HC-KAR

NC: 2026:KHC-D:8220
WP No. 107936 of 2014

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 107936 OF 2014 (GM-RES)

BETWEEN:

GURU KOTTURESHWARA
KALYAN MANTAP (REGD)
NEAR TERU GADDE,
KOTTUR-583134,
REPRESENTED BY ITS SECRETARY,
SRI B.S. VEERABHADRAPPA
AGE: 88 YEARS.

... PETITIONER

(BY SRI M.B. HIREMATH, ADVOCATE)

MOHANKUMAR B SHELAR
Digitally signed by MOHANKUMAR B SHELAR
Location: HIGH COURT OF KARNATAKA

AND:

1. THE DEPUTY COMMISSIONER,
   BELLARY.

2. THE ASSISTANT COMMISSIONER,
   HOSPET.

3. THE TAHASILDAR,
   KOTTUR.

4. SRI KARNAM MAHANTAPPA
S/O. KARNAM KOTRAPPA,
AGED ABOUT: 68 YEARS,
R/AT: PATIL ELECTRICAL MAIN ROAD,
CAR STREET, KOTTUR,
TQ: KUDALGI,
DIST: BELLARY.

5. SRI KARNAM SHIVAKUMAR
S/O. KARNAM MAHANTAPPA
AGE: 68 YEARS
R/AT: PATIL ELECTRICAL MAIN ROAD
CAR STREET, KOTTUR
TQ: KUDALGI,
DIST: BELLARY

… RESPONDENTS

(BY SRI SHARAD V. MAGADUM, AGA FOR R1 TO R3,
SRI T. HANUMAREDDY, ADVOCATE FOR R4 AND R5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING ORDER BEARING NO. KA.MAG/33/2008-2009 DATED 26.07.2014 PASSED BY THE 2ND RESPONDENT AT ANNEXURE-Q & ETC.,

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

1. The captioned petition is filed assailing the order bearing No.KA.MAG/33/2008-2009, dated 26.07.2014 passed by the second respondent as per Annexure-Q.

2. Heard the learned counsel appearing for the petitioner and the learned AGA appearing for the respondents – State. Perused the records.

3. The petitioner–Association is a Society registered under the provisions of the Mysore Societies Registration Act, 1960. It claims to be the absolute owner in possession of property bearing Sy.No.684/6, presently assigned Door No.278, situated at Kottur Town. The petitioner further contends that pursuant to the grant made in its favour on 23.11.1972, the jurisdictional Tahsildar has issued an allotment certificate recognizing its title and possession over the subject property.

4. The fourth respondent claims to have purchased the adjoining property bearing No.134. Alleging that the petitioner has put up unauthorized construction by encroaching upon the road and thereby obstructed his right of access, the fourth respondent lodged a complaint before the Deputy Commissioner seeking appropriate action.

5. The second respondent, on receipt of a report from the jurisdictional Tahsildar, initiated proceedings and has passed the impugned order holding that the petitioner has raised construction by encroaching upon the alleged road and has consequently proceeded to direct removal of the encroachment.

6. Before adverting to the rival claims and examining the records, this Court deems it appropriate to refer to the stand taken by the petitioner before the second respondent while contesting the proceedings. The same is extracted hereinbelow:—

"ಪ್ರತಿವಾದಿಗಳ ಪರ ವಕೀಲರು ವಿಚಾರಣೆಗೆ ಹಾಜರಾಗಿ, ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಇತ್ತೀಚಿಗೆ ತಹಶೀಲ್ದಾರರು, ಕೂಡ್ಲಿಗಿ ಇವರು ಭೂಮಾಪಕರು,

ಕಂದಾಯ ನಿರೀಕ್ಷಕರು, ಗ್ರಾಮಲೆಕ್ಕಾಧಿಕಾರಿಗಳೊಂದಿಗೆ ಸ್ಥಳ ಪರಿಶೀಲನೆ ಮಾಡಿ, ಸರ್ವೆ ಮಾಡುವ ಸಮಯದಲ್ಲಿ ಪ್ರತಿವಾದಿಗಳಿಂದ ಅತಿಕ್ರಮಣವಾಗಿರುವುದಿಲ್ಲವೆಂದು ಕಚ್ಚಾ ನಕಾಶೆಯೊಂದಿಗೆ ವರದಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಖಾಲಿ ಜಾಗಕ್ಕೂ ಹಾಗೂ ಪ್ರತಿವಾದಿಯ ಆಸ್ತಿಗೂ ಯಾವುದೇ ಸಂಬಂಧವಿರುವುದಿಲ್ಲ. ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಯವರು, ಬಳ್ಳಾರಿ ಇವರು ಮಂಜೂರು ಮಾಡಿದ ಖಾಲಿ ಜಾಗ 0.12 ಸೆಂಟ್ಸ್‌ಯಿದ್ದು, ಇನ್ನೂಳಿದ 0.09 ಸೆಂಟ್ಸ್ ಖಾಲಿ ಜಾಗವನ್ನು ಪ್ರತಿವಾದಿಗಳು ಅತಿಕ್ರಮಣ ಮಾಡಿರುವ ಬಗ್ಗೆ ಪ್ರಶ್ನೆಯೇ ಉದ್ಭವಿಸುವುದಿಲ್ಲ. ಹಾಗೂ ತಹಶೀಲ್ದಾರರವರು ಕೊಟ್ಟೂರು ಪಟ್ಟಣದ ನಕಾಶೆಯನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ. ಇದರಿಂದ ಕೊಟ್ಟರೇಶ್ವರ ಕಲ್ಯಾಣ ಮಂಟಪದ ಪಕ್ಕದಲ್ಲಿ ರಸ್ತೆ ಇರುವುದಾಗಿ ದಾಖಲೆ ಇರುವುದಿಲ್ಲವೆಂದು ಹಾಗೂ ಈ ವಿಷಯವಾಗಿ ಸಾರ್ವಜನಿಕರಿಂದ ಯಾವುದೇ ಆಕ್ಷೇಪಣೆಯಾಗಲೀ, ವಾದವಾಗಲೀ ಮಾಡಿರುವುದಿಲ್ಲ. ತಹಶೀಲ್ದಾರರು ಸರ್ವೆ ಮಾಡುವ ಸಮಯದಲ್ಲಿ ಪಟ್ಟಣ ಪಂಚಾಯಿತಿಯವರಿಂದ ಯಾವುದೇ ವರದಿಯನ್ನು ಪಡೆದಿರುವುದಿಲ್ಲ. ತನಿಖೆಯ ನಂತರ ಮುಖ್ಯಾಧಿಕಾರಿಗಳು ಕಲ್ಯಾಣ ಮಂಟಪ ನಿರ್ಮಾಣ ಮಾಡಲು ಪರವಾನಿಗೆಯನ್ನು ಮತ್ತು ವಿದ್ಯುತ್ ಮಂಡಳಿಯವರು ವಿದ್ಯುತ್ ಸಂಪರ್ಕ ಸಹ ನೀಡಿರುತ್ತಾರೆ. ಇದರಿಂದ ಖಾಲಿ ಜಾಗದಲ್ಲಿ ಪ್ರತಿವಾದಿಗಳು ಅತಿಕ್ರಮಣ ಮಾಡಿರುವುದಿಲ್ಲವೆಂದು ಹಾಗೂ ಪ್ರತಿವಾದಿಗಳಿಗೆ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಯವರು ಮಂಜೂರು ಮಾಡಿದ ಆಸ್ತಿಯಲ್ಲಿ ಉತ್ತರ ಭಾಗದಲ್ಲಿ ಖಾಲಿ ಜಾಗಯಿದ್ದು, ಈ ದಿನವು ಸಹ ಖಾಲಿ ಜಾಗವಿರುತ್ತದೆ. ಆದರೆ ವಾದಿಯು ಕಂದಾಯ ಅಧಿಕಾರಿಗಳಿಗೆ ಸುಳ್ಳು ಮಾಹಿತಿಯನ್ನು ನೀಡಿ ದಾರಿ ತಪ್ಪಿಸುತ್ತಿದ್ದಾರೆ. ಸದರಿ ಪ್ರಕರಣವು ಸಿವಿಲ್ ಪ್ರಕರಣವಾಗಿದ್ದು, ವಜಾಗೊಳಿಸುವಂತೆ ಕೋರಿರುತ್ತಾರೆ.”

7. In the light of the stand taken by the petitioner and the rival contentions urged by the parties, the principal question that arises for consideration is as to whether the second respondent–Assistant Commissioner could have invoked the powers under Section 133 of the Code of Criminal Procedure, 1973, to adjudicate a dispute which, in substance, pertains to the identity and existence of an alleged road as well as an inter se boundary dispute between adjoining property holders. The ancillary issue that also falls for consideration is whether allegations relating to unauthorized construction and violation of building regulations could have been examined by the second respondent when the properties admittedly fall within the jurisdiction of the Municipal authorities constituted under the Karnataka Municipalities Act, 1964.

8. The records would indicate that the primary grievance ventilated by the fourth respondent before

the second respondent was that the petitioner-Society has put up a godown by encroaching upon a road and that the construction is unauthorized and illegal. The petitioner, while resisting the complaint, has alleged that the fourth respondent was earlier functioning as the Secretary of the petitioner-Society and that the godown in question had been let out in the name of the son of respondent No.4. It is the specific case of the petitioner that on account of certain disputes, legal proceedings were initiated and possession of the godown was ultimately recovered. It is in this background that the petitioner alleges that the present complaint is actuated by personal animosity and has been instituted with an oblique motive.

9. The petitioner would therefore contend that the complaint lodged by respondent No.4 is vitiated by mala fides and is only an offshoot of the earlier dispute inter se between the parties. According to the

petitioner, respondent No.2 ought to have been circumspect in entertaining the complaint and initiating proceedings under Section 133 of the Code of Criminal Procedure,1973 (for short 'CrPC') particularly when the dispute is essentially civil in nature and concerns rival claims over the existence and user of the alleged road.

10. The second and more substantial objection raised by the petitioner is that respondent No.2, acting solely on the basis of a report furnished by the jurisdictional Tahsildar, could not have proceeded to record a finding of encroachment and pass the impugned order. According to the petitioner, the controversy raised by respondent No.4 is essentially a boundary dispute involving adjudication of title and easementary rights, which cannot be gone into in proceedings under Section 133 of CrPC. It is further contended that even assuming that there is any violation of the sanctioned plan or building licence, the

same squarely falls within the exclusive domain of the Municipal authorities under whose jurisdiction the properties are situated and, therefore, respondent No.2 lacked the jurisdiction to embark upon such an enquiry.

11. On a careful examination of the impugned order passed by the second respondent, this Court finds that the conclusion regarding encroachment is founded entirely on a report submitted by the Tahsildar. What is rather intriguing is that the order does not indicate the manner in which such report was secured. There is absolutely no reference to the source of power under which the Tahsildar undertook the inspection or measurement. The impugned order is conspicuously silent as to the procedure adopted while conducting the alleged survey. It is also not forthcoming as to whether notice was issued to all stakeholders and whether measurements were undertaken in accordance with the provisions governing survey and demarcation of

properties. In the absence of such foundational facts, the findings recorded by the second respondent cannot be sustained.

12. What is more significant is that there is no reference whatsoever to the title documents of either party before arriving at a conclusion that a road exists abutting the godown belonging to the petitioner-Society. Equally, there is no examination as to whether respondent No.4 has any legally enforceable right over the alleged road or whether he possesses any easementary right of access through the disputed strip of land. Determination of such questions necessarily requires adjudication of disputed questions relating to title, identity of property and easementary rights, which are matters falling within the province of a competent Civil Court. Such issues cannot be conveniently adjudicated in summary proceedings under Section 133 of CrPC.

13. Having regard to the nature of the controversy and the disputed questions involved, this Court is of the considered opinion that the second respondent has clearly exceeded the jurisdiction vested in him. Proceedings under Section 133 of CrPC are intended to deal with cases of public nuisance and cannot be converted into a mechanism for resolving intricate civil disputes relating to title, boundary and right of way. If the grievance of respondent No.4 is that the petitioner has put up unauthorized construction or has violated the sanctioned plan, the appropriate remedy available to him is to approach the Chief Officer of Kottur Municipality. Section 187 of the Karnataka Municipalities Act, 1964 confers adequate powers on the municipal authorities to examine complaints relating to illegal or unauthorized constructions and to take appropriate remedial measures. Therefore, the machinery provided under the Municipal law constitutes

a complete and efficacious remedy for redressal of such grievances.

14. Admittedly, the subject properties fall within the municipal limits and are governed by the provisions of the Karnataka Municipalities Act, 1964. Therefore, respondent No.2, even assuming that he was acting pursuant to a delegation made by the Deputy Commissioner, could not have exercised powers in a manner that effectively supplants or usurps the statutory authority vested in the Chief Officer of the Municipality. The impugned exercise undertaken by respondent No.2 has the effect of encroaching upon a field exclusively occupied by the Municipal authorities under the scheme of the Karnataka Municipalities Act, 1964, which is impermissible in law.

15. Therefore, if respondent No.4 is genuinely aggrieved by the construction undertaken by the

petitioner-Society and if according to him the construction is in violation of the sanctioned plan or building regulations, it is always open to him to invoke the jurisdiction of the competent Municipal authority under Section 187 of the Karnataka Municipalities Act, 1964. Needless to observe that if such proceedings are initiated, the competent authority shall consider the same independently and in accordance with law after affording an opportunity of hearing to all concerned parties.

16. For the reasons stated supra, this Court is of the considered view that the impugned order passed by the second respondent is wholly unsustainable, being one passed without jurisdiction and by embarking upon an enquiry involving disputed questions of title, boundary and right of way, which are alien to the scope of proceedings under Section 133 of CrPC.

Consequently, the impugned order is liable to be quashed.

17. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The writ petition is ***allowed***.

(ii) The impugned order passed by the second respondent is hereby quashed and set aside.

(iii) It is, however, made clear that this order shall not preclude respondent No.4 from approaching the jurisdictional Municipal authorities under the provisions of the Karnataka Municipalities Act, 1964, if he is aggrieved by the construction put up by the petitioner-Society.

(iv) In the event such proceedings are initiated, the competent authority shall consider the same on its own merits and in accordance with law, uninfluenced by any observations made in the present order.

(v) All rival contentions of the parties are kept open.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

VNP / CT: GSM
List No.: 1 Sl No.: 56