

Thimmarayaswamy Vs. Gurumurthy

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Court : Karnataka

Decided On : Jun-11-1991

Reported in : ILR1991KAR2373; 1991(2)KarLJ300

Judge : Mohan, C.J. and ;Hanumanthappa, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.A. No. 748 of 1990

Appellant : Thimmarayaswamy

Respondent : Gurumurthy

Advocate for Def. : K. Suryanarayana Rao, Adv. for R-1, ;N.K. Gupta, Govt. Adv. for R-4 and R-5 and ;T. Jayaprakash, Adv. for R-6

Advocate for Pet/Ap. : Mohandas N. Hegde, Adv.

Disposition : Writ appeal dismissed

Judgement :

Mohan, C.J.

1. This is rather a peculiar case in which the appellant Sangha merely claims that in the allotment of a site by the Local Mandal Panchayath in favour of the first respondent, it has violated the norms set out under Section 50 of the Village

Panchayath Act. Where therefore no applications are invited and no notice was given to the general public, nor was there any sanction under Section 50 of the Act from the Government to enable the Panchayath to make allotment, it is open to the appellant - Rate payer to question the validity of allotment. This was the strong argument put forth by Sri Mohandas N. Hegde. In support of this he has relied on AIR 1949 Bombay 229 wherein it had been held that a Rate payer who is interested in expenditure of local body, could question if the funds were not utilised in the proper way. Therefore he could maintain the Writ Petition.

2. We have to note in this case that the appellant is not even an individual tax payer, but Yuvaka Rytha Sangha - an Association. In our considered view, therefore, the appellant cannot claim to be a rate payer.

3. We will assume for a moment that it is a rate-payer. Than what is it that will enable it to come by way of Writ Petition? In AIR 1949 Bombay 229, what was laid down is as follows:-

'A rate-payer is undoubtedly interested in the application of the municipal fund both as a rate-payer who has actually contributed to that fund and also as a beneficiary who is entitled to the various benefits which accrue to the citizens by the application of that fund.'

In laying down this proposition of law, the learned Judges also referred to Section 45 of the Specific Relief Act of 1877 and stated under Section, 45, Specific Relief Act, in order to satisfy the first proviso a party must have some interest in property, franchise or personal right, the injury to which alone would entitle him to maintain a petition under that Section. Again it was stated every rate-payer has a right to prevent the public body to which he pays the rates, from acting contrary to law or contrary to its own charter. In these cases, the law assumes that the member of the Corporation or the rate-payer has a specific legal interest which entitles him to come to Court in support of his right and in order to prevent the Corporation or the public body from acting contrary to law or their own charter. In the instant case the appellant-Sangha was not even an applicant for the allotment of site. Therefore, there is no legal interest, much less specific legal interest.

4. To use the words of Lord Denning, the appellant-Sangha is none other than 'an interloper'. Certainly, a statutory Corporation like Panchayath has misconduct itself. There are persons who compose Panchayath and will take care of it. Merely on the ground that the appellant is a tax-payer, as we set out which itself is in doubt, it does not enable it to bring this quarrel to the fore by way of a Writ Petition. We hold such a Writ Petition is not maintainable.

On this short ground, we dismiss the Writ Appeal.

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