visited the spot on 19.01.2017 and a serious public agitation including by the school children who are suffering badly because of bad odour and foul smell on account of fish processing unit set up by the petitioner with no objection from the State Pollution Control Board and to avoid any public nuisance, she has passed an order on 19.01.2017 to close the said new unit which, according to her, was not even completely constructed so far and for that purpose, some site photographs are also produced before this Court for perusal.

8. The learned counsel appearing for the villagers and school children, Mr. Ajit Anand Shetty, also submitted that the process of fish powdering in which the fish after being cut, has to be boiled at a particular temperature and then dried before they are crushed into a powder form, causes a very foul smell to which the public at large cannot withstand. He also pointed out that no proper Trade

License so far has been obtained by the petitioner for running of such fish powdering unit.

9. Learned Government Advocate also supported these contentions raised by the learned counsels appearing for the private parties.

10. After hearing all the learned counsels, this Court is of the opinion that unless and until the petitioner or her husband in both the units in question obtain all the "due clearances" and "no objection" from the concerned Government Authorities, they cannot be permitted to carry on the business of fish cutting and fish processing unit at either of the two places to avoid public nuisance and trouble to the school going children in the nearby located school premises. Mere obtaining the clearance from the State Pollution Control Board and the Grama Panchayath for construction of the building in question is not sufficient to start such a business activity.

11. Therefore, unless and until all due clearances and Trade Licence under the applicable laws are obtained by the petitioner or her husband they cannot be permitted to undertake the said business activities of Fish Cutting and Fish Powdering Unit. The petitioner will be, of course, at liberty to apply for such permissions to the concerned Authorities, who are expected to consider their applications in accordance with law and pass appropriate orders after giving an opportunity of hearing to her.

12. In view of the nature of public nuisance, which is likely to be caused by this kind of industrial unit set up by the petitioner or her husband in the middle of the town near a school, it would also be proper to the petitioner and her husband to consider the shifting of their industrial units outside the town limits to avoid any public nuisance for the residents of that area. It is needless to say that larger public interest should always over-ride the private business interest of any individual and the freedom to carry on the business under Article 19(1)(g) of the Constitution of India is always subject to reasonable restrictions under Article 19(2) of the Constitution of India. Therefore, r.o blanket permission as such can be given to carry on any trade or business of any nature irrespective of the Rules and Regulations governing such business.

13. Accordingly, this writ petition is disposed of with the aforesaid observations and with a liberty and direction to the petitioner, first to seek clearances and Trade Licence from the concerned Departments, and thereafter only, to carry on the business activities at the same place or at a different place outside the town, to avoid any nuisance and inconvenience to the public at large.

No order as to costs.