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Court : Karnataka

Decided On : Aug-11-2003

Reported in : AIR2004Kant171

Judge : D.V. Shylendra Kumar, J.

Acts : Railway Act, 1989 - Sections 147(2); [Constitution of India](#) - Article 226

Appeal No. : Writ Petn. Nos. 2104 to 2204 of 2001

Appellant : Murugan and ors.

Respondent : Dept. of Housing and Urban Development and ors.

Advocate for Def. : M.N. Ramanjaneya Gowda, Adv. for Nos. 1 and 4, ;N.S. Sanjay, Adv. for No. 2 and ;Prakash Ramaiah, Adv. for No. 3

Advocate for Pet/Ap. : M.S. Ramachandra Rao, ;C. Ramamurthy and ;V. Krishnan, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. Petitioners claim to be residents of Channapatna town who have put up their huts near the railway line and the area where they have been fixed their tents has come to be known as 'Dr. Ambedkar Railway Platform Slum' and also known as 'Tamilian Colony Railway Plat Form' and there were about 800 such persons living in the area and there are about 140 huts or houses. It is also claimed that the Karnataka Slum Clearance Board who is impleaded as 3rd respondent to this writ petition has declared the area where the petitioners are residing as a slum area as per Section 3 of the Karnataka Slum Area (Improvement and Clearance) Act, 1973 (for short 'the Act'). Petitioners claim that they have been living in the huts put up by them for the past several years, that their names figured in the voters list of the area coming under Channapatna Legislative and Channapatna Parliamentary constituency, that they have been so occupying the place for about 40 years or above and their possession had not been disturbed by any other authority or person so far and when the matter stood thus the 2nd respondent, Divisional Manager, Bangalore Division, Southern, Railways, Bangalore had trespassed into the area on 9-1-2001 without even as much a notice to the petitioners, had demolished some of the structures belonging to them in the area, that the 2nd respondent has acted in a high handed manner and without even consulting or interacting with the 3rd respondents Slum Clearance Board has interfered with the living of the petitioners, that the 2nd respondent by putting forth an untenable stand and proposition that the Railway Authorities have right to remove any person from the property which belongs to railways if such person is found on the railway premises, by virtue of the powers conferred to the authorities under Section 147(2) of the Railway Act, that in the guise of exercising such power the 2nd respondent has subjected the petitioners to great hardships, difficulty and interfered with their peaceful possession and enjoyment of the property, where they have been living for the past several decades, their peaceful possession is threatened, that in some earlier, writ petitions where railway authorities had sought to take law into their own hands to that of the petitioners, the authorities have been restrained by the orders passed by this Court from taking such action except in accordance with due process of law, that the petitioners are entitled to similar relief in these petitions also.

2. Statement of objections has been filed on behalf of the 2nd respondent. Petition averments are denied and disputed. It is also asserted that the writ petitions itself are not maintainable as all the petitioners are not residents of 'Tamilian Colony' as claimed. It is also asserted that the petitioners are suppressing material facts and have filed writ petitions with false and incorrect statements. It is disputed that the petitioners are living in the area known as Tamilian Colony for the past four decades. The voters list copy of the year 1995 copy of which is produced as Annexure C does not contain the names of the petitioners, that it does not at any rate establish the petitioners stay for the past four decades etc. This respondent has denied that it has either trespassed into any portion of the said Tamilian Colony or has demolished any huts or house or building located in the said Tamilian Colony and the only action which is admitted on the part of the 2nd respondent is that they have put up a compound wall surrounding the railway properties and as this is the only action that they have taken question of 2nd respondent having trespassed into the Tamilian Colony or demolishing houses of the residents in that area does not arise is what is claimed by the 2nd respondent. It is also asserted that the Tamilian Colony which exists adjacent to the railway property has never been claimed by the railway authorities and that the railway property has all along been in the possession of the railway authorities, that no part of the railway property has been notified as a slum area, that the action of putting up a compound wall on the boundary of the railway property is to protect the property that it is very essential and valid and it is also claimed that the reliance placed by the petitioners on- the judgment of Single Bench and also of the Division Bench referred to in Annexure-D and E respectively to these petitions have no relevance to the facts of the present case and this respondent has prayed for disposal of the writ petition.

3. While the petitioners claim that the 2nd respondent has been interfering with the possession and enjoyment of their huts and houses which are located in the area known as slum area called as Tamilian Colony railway platforms the 2nd respondent has denied this and has disputed such averment. The 2nd respondent has asserted that it was never notified by the Slum Clearance Board under the Act and it was never put in the possession and enjoyment of any of the residents in the slum area which is known as Tamilian Colony. The very notification produced

by the petitioner copy at Annexure-E purporting to have been issued by Slum Clearance Board under Section 34 of the Act indicates that the said Tamil Railway platform is in a private ownership that it measures near 26 guntas comprising about 140 huts with the population of 800.

4. It is not possible for this Court to examine the correctness or otherwise for such disputed facts as asserted by the petitioner and as denied by the 2nd respondent. The 2nd respondent has asserted that they had put up only a compound wall in the area belonging to the railway authorities, that the notification issued under Section 3 of the Act does not indicate that any portion of the railway property has been declared as a slum area.

5. In the circumstances the decision relied upon by the petitioners namely Annexure-D and E are of no assistance to the petitioners in the present case. When once the possession of the petitioners in respect of any portion of the railway property is not demonstrated and which has been declared as a slum area there is no question of this Court examining the issue further and issuing a protective order in favour of the petitioners to restrain the 2nd respondent from taking action against the petitioners in any manner other than by due process of law in the exercise of writ jurisdiction by this Court.

6. If the 2nd respondent has put up a compound wall on the boundaries of its property it cannot be characterised as an illegal or unauthorised action or an act by which the 2nd respondent is trying to take law in their own hands or trying to over reach any provisions of law.

7. I do not find any merit in the petitions and accordingly the writ petitions are dismissed.