

Nagaraju Vs. Mahalingappa

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Court : Karnataka

Decided On : Mar-09-1990

Reported in : ILR1990KAR1515

Judge : K.A. Swami, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115; [Indian Electricity Act, 1910](#) - Sections 51

Appeal No. : C.R.P. No. 1173 of 1990

Appellant : Nagaraju

Respondent : Mahalingappa

Advocate for Def. : Ravi and Ravi, Adv. for R-1 and ;B. Rudre Gowda, Adv. for R-2 and R-3

Advocate for Pet/Ap. : B. Palakshaiah, Adv.

Judgement :

ORDER

K.A. Swami, J.

1. Sri B. Rudra Gowda, learned Standing Counsel for the K.E.B. to appear for respondents-2 and 3.

2. This Civil Revision Petition is preferred against the order dated 18th January 1990 passed in M.A. No. 66/ 1989 confirming the order dated 30-9-1989 passed in O.S. No. 322/1989 by the learned Munsiff, Gubbi.

3. The petitioner in this C.R.P. is the 4th defendant; 1st respondent is the plaintiff & respondents 2 to 4 are the defendants 1 to 3 in the suit O.S.No.322/ 1989. In this order, the parties will be referred to as per the position they enjoy in the trial Court.

4. The suit is one for permanent injunction restraining the defendants 1 to 3 from drawing the power line over the land of the plaintiff bearing S.No.48 of B. Kodihalli village of Gubbi Taluk in order to provide power supply to the Bore-well situated in the land of the 4th respondent. The defendants are resisting the suit. In that suit, the trial Court on the application-1.A. No. 1, filed by the plaintiff has granted an order of temporary injunction restraining the defendants 1 to 3 from drawing a power line over the land of the plaintiff referred to above in order to provide power supply to the borewell situated in the land of the 4th respondent. The lower Appellate Court has affirmed the order of temporary injunction granted by the trial Court and dismissed the appeal. Hence this revision.

5. It appears to me that the Courts below have failed to take into account the legal position emerging from Section 51 of the [Indian Electricity Act, 1910](#) (hereinafter referred to as the 'Act') and the order issued by the State Government in exercise of the power conferred by Section 51 of the Act, conferring power on the Karnataka Electricity Board. Section 51 of the Act reads thus:

'51. Exercise in certain cases of power of Telegraph Authority - Notwithstanding anything in Sections 12 to 16 (both inclusive) and Sections 18 and 19, the State Government may, by order in writing, for the placing of electric supply lines, appliances and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of work, confer upon any public Officer, licensee or any other person engaged in the business of supply energy to the public under this Act, subject to such conditions and restrictions (if any) as the State Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885) any of the

powers which the Telegraph Authority possesses under that Act, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.'

6. Thus Section 51 of the Act empowers the State Government to confer upon the Karnataka Electricity Board, notwithstanding the provisions contained in Sections 12 to 16 and 18 and 19 of the Act, for placing of electric supply lines, appliances and apparatus for the transmission of energy to the public or for the purpose of telephonic or telegraphic communications necessary for the purpose of carrying on works under the Act subject to the conditions and restrictions as may be stated in. the order to exercise any of the powers which the Telegraphic Authority possesses under the India Telegraphs Act, 1885 with respect to placing of telegraph lines and poles for the purpose of telegraphs established or maintained or to be established or maintained by the Government. It is in the exercise of this power the State Government has issued an order bearing No. PWD 20 EEB 69 dated 22/25th July 1969 which reads thus:

'In exercise of the powers conferred by Section 51 of the [Indian Electricity Act, 1910](#) (Central Act 9 of 1910) and in supersession of Order No.S.O.2037 dated the 8th February 1965, the Government of Mysore, for the placing of, electric supply lines, appliances and apparatus for the transmission of energy hereby confers upon the M.S.E.B. the powers which the Telegraph Authority possesses under Section 10 to 19 and 19A of the Indian Telegraph Act 1885 (Central Act 13 of 1885) with respect to the placing telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained and the Government of Mysore further directs that the powers conferred under this order are exercisable subject to the provisions of Indian Telegraph Act, 1885 and to the conditions specified hereunder namely:-

1. the telegraph and telephone lines crossing the transmission lines shall be efficiently guarded to the satisfaction of the Telegraph Authority; and
2. all such crossings shall be at right angle or as near to right angles as practicable.'

7. Thus In the light of the aforesaid provisions read with the Government Order No. PWD 20 EEB 69 dated 22/25th July 1969, it is open to the K.E.B. to enter upon the lands of private citizens for the purpose of placing of electric supply lines, appliances and apparatus for the transmission of energy without the consent of the owners of such lands.

8. Similar matter came up for consideration before this Court in A.T. THIPPESWAMY AND ANR. v. K.E.B. AND ORS. : ILR 1990 KAR1038 . This Court on consideration of the aforesaid Government Order, and the provisions referred to above, held that the K.E.B. cannot at all be restrained by directing not to undertake the execution work including drawing of electric wire for laying electric line over the property of a citizen. Court in the aforesaid decision also noticed the earlier decisions of this Court in M.S.E.B. BANGALORE v. SHRI KRISHNAPURA MUTT, UDIPI, (R.S.A. No. 657/1965 DD 8-7-1970) and THE CHAIRMAN, K.E.B. v. H.R. HIRIYAPPA GOWDA, (R.S.A.No.524/74 DD 7-11-1979 reported in I.L.R. 1979 Kar. S.N.R.D. 185). Therefore, it is clear that the Courts below have acted illegally in granting an order of temporary injunction against the defendants 1 to 3 restraining them from drawing power line over the aforesaid land of the plaintiff to supply power to the borewell of the 4th defendant. As such the orders of the Courts below are liable to be set aside.

9. It is an established rule that an interim order passed in exercise of discretion by the Court of first: instance, the appellate and the Revisional Court should not lightly interfere with it. But this rule is applicable to cases where the discretion is exercised judiciously on taking into consideration all the relevant and essential facts and the law governing the same. If the Courts below fail to take into account all the essential facts and fail to apply the law governing the subject and pass an order of temporary injunction it would not be a case of exercise of discretion judiciously. Therefore, even if there is a concurrent finding, the Revisional Court can interfere to set right the miscarriage of justice. No doubt in the instant case both the Courts have concurrently held against the defendants; but both the Courts below have failed to take into consideration the relevant provisions of law and the Government Order issued under Section 51 of the Indian Electricity Act which go to the very root of the matter. Therefore, the exercise of discretion is not

judicious. In such a case, interference under Section 115 of C.P.C. becomes necessary, as otherwise the illegality committed by the Courts below not only results in miscarriage of justice but also causes inordinate delay in the execution of the work of the nature in question by the public utility concern for the benefit of the general public.

10. For the reasons stated above, this C.R.P. is allowed. The order dated 18-1-1990 passed by the learned Additional Civil Judge, Tumkur in M.A. No. 66/1989 and also the order dated 30-9-1989 passed by the learned Munsiff, Gubbi in O.S. No. 322/1989 are set aside. Consequently, I.A.II filed by the defendants is allowed and I.A.I, filed by the plaintiff for an order of temporary injunction is dismissed.

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