

C Muni Reddy Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-20-2016

Judge : Dr. Vineet Kothari

Appeal No. : WP 51666/2016

Appellant : C Muni Reddy

Respondent : State of Karnataka

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 20TH DAY OF OCTOBER, 2016 R BEFORE THE HONBLE Dr.JUSTICE VINEET KOTHARI WRIT PETITION No.51666/2016 (LB-RES) BETWEEN C MUNI REDDY S/O LATE CHINNAPPA REDDY AGED ABOUT 75 YEARS RESIDING AT NO.36/1 BTM 4TH STAGE, 2ND BLOCK OPP: MAHAVEER CALYX APTS BENGALURU-560076 ...PETITIONER (BY SRI ACHAPPA P B, ADVOCATE) AND 1 STATE OF KARNATAKA REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT VIDHANA SOUDHA DR. AMBEDKAR VEEDHI BENGALURU-560 001 STATE OF KARNATAKA REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY TO GOVERNMENT BENGALURU URBAN DEVELOPMENT ROOM NO.436, 4TH FLOOR VIKASA SOUDHA BENGALURU-560 001 2. Date of order :

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4. 5.

6. BRUHAT BENGALURU MAHANAGARA PALIKE (BBMP) REPRESENTED BY ITS COMMISSIONER BBMP HEAD OFFICE CORPORATION CIRCLE HUDSON CIRCLE BENGALURU-560002 BRUHAT BENGALURU MAHANAGARA PALIKE REPRESENTED BY ITS CHIEF ENGINEER (STORM WATER DRAINS) BBMP HEAD OFFICE CORPORATION CIRCLE HUDSON CIRCLE BENGALURU-560002 BENGALURU METROPOLITAN TASK FORCE REPRESENTED BY ITS ADDITIONAL DIRECTOR GENERAL OF POLICE BBMP OFFICE BUILDING N.R.SQUARE BENGALURU-560002 BENGALURU URBAN DISTRICT REPRESENTED BY ITS DEPUTY COMMISSIONER K.G.ROAD, BENGALURU-560009 ...RESPONDENTS (BY SRI V SREENIDHI, AGA FOR R-1 AND R-2. SRI V SREENIDHI, ADVOCATE FOR R-3 AND R-4) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT NOT TO TRANSGRESS INTO THE PROPERTY OF THE PETITIONER OR TRESPASS OR ENCROACH AND USURP THE PROPERTY OF THE PETITIONER UNDER THE GUISE OF RAJAKALUVE RUNNING THROUGH THE PROPERTY OF THE PETITIONER AND TO IMPLEMENT REMOVAL OF ENCROACHMENT OF RAJAKALUVE, IF ANY AS PER THE SURVEY SEKTCH VIDE ANNEXURE-C AND ETC. THE Date of order :

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ORDER

S THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Mr. Achappa P B, Adv. for Petitioner. Mr. V Sreenidhi, AGA for Respondent Nos.1 and 2. Mr. V Sreenidhi, Adv. for Respondent Nos.3 and 4.

1. The petitioner has approached this Court with the following prayers; i) Issue a writ of mandamus or any other appropriate writ not to transgress into the property of the petitioner or trespass or encroach and usurp the property of the petitioner under the guise of Rajakaluve running through the property of the petitioner and to implement the removal of the encroachment of Rajakaluve, if any as per the Survey Sketch produced at Annexure-C. ii) Issue a writ of mandamus or any other appropriate writ to the respondents not to deviate Rajakaluve from the Survey Sketch as published in the website of the BBMP and to implement the removal of encroachment of Rajakaluve as denoted in the Survey Sketch/Map published on the website of BBMP and produced at Annexure-B while removing the encroachers of Rajakaluve from the encroachment; and Date of order :

20. 10.2016 in WP No.51666/2016 C Muni Reddy vs. State of Karnataka and others 4/9 iii) Grant costs and such further reliefs as may be deemed appropriate under the circumstances of the case. 2. By an interlocutory order, a co-ordinate Bench of this Court, on 28.09.2016, directed the officers of the BBMP to conduct survey of the schedule property on 5.10.2016 and till 21.10.2016, status quo was directed to be maintained. The order passed by the co-ordinate Bench is quoted below for ready reference; The learned counsel for the State is directed to accept notice on behalf of respondent Nos.1 and 2. Mr. Sreenidhi V., the learned counsel is directed to accept notice on behalf of respondent Nos.3 and 4. Mr. Sreenidhi V., the learned counsel for BBMP submits that the BBMP would like to inspect the scheduled property. Therefore, the petitioner is directed to remain on the schedule property on 5th of October 2016. The officers of the BBMP are directed to begin their survey at 10.30 a.m. on 5.10.2016, and submit the report of the survey before this Court Date of order :

20. 10.2016 in WP No.51666/2016 C Muni Reddy vs. State of Karnataka and others 5/9 on 18th October 2016. Till 21.10.2016, the status- quo shall be maintained. List this case on 18.10.2016. 3. Today, Mr.Sreenidhi.V, learned counsel for Bruhat Bengaluru Mahanagara Palike (BBMP), has filed an affidavit before this Court of one Mr.P.Ashok, Assistant Executive Engineer, Arekere Sub-Division, BBMP, Bengaluru, a copy of which has been served on the learned counsel for the petitioner. Paragraphs 4 to 6 of the said affidavit are quoted below

for ready reference; 4. I state that in pursuance of the said Order, the BBMP has conducted a survey through the Office of the Joint Director of Land Records and have identified encroachments on the Rajakaluves/ Storm Water Drains. Based on the marking of the surveyors of the Joint Director of Land Records, the BBMP is demolishing the portions of encroachments by exercising their power under Section 228A and 288B of the Karnataka Municipal Corporation Act, 1976.

5. I state that the BBMP is undertaking the exercise of demolition only upon the survey report Date of order :

20. 10.2016 in WP No.51666/2016 C Muni Reddy vs. State of Karnataka and others 6/9 provided to them by the Survey Department, i.e., the Office of the Joint Director of Land Records. In the instant case, a survey has been conducted and 8 feet of encroachment on the drain of 8 feet is identified and marked by the Survey Department. The BBMP through the Bangalore Metropolitan Task Force and the jurisdictional police has marked in the presence of the said surveyors.

6. I state that, as per the survey conducted, the petitioners property does not fall on the Rajakaluve. However, certain trees which were on the Rajakaluves were demolished. The claim of the petitioner that the BBMP has trespassed or encroached or usurped the property of the petitioner under the guise of Rajakaluve running through the property of the petitioner is wholly misplaced and misconceived. The BBMP has no intention to demolish and property which is not on the Rajakaluve. The BBMP is clearing only encroachments on the Rajakaluve.

4. Upon perusal of the material placed before the Court, this Court is of the opinion that firstly, the case of this nature is not a fit case to be entertained by way of writ petition under Article 226 of the Constitution of India. Date of order :

20. 10.2016 in WP No.51666/2016 C Muni Reddy vs. State of Karnataka and others 7/9 The extraordinary jurisdiction of this Court where the pleadings are supported only by affidavits and even the evidence placed on record is supported by affidavits only the questions involved in the case of this nature obviously touching the question of title of the property of the petitioner, whether such property has been made in encroachment of the public land or Rajakaluves (Storm Water Drains) as in the present case or not and whether the intended action of the

respondent-authorities of BBMP or the Revenue Department, which marks the encroachments of the public lands as per Sections 288A and 288B of the Karnataka Municipal Corporations Act, 1976, are all questions, in which before proceeding further, certain finding of facts based on the relevant material as admissible evidence is required to be proved before the competent civil court. Entering into the enquiry at the instance of the petitioner in these type of cases unnecessarily and unduly widens the scope of writ jurisdiction, beyond the known parameters. The writ Date of order :

20. 10.2016 in WP No.51666/2016 C Muni Reddy vs. State of Karnataka and others 8/9 jurisdiction is meant for quashing and controlling the arbitrary actions of the public authorities or public bodies and they are not meant to substitute the process of civil suits where the evidence of documentary or oral in nature is to be proved by the parties to the lis and that can be undertaken only by the appropriate civil courts and appropriate relief can be granted by the appropriate civil courts.

5. As brought out by the respondents in the affidavit produced before the Court, it is clear that not only the property of the petitioner has not been marked so far, for the intended demolition vide paragraph 6 of the affidavit quoted above, it also appears that the petitioner seeks to urge that the encroachment on Rajakaluve was actually done by other neighbours and the Rajakaluve is passing through other adjacent lands and not on the land of the present petitioner. This contention of learned counsel for the petitioner as raised before the Court itself is sufficient to dismiss the writ petition as it is based on the ground Date of order :

20. 10.2016 in WP No.51666/2016 C Muni Reddy vs. State of Karnataka and others 9/9 that the Rajakaluve in question has been encroached elsewhere as indicated by the respondents and it is not the petitioner, but somebody else has encroached the public land, according to the petitioner. These are all the questions of facts which can be determined and adjudicated only by a competent civil court and not by this Court in writ jurisdiction. Therefore, this Court is satisfied that no interference called for at the instance of the petitioner in this case.

6. Writ petition is, therefore, dismissed. In case, any occasion arises for the petitioner to approach the Court for the intended action or any action taken by the

respondents in this regard, the petitioner is of-course at liberty to approach the Court by way of civil suit. No costs. Sd/- JUDGE mv

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