

State of Karnataka Vs. Basalingappa

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Court : Karnataka

Decided On : May-29-1989

Reported in : ILR1989KAR3363; 1989(2)KarLJ189

Judge : K.A. Swami, J.

Acts : [Specific Relief Act, 1963](#) - Sections 38 and 39; [Constitution of India](#) - Article 300A

Appeal No. : R.S.A. No. 631 of 1979

Appellant : State of Karnataka

Respondent : Basalingappa

Advocate for Pet/Ap. : A.J. Gunjal, HCGP

Disposition : Appeal dismissed

Judgement :

K.A. Swami, J.

1. This second appeal by the defendant arises out of the suit O.S.No. 22/1973 filed by the respondent-plaintiff for damages of Rs. 1,200/-; for perpetual and mandatory injunction pertaining to land bearing S.No. 231 measuring 13 acres 14 guntas assessed at Rs. 37.12 situated at Malkhed village, Sedam Taluk, Gulbarga

District.

2. It is not in dispute that the plaintiff is the owner of the suit land. It is also not in dispute that the State In the purported exercise of its power of eminent domain, without acquiring the land in question, attempted to lay a road on the land in question in spite of the objection raised by the plaintiff.

3. The trial Court on the basis of the pleadings of the parties, raised the following Issues:

1. Does plaintiff prove that the breadth of the road constructed in the suit land is 75 as averred in the plaint?

2. Does defendant prove that plaintiff is estopped from challenging the construction of the road as he did not object while constructing the said road as contended in para 6 of his written statement?

3. Whether plaintiff is entitled for mandatory and perpetual injunction?

4. Is plaintiff entitled for damages and if so, to what amount?

5. What order?

The trial Court answered issue No. 1 in the affirmative and issue Nos. 2 and 4 in the negative. It also held in issue No. 3 that the plaintiff was not entitled to mandatory injunction but he was entitled to perpetual injunction. Accordingly it passed a decree in the following terms:

'In view of the foregoing reasons, the suit of the plaintiff is decreed as prayed, for permanent injunction in para (b) of the prayer column in 'the plaint and the suit of the plaintiff for Mandatory injunction as prayed in para (c) and damages of Rs. 1,200/- as prayed in para 1 of the plaint prayer column are dismissed. In view of the peculiar circumstances arise in this case, I decline to award cost. Accordingly, the suit of the plaintiff is decreed in part without cost.'

4. Aggrieved by the aforesaid Judgment and decree of the trial Court, the defendant went up in appeal before the District Court, Gulbarga. The plaintiff also

preferred cross-objections regarding denial of other reliefs to him by the trial Court. The lower Appellate Court raised the following points for determination:

- 1) Whether the defendant-appellant proves that the plaintiff is estopped from challenging the laying of the road by the defendant in the plaintiff's land as contended?
2. Whether the lower Court's Judgment and decree in granting perpetual injunction is justified to be interfered with as challenged by the appellant?
- 3) Whether the lower Court's Judgment and decree in respect of dismissing the reliefs of mandatory injunction and damages is justified to be interfered with in view of the cross-objections filed?
- 4) What order and Decree?

The lower Appellate Court answered points 1 and 2 in the negative. Point-3 was answered to the effect that the plaintiff was entitled to mandatory injunction. Regarding damages, it awarded a sum of Rs. 500/-. Accordingly, it passed the decree in the following terms:

'The. appellant's appeal is dismissed with costs and the lower Court's Judgment and decree decreeing the plaintiff's suit of permanent injunction against the defendant dated 22-11-1976 is hereby confirmed. The cross-objections of the respondent-plaintiff is allowed in part with proportionate costs and the defendant-appellant is hereby directed by mandatory injunction to remove the earth road and to fill up the pits dug on either side of the said road by making it even as it existed before; failing which the defendant is directed to pay the expenses of Rs. 500/- as claimed by the plaintiff for the said purpose and the lower Court's Judgment and decree in dismissing the relief of mandatory injunction is accordingly set aside.'

5. Sri Ajit J. Gunjal, learned Government Pleader appearing for the appellant submits that as the plaintiff was fully aware of the fact that the land in question was being used for laying the road and as he did not raise any objection, he must be deemed to have contented to laying the road on the suit land, therefore, he was estopped from seeking a relief of permanent injunction at the belated stage.

6. The appeal has been admitted on the following substantial question of law;

'Whether on facts and circumstances of the case the plaintiff is not estopped from challenging the laying of the road by the defendant in his land and whether he is entitled to the injunction at this belated stage.'

The respondent-plaintiff though served, has remained absent and unrepresented.

7. It is not in dispute that the suit property is a private property of the plaintiff. No doubt a private property of a citizen can be acquired by the State in exercise of its power of eminent domain for public purpose. It should be acquired in accordance with law as per the provisions contained in the Land Acquisition Act. Article 300A of the Constitution ensures and guarantees a right to property and it specifically provides that no person shall be deprived of his property save by authority of law. In the year 1973 when the State attempted to deprive the plaintiff of his private property, the right to acquire, hold and dispose of property was a fundamental right guaranteed under Article 19(1)(f) of the Constitution. Clause (f) of Article 19(1) of the Constitution came to be omitted by the Constitution (Forty fourth Amendment) Act, 1978, with effect from 20-6-1979 and Article 300A came to be inserted by the same Act with effect from 20-6-1979. For the purpose of this case, it is sufficient to observe that it makes no difference because at the relevant point of time i.e., 1973, Article 19(1)(f) was In force; therefore it is not necessary to go into broader aspects as to the effect of omission of Clause (f) of Article 19(1) and insertion of Article 300-A of the Constitution (Forty-Fourth Amendment) Act, 1978. Further the plaintiff is deprived of the property by the State without recourse to law. Admittedly, there was no acquisition proceeding. Atleast in the Court below the State was not good enough to come forward with a plea that it would pay legitimate compensation to the plaintiff. The learned Government Pleader has not been able to show any evidence which can be held to establish that the plaintiff had consented for laying the road on the suit land. Thus the action of the State Government, though it had a laudable object, was highly arbitrary and was violative of the fundamental right guaranteed under Article 19(1)(f) of the Constitution as it stood then as the land was not acquired under the Land Acquisition Act.

8. The State which takes law into its own hand, and acts in wilful disobedience to law and usurps the property of a citizen, cannot be permitted to contend that the citizen having not raised any objection is not entitled to seek an order of mandatory injunction or a permanent injunction. If the State is allowed to do such act, it would amount to putting a premium on the illegal act of the State. The action of the State may have a laudable object but it has to be accomplished in accordance with law. The STATE is not above law. It is as much bound by Rule of Law as any citizen or person. The actions of the State when they affect the life, liberty and property of a person or a citizen must be dictated by accepted notions of fair-play justice and the laws governing them. Therefore, I am of the view that it is not possible to hold that the plaintiff is estopped from seeking a decree for permanent injunction and also a decree for mandatory injunction as it is not proved that the plaintiff consented to or waived his right by allowing the State to lay the road on the suit land.

9. As far as the damages awarded by the lower Appellate Court is concerned, it has recorded a finding that the plaintiff had spent that much of amount for the purpose of restoring the land to its original position. Therefore, he was entitled to be reimbursed. Hence I do not see any ground to interfere with that finding.

10. However, one other aspect of the case which has to be adverted to, is that the decree passed by the trial Court and affirmed by the lower Appellate Court cannot be construed as a permanent bar to the State Government to acquire the suit land in accordance with law. In spite of the decree passed by the Court below, it is open to the State Government to acquire the suit land in accordance with the provisions of the Land Acquisition Act. In that event, it is open to the plaintiff to seek compensation in accordance with the provisions of the Land Acquisition Act.

11. For the reasons stated above, the appeal is dismissed. However, it is made clear that the decree under appeal shall not be construed as preventing or estopping, or coming in the way of the State Government to acquire the suit land in accordance with law and in accordance with the provisions of the Land Acquisition Act.

12. Having regard to the fact that the respondent has not put in appearance, there shall be no order as to costs.

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