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Court : Karnataka Dharwad

Decided On : Aug-13-2015

Judge : Ashok B. Hinchigeri

Appeal No. : Writ Petition No. 9449 of 2008 (LB-RES)

Appellant : K. Sharada Bhat and Others

Respondent : State and Another

Judgement :

The petitioners have called into question the second respondent's order dated 16-5-2010 (Annexure-S) and the order dated 6-4-2008 (Annexure-T) passed by the District Judge, Uttara Kannada in Misc. Appeal Nos. 3 and 4 of 2000. The District Judge confirms the second respondent's order to vacate the premises in question within 45 days.

2. Sri R.Y. Itagi, the learned Counsel for the petitioners submits that the Competent Authority's order is passed in violation of the principles of natural justice. He submits that the petitioners were not even given clear two weekstime to resist the eviction proceedings. The notice dated 24-4-2000 is received by the petitioners around 30-4-2000 and that the order of eviction is passed on 16-5-2000. He complains of lack of opportunities.

3. He submits that the lease agreements, dated 13-3-1967 and 27-10-1993 are subsisting. There is no termination of the lease at all. He submits that there is no

clause in the said two lease agreements to the effect that if the lessee commits any default, the lease arrangement would automatically stand terminated. Therefore, it is not permissible for the respondents to resort to the initiation of the proceedings under the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act 1974.

4. As the petitioners are in lawful possession of the properties in question, they cannot be treated as the unauthorised occupants. He submits that the respondents have to first determine the lease and thereafter secure the vacant possession of the premises, if it is otherwise open to them to do so in law. In any case, the same has to be done only by filing a suit, so contends the learned Counsel.

5. He submits that the municipality has sanctioned the building plan in favour of the petitioner 4 in respect of the site measuring 30 x 40 ft., as is evident from the municipality's order dated 6-9-1995 (Annexure-D). As the construction on the site has taken place with the prior approval of the municipality, the respondent 4 cannot be treated as the unauthorised occupant.

6. The learned Counsel for the petitioners has relied on the Apex Court's judgment in the case of *Express Newspapers Private Limited and Others v. Union of India and others* (AIR 1986 SC 872 : (1986) 1 SCC 133). Para 87 read out by him is extracted:

The express buildings constructed by Express Newspapers Private Limited with the sanction of the lessor i.e., the Union of India, Ministry of Works and Housing on Plot Nos. 8, 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Private Limited, under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the lessor i.e., the Union of India, Ministry of Works and Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture

of lease due to breach of the terms of the lease. ?

7. Sri Prakash B. Angadi, the learned Counsel for the respondent 2 submits that the lease agreement dated 13-3-1967 (Annexure-A) is only for a period of 7 years. Thereafter there is no renewal of the lease agreement.

8. He submits that Clause 8 of the lease agreement (Annexure-B) executed in Order 1993 empowers the lessor to resume the site along with the temporary structure even before the expiry of the lease period, if the lessee violates any of the terms and conditions of the lease agreement. He submits that the intentment of the lessor to terminate the lease was conveyed to the lessee by the issuance of the legal notice on behalf of the lessor.

9. Sri Ravi V. Hosamani, the learned Additional Government Advocate appearing for the respondent 1 submits that late Sri K. Gopalakrishna Bhat and the petitioners, who claim under him, have been squatting on this property for the last 47 years without paying any annual rent. He submits that permitting them to be in possession of the properties in question would not be in public interest. He submits that both the lease agreements are a nullity in the eye of law, as no prior permission as required under Section 72(2) of the Karnataka Municipalities Act, 1964 has been obtained.

10. The submissions of the learned Counsel have received my thoughtful consideration. My perusal of the impugned orders reveals that both the learned District Judge and the Competent Authority have not addressed themselves to the pertinent issues like whether the lease was terminated and if so whether it was terminated in a manner known to law. If it is the case of the respondents that the lease has spent itself after the expiry of 7 years from the date of the first lease agreement and the 5 years ham the date of the second lease agreement, then what has to be verified is whether the petitioners or K. Gopalakrishna Bhat continued to pay the annual rents. If they had continued, whether the respondent 2 continued to receive the same or refused to receive the same on the ground that the lease period has expired and as the lease is not renewed. Neither the petitioners nor the respondents have produced the up-to-date rent receipts, if any.

11. If the lease itself was without the prior permission of the Government, which is a mandatory requirement, it is not known what action is taken by the Government against the respondent 2. Further, the respondent 2 has not issued any notice to Sri K. Gopalakrishna Bhat or the petitioners to the effect that the execution of the lease agreement itself is bad for want of sanction from the Government. On the other hand, the respondent 2 has sanctioned the building plans in respect of the site measuring 30 x 40 ft. It is also not known whether the site measuring 30 x 40 ft., which is the subject-matter of second lease agreement was released from the first lease agreement dated 13-3-1967 or it was not a part of the subject-matter of the first lease agreement at all.

12. Thus, I find the version of both the sides to be full of loose ends. The impugned orders cannot be sustained based on the materials placed on record. Therefore, they are quashed. The matter is remanded to the respondent 2 for fresh enquiry in accordance with law. The petitioner shall appear before the respondent 2 on 4-9-2015 without waiting for any notice from it. The petitioners shall co-operate with the respondent 2 in the speedy conclusion of the remanded matter. The respondent 2 shall, after affording reasonable opportunities to both the parties to put their cases across, dispose of the remanded matter in accordance with law and as expeditiously as possible and in any case within an outer limit of three months from 4-9-2015.

13. No order as to costs.

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