

Narayansa and Others Vs. Ramakrishna and Others

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Court : Karnataka

Decided On : Dec-08-1997

Reported in : ILR1998KAR616; 1998(6)KarLJ400

Judge : Y. Bhaskar Rao, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 8 - Order 7, Rule 4 - Order 23, Rule 3; Karnataka Municipal Corporation Act

Appeal No. : Civil Revision Petition No. 2668 of 1997

Appellant : Narayansa and Others

Respondent : Ramakrishna and Others

Advocate for Pet/Ap. : Sri Subhash B. Adi, Adv.

Judgement :

ORDER

1. This is a revision petition filed by defendants 2 to 5 assailing the order of the Court below granting permission to sue the defendants in representative capacity.

2. The facts of the case are that the plaintiffs filed a suit for declaration, declaring that the C.T.S. No. 3477 of Hubli is part of street or lane and also for permanent injunction against the defendants 2 to 5 not to proceed with the construction over C.T.S. Nos. 2616-B and 3477 as per Building Plan No. HDC/BB

II/28/ARB/2B/PWD, dated 24-8-1995 and also for such other reliefs. Learned Counsel assailing the order of the Court below permitting the plaintiffs to sue the defendants in representative capacity has filed this revision.

3. Learned Counsel for the petitioners contended that as per Order I, Rule 8 read with Order 7, Rule 4, Civil Procedure Code of Karnataka Amendment, the Court before granting permission ought to have issued a notice to the defendants 2 to 5. It is secondly contended that who are the parties, who are affected is not specifically stated and their number is also not mentioned. Therefore, on that count itself, the permission granted is liable to be set aside.

4. To appreciate the above contentions, it is relevant to refer to some of the facts. The respondents-plaintiffs alleged in the plaint that the defendant 1 is a statutory authority as the same is Hubli-Dharwad Municipal Corporation, Hubli. Its powers and functions are circumscribed by the provisions of the Karnataka Municipal Corporation Act and the Rules framed thereunder. Defendant 1 framed Zoning Regulations governing the use of land and the construction of buildings. Defendants 2 to 5 are the owners of the property comprised in C.T.S. Ward No. III, C.T.S. No. 2616-B of Hubli. Towards the southern side of this property, there is street or lane. This street or lane belongs to defendant 1. Southern part of this street or lane is now numbered as C.T.S. No. 3477, C.T.S. No. 2616-B and C.T.S. No. 3477 are the subject matter of this suit. So they are collectively called as property in suit. Defendant 1 is the owner of all the streets and lanes in the town. Defendants 2 to 5 got approved a plan and trying to construct on the street or lane occupying the street or lane. If the construction is carried on it will cause great hardship to the general public to pass through the street or lane including the plaintiffs. Further, there is also a proposal to widen the said street or lane.

5. The facts stated in the plaint clearly show that the public at large are affected by the proposed construction. Further, if the construction is carried on the street or the lane by defendants 2 to 5, it will affect the public at large, is a question of fact to be decided by the Trial Court. When there are prima facie allegations alleging that defendants 2 to 5 are occupying the street or lane and making construction work on the street or lane, which belonged to the Municipal Corporation, that is to

the public, it cannot be said that there is no allegation at all.

6. Therefore, the question that arises for my consideration in this petition is.-

'Whether prior notice to defendants is required before granting permission to sue in representative capacity under Order 1, Rule 8, Civil Procedure Code when the subject matter of the suit involves rights of the public at large?'

7. Order I, Rule 8 envisages that one person may sue or defend on behalf of all in the same interest and one or more of such persons may, with the permission of the Court, sue or be sued or may defend such suit on behalf of all and in every case where permission is granted under sub-rule (1), at the expense of the plaintiff, give notice of the suit to all persons so interested. Under sub-rule (1) any person on whose behalf or for whose benefit a suit is instituted, may apply to the Court to be made a party to such suit. Sub-rule (3) of Rule 1 of Order 23 stipulates that no agreement, compromise of satisfaction shall be recorded in any such suit under Rule 3. Sub-rule (5) refers to any person so interested does not proceed with due diligence, the Court may substitute in his place any other person having the same interest on it. Sub-rule (6) envisages that a decree passed in the suit under this rule shall be binding on all persons on whose behalf the suit is instituted.

8. Order 7, Rule 4(1) states that where the plaintiff sues in a representative character, he has to show his actual interest in the subject-matter and he has taken steps necessary to enable him to institute a suit concerning it. When permission is sought under Rule 8 of Order I the plaint shall be accompanied by an application supported by an affidavit stating the number of persons interested, the places where they reside and they have interest in the subject-matter of the suit etc. If permission sought is granted the plaint shall state or be amended so as to state the plaintiff sues on behalf of himself and all other persons interested in the matter and that he has been permitted by the Court to do so by an order made on a particular date in the application referred to above.

9. By reading Order I, Rule 8, Civil Procedure Code along with Order 7, Rule 4 of the Karnataka amendment, it is not manifest that there is any requirement to issue

notice to the defendants before the Court grants permission to sue in a representative capacity where public interest is involved. If it is to be presumed that such notice is required, until the notice is served and defendants appear, that the construction will be completed and the suit itself become infructuous. Therefore, when there is no provision providing for issue of notice to the defendants or granting permission to sue in a representative capacity, it cannot be held that there is a requirement to issue notice before Court grants permission to sue in a representative capacity. In view of the above principle, issuing of the notice to defendants before granting permission to the plaintiff to sue in representative capacity is not mandatory and not required. This view of mine is fortified by the decision of this Court in *M/s. Southern Steelmet and Alloys Limited v Lakskmi Nivas Mittal and Others*.

10. The next question is, what is the duty of the Court when the suit is filed seeking permission to sue in a representative capacity. On a perusal of Order, Rule 8 of the Code of Civil Procedure along with Order 7, Rule 4. Civil Procedure Code (Karnataka Amendment) where there is a public interest involved, if the Court is satisfied, it can grant permission. Thus what all that required is the Court must satisfy that there is public interest involved. Once that is satisfied, the Court can grant permission to sue in a representative capacity. The suit in representative capacity itself suggests that one or more persons or class of persons, whose interest is affected, can file a suit. Therefore, where there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the Court sue or be sued, any suit, on behalf of or for the benefit of all persons so interested.

11. It is also apt to mention here the observations of Justice Krishnalyer in *Akhil Bhartiya Soshit Karamchari Sangh (Railway) v Union of India*, regarding the nature of public interest litigation in India thus:

'Our current processual jurisprudence is not of individualistic Anglo-Saxon mould. It is broad based and people-oriented, and envisions access to justice through 'Class Actions', 'Public Interest Litigation' and 'Representative Proceedings'. Indeed little Indians in large numbers seeking remedies in Courts through

collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy', (para 63)

12. The above principle though laid down while exercising the power of judicial review, squarely applies the principles involved in the present case. Therefore, what the Court has to do is to scrutinise whether the suit brought is really in the nature of representative capacity to redress the grievance of the class of citizens or group of persons, whose rights are violated or infringed. Once that is satisfied, the Court can grant permission to sue in representative capacity. There is an embargo on the plaintiff to withdraw the suit except with the permission of the Court and after following the procedure laid down thereunder. At any rate, collusive permission or collusive withdrawal of the suit cannot be allowed when the rights of the parties are affected.

13. Thus, it is evident that once the Court is satisfied that there is a question of public interest involved, the Court can grant permission to sue in representative capacity even without issuing notice to the defendants. Therefore, I see no merit in the revision petition.

Accordingly it is dismissed.

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