

M John Phillips Vs. The Commissioner Bruhath Bangalore Mahanagara Palike and Others

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Court : Karnataka

Decided On : Dec-05-2016

Judge : The Honourable Dr. Justice Vineet Kothari

Appeal No. : WP No. 31885 of 2016 (LB-BMP)

Appellant : M John Phillips

Respondent : The Commissioner Bruhath Bangalore Mahanagara Palike and Others

Judgement :

(Prayer: This writ petition is filed under articles 226 and 227 of the constitution of India praying to issue a writ of mandamus to consider the representation given by the petitioner vide Annexures-E, F and G dated 18.04.2016 pass appropriate orders.)

1. The prayers in the writ petition are quoted below;

"a) Issue a writ of mandamus to consider the representation given by the petitioner vide Anneuxres-E, F and G dated 18.04.2016 pass appropriate orders.

b) Pass any other writ, order direction as this Hon'ble Court may deem fit in the circumstances of the case, in the interest of justice and equity."

2. Recently, this Court in the case of V Dhamodaran and others versus Bruhat Bangalore Mahanagara Palike and others in WP Nos.3880-3881/2014 decided on 28.11.2016 has held that these type of writ petitions are not maintainable under Article 226 of the Constitution of India. The relevant paragraphs of the said judgment are quoted below for ready reference;

"5. Upon a preliminary hearing of the matter by this Court, this Court is of the considered opinion that the present writ petitions are not maintainable and deserve to be dismissed at this stage itself and there is no reason to decide the aforesaid large number of issues raised herein.

6. The case in hand is obviously a case requiring an inquiry into the facts and rather a complex cob-web of facts where the Respondent - Builders are alleged to have raised constructions in violation of the various statutory provisions of different enactments and certain registered documents like Relinquishment Deed in favour of BBMP is also sought to be quashed, which is plain and simple a cause which can be tried only by a Competent Civil Court in a properly instituted Civil Suit and not in Writ Jurisdiction.

7. Firstly, the petitioner - complainants who are before this Court ought to have brought such violations to the notice of the concerned public bodies themselves and if they have done so, it could be only expected of the public bodies to take action according to law and pass appropriate reasoned orders on such representations/complaints. If such action or orders caused any grievance to any person, there are remedies provided in the relevant laws themselves where such grievances can be ventilated. The very fact that two of such appeals against the action initiated by the Respondent - BBMP are pending before the competent Tribunal which can go into such facts, the present petitioners instead of seeking their impleadment before the Tribunal in the matter to place their complaint and evidence before the said Tribunal, have approached this Court by way of present three writ petitions, scattering the litigation to more than one Forum, which is not permissible and desirable. This is not only likely to result in conflicting orders to be passed by two Forums, but the case in hand obviously as indicated above, requires a deep scrutiny in the whole lot of facts of the case which are required to

be proved as per the provisions of Evidence Act read with relevant provisions of the Civil Procedure Code and which cannot and do not deserve to be undertaken in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8. The petitioners- complainants, therefore, cannot call upon this Court in writ jurisdiction to hold such fishing and roving enquiry and undertake the scrutiny in all these facts and supervise the working of the public bodies like BBMP and BDA and compel them to take action, which otherwise also they are expected and can in law undertake and instead of approaching the concerned authorities and pursuing their matters before them to its logical end and the petitioners in such cases directly and prematurely invoking the writ jurisdiction of this Court in such matters deserve to be relegated to the Forums below.

9. This Court is experiencing a flood of this kind of litigation and the very fact that such private disputes which may be initiated for bona fide reasons or even for ulterior motives, are allowed to be entertained in writ jurisdiction, the same consume a lot of precious public time of the Court which is absolutely unnecessary. The averments made in Writ Petitions which are supported only by Affidavits cannot be taken as proved facts or Gospel truths to initiate such an enquiry. No such mixed and joined causes against so many Builders whose projects, sanctions and constructions may be going on at different places cannot be assailed by way of an all-sweeping kind of Petition under Article 226 of the Constitution of India.

Whether the sanctioned plans have been obtained or not, whether the due approvals have been given in accordance with the Rules or not, whether the constructions have deviated from the sanctioned plans or not, what is the locus standi and bona fides, of the petitioners and prejudice caused to them, (why should three individuals rise against a host of Builders except at the instance of hidden Rival Builders, embroiling public bodies in such lis, is a serious question to ponder) whether the public bodies have dealt with their grievances raised before them or not, whether the appellate mechanism provided under the relevant Statutes has been fully exhausted or not, are all the relevant questions in such

cases.

10. It is unfortunate that the writ jurisdiction is treated as panacea for all alleged its and with the kind of blanket and bald averments and objections and lot of bulky documents which are put forth on the dockets of this Court in these type of cases are called upon to be examined by writ Court, whereas such issues and matters ought to have been raised at the lower Forums viz., Departmental authorities and Tribunals constituted under these laws, who are expected to give finding of facts based on relevant evidence and this is indeed a sorry state of affairs.

11. The insistence of the learned counsel for the petitioners that this Court should not dismiss these writ petitions at this stage in view of the aforesaid interim order passed by the co-ordinate bench is misconceived, to say the least.

12. With all due respects to the learned counsel for the Petitioners in the said interim order passed by the co-ordinate bench of this Court, the self-same order itself notices that "large number of issues have been raised by the petitioners and the issue regarding maintainability of the writ petitions still needs to be debated". Therefore at that stage, even if the writ petitions were not dismissed and this debate was kept open, the petitioners cannot insist upon this Court to continue these writ petitions and dilate upon the details on merits.

13. This Court is of the clear opinion that merits or otherwise of the present case deserves to be decided by the lower forums or the authorities of the public bodies like BBMP and BDA itself or the Town Planning Authority concerned and if they have so decided or so decide in future and the petitioners feel aggrieved of their decisions, then the relevant Statutes have already provided for appellate mechanism and forums for redressal of their grievances before them and finally before the Tribunal.

14. The petitioners, therefore, would be well advised to approach the said Tribunal itself and seek their impleadment in aforesaid pending appeal. If the learned Tribunal is satisfied about their bona fide and the locus standi that they need to be heard in the matter, the Tribunal is at liberty to implead them as party in the said appeals and as complainants, the present petitioners can, lead their evidence and

grievance before the said Tribunal.

15. In the alternative, they can also be directed by the Tribunal to approach the concerned public authorities like BBMP and BDA or Town Planning Authority itself first.

16. In case such an exercise is undertaken by the fact finding body like the Departmental authorities or the Tribunal and the petitioners are not satisfied with their decisions, they can still file Civil Suits separately against each of the private Respondents - Builders separately and impleading even the public authorities like BBMP and BDA etc., as defendants.

17. However, in view of the aforesaid, this Court is not inclined to proceed further with this case and cases of this nature and holds that these type of writ petitions are not maintainable. The writ petitions, therefore, deserve to be dismissed and are accordingly dismissed. No costs.

3. In view of the above, the present writ petition is liable to be dismissed and the same is dismissed accordingly.

In view of dismissal of the writ petition, I.A.No. 1/2016 for amendment of the writ petition does not survive for consideration and the same is also dismissed.

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