

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
TIRUMAKUDALU NARASIPURA

DATE OF JUDGMENT: 01-09-2018

PRESENT: Sri A.Nagi Reddy., B.A.L, LL.B.,
Senior Civil Judge & JMFC, T.Narasipura

M.A.No.1/2018 C/w M.A. No.2/2018

Appellant in
M.A No.1/2018

The Assistant Forest
Conservator,
Mysuru Sub-Division,
Aranya Bhavana,
Mysuru and others.

By Smt.B.S., Adv.,

V/s

Respondents in
M.A No.1/2018

1. T.M.Rangaswamy,
The president of Vyavasthapana
Samithi,
Vydyanatheshwara Group of
Temples, Talakadu,
T.Narasipura.
2. The Panchayath Development
Officer,
Talakadu Grama Panchayath,
Talakadu,
T.Narasipura Taluk.
3. The Executive Officer,
Taluk Panchayath,
T.Narasipura,
Mysuru District.

R.1 by Sri.A.P.S., Adv

R.2 by Sri.S.J, Adv
R.3 - Exparte

AND

Appellant in
M.A No.2/2018

Panchayath Development
 Officer,
 Talakad Grama Panchayath,
 Talakad Village,
 T.Narasipura Taluk

By Sri.S.J., Adv.,

V/s

Respondents in :
M.A No.2/2018

1. Sri.T.M.Rangaswamy,
 Aged about 50 years,
 President of Vyavasthapana
 Samithi of Vydyanatheshwara
 Group of Temples, Talakad
 Village, T.Narasipura Taluk.
2. The Asst. Conservator of Forest,
 Forest Bhavana,
 Mysuru Division,
 Mysuru.
3. Executive Officer,
 Taluk Panchayath,
 Nanjangud Road,
 T.Narasipura Town.

R.1 by Sri.A.P.S., Adv
R.2 by A.G.P
R.3 - Exparte

: COMMON JUDGMENT :

These Miscellaneous Appeals are filed by the defendants against the order dated: 23.10.2017 passed by the learned Civil Judge and JMFC, T.Narasipura on I.A No.3 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC in O.S. No.108/2015.

Since a common question of fact and law is involved in both the appeals, they are taken up together for common disposal.

2. The parties would be referred to as per the ranks held by them in the suit before the court below.

3. The plaintiff has filed a representative suit before the court below seeking the relief of permanent injunction restraining the defendants from collecting entry fee on vehicles unlawfully in so far as the suit schedule property is concerned.

4. It is the case of plaintiff that he is the President of Vyavasthapana Samithi of Sri.Vydyanatheshwara Group of Temples, Talakadu. Talakadu is a historical place which is famous for panchalinga dharshana. Several pilgrims visit Talakadu to have dharshana in the temples located within the

area of Talakadu. The defendant No.1 and 2 are collecting entrance fee at two points within the area of Talakadu at a distance of less than half kilometer which is illegal and against to the Panchayath Raj Act. Sec.199 of Karnataka Panchayath Raj Act provides to collect taxes etc only as parking fee that to if grama panchayath provides adequate facilities. The 1st defendant had no any authority to collect entrance fee from the pilgrims. The collection of entry fee on the vehicles is prohibited from 02.03.2010 as per the letter of District Commissioner, Mysuru in DVS/2CR/149/09-10 dated: 10.01.2011. The plaintiff had issued a notice to the defendants on 05.03.2015 in compliance of Sec.80(2) of CPC r/w Sec.249(4) of Karnataka Panchayath Raj Act. But they did not comply the terms of the notice. Hence, the plaintiff was constrained to file the suit seeking aforesaid relief.

5. On appearance, the defendant No.1 had filed written statement admitting that the plaintiff is the President of the said committee. But it is denied that the suit is filed to protect the interest of the general public and as such the plaintiff has no any locus-standi to file this suit. It is admitted that the group of Vydhyatheshwara temples are situated within the reserved forest area which under the control of the defendant No.1. As per the decision of the village forest committee which has been constituted in accordance with the order of the

Government, the 1st defendant is collecting entry fee on the vehicles which are plying within the reserved forest area. The process of tender for collecting the entry fee for vehicles was brought to the notice of the Deputy Commissioner of Mysuru and then as per the decision taken by the Village Forest Committee the Deputy conservator of Mysuru had completed the tender process and thereafter collecting entrance fee from the vehicles. Out of revenue derived from the same, 50% has been remitted to the Government as per Order in FEE 50 FAC 2000 Bengaluru dated: 19.06.2002 and remaining 50% has been paid to village forest development committee, out of which 25% has been given for village forest fund and remaining 25% has been allotted to the village development fund. The amount has been utilized for improvement of reserved forest which comes within the jurisdiction of 1st defendant and remaining 25% of amount has been utilized for maintenance of tourism and development activities like drinking water, toilet, for seating arrangement, for change of dress to the tourist and development of village. Therefore, collection of fee by the 1st defendant is not illegal as alleged by the plaintiff. It is further contended that the suit is not maintainable in view of non-compliance of statutory provisions and non-joinder of necessary parties as the Chief Secretary, Chief Conservator of Forest and Deputy

Conservator of Forest are necessary parties. Hence, the 1st defendant sought for dismissing the suit with cost.

6. The 2nd defendant has filed written statement contending that the grama panchayath is empowered to collect toll fee from the pilgrims at the entry point. The amount which has been collected as toll fee is being spent for providing pure drinking water to the pilgrims and also for cleaning the premises of temple and the area situated outside the temple. Hence, the 2nd defendant prays to dismiss the suit with cost.

7. I.A No.3 is filed under Order 39 Rule 1 and 2 of CPC to restrain the defendants from collecting the entry fee in the plaint schedule unlawfully until disposal of the suit. I. A No.3 is supported by an affidavit sworn to by the plaintiff. The affidavit contains the reiteration of averments stated in the plaint.

8. The defendant No.1 and 2 have filed objection reiterating the stand taken by them in their respective written statement.

9. By the impugned order, the learned trial judge has held that the plaintiff has made out prima-facie case, that the balance of convenience lies in his favour and if the order of

temporary injunction is not granted he will be put to hardship. Being of that opinion, the learned trial judge has allowed I.A No.1 partly and restrained the 1st defendant from collecting the toll fee until the disposal of the suit. Whereas, the 2nd defendant has been permitted to collect the fee as provided under Sec.199(3)(d) of the Panchayath Raj Act subject to the condition that the 2nd defendant shall make necessary arrangements for water supply, sanitation, health, vehicles shelter etc for the persons attending jatras, festival etc for a limited period and not otherwise till the disposal of the suit.

10. I have heard and perused the material placed on record.

11. The learned AGP for appellant in M.A No.1/2018 has vehemently argued that the impugned order passed by the court below is not sustainable under law. According to her, the 1st defendant has been empowered to collect the vehicle entry fee from the pilgrims who used to pass through the entry gate of the reserved forest. It has been further argued that as per the Government Notification, the 1st defendant has been authorized to collect such vehicles entry fee. In view of that notification, the forest conservator has called tender to collect the vehicles entry fee. Thereafter, the tender was given

to the highest bidder namely Muddabasappa for collecting toll fee. It is further argued that the revenue derived from the collection of vehicles entry fee has been utilized for the purpose of developmental activities to provide basic amenities to the pilgrims. As such the impugned order restraining the 1st defendant from collecting the vehicles entry fee is not sustainable under law. Hence, she prays to allow the appeal setting aside the impugned order as against the 1st defendant is concerned.

12. The learned counsel for the appellant in M.A No.2/2018 has argued that by virtue of Sec.199(4)(d) of Karnataka Panchayath Raj Act, the grama panchayath is empowered to collect toll fee from the pilgrims who used to visit to have dharshana in the temples located within the area of Talakadu. It has been argued that the revenue derived from the collection of such fee has been utilized for the purpose of providing drinking water, sanitation etc. If the 2nd defendant has been restrained from collecting the toll fee throughout the year, they are not in a position to provide the basic amenities to the pilgrims who attend Talakadu to have dharshana in the temples. Hence, he prays to allow the appeal and to set aside the impugned order passed by the trial court restricting the 2nd defendant to collect the toll fee only on special occasions.

13. Refuting the aforesaid arguments, the learned Advocate for the plaintiff had argued that the collection of toll fee by the defendants is illegal and without any basis. According to him, the pilgrims are made pay of toll fees at two points within a distance of half kilometer which is illegal. He has argued that even though they are collecting toll fees at two points, either the 1st defendant nor the 2nd defendant made any shelter for parking of vehicles and the pilgrims are made to park the vehicles on the roadside without there being any parking shelter and as such the very collection of toll fee by the defendant No.1 and 2 is illegal. Hence, he supports the impugned order passed by the trial court and sought for dismissing both the appeals with cost.

14. In view of the aforesaid fact and circumstances of the case, the following points that arise for my determination are:

1. Whether the impugned order is capricious and perverse calling for interference in this appeal?

2. What Order?

15. My answers to the above points are as under :-

Point No.1 : In the **NEGATIVE**

Point No.2 : As per **final Order** for the following;

REASONS

16. **POINT No.1** : Since this being the Miscellaneous Appeal I did not secure the original records. The counsels appearing for both the sides have produced the copies of plaint, written statement, IA No.3, objections filed to the said application and copies of documents produced by both the parties in the Trial Court. I have gone through them.

17. Admittedly, Talakadu is an historical place important place located on the river bank of Cauvery. It is a pilgrimage a several Hindu ancient temples are located within the area of Talakadu. Therefore, several pilgrims used to visit Talakadu daily to have dharshana in the temples. It is not in dispute that the plaintiff is the President of Vyavasthapana Samithi of Sri.Vydyanatheshwara Group of Temples, Talakadu. He brought the suit before the trial court in the representative capacity seeking the relief of permanent injunction to restrain the defendant No.1 and 2 from collecting the vehicles entry fees at two points within the area of Talakadu. It is not in dispute that the defendant No.1 and 2 are collecting vehicles entry fees from the vehicles that used to visit Talakadu. It is the case of plaintiff that the collection of vehicles entry fees by the defendant No.1 and 2 is illegal and without any basis.

18. It is the case of 1st defendant that as per the order of Government of Karnataka in No.FEE 19 FWL 2010 Bengaluru dated: 28.01.2011 the Eco-Development Committees in Wildlife Protected Areas and other forest areas having canopy cover (Crown Density) more than 0.25 under different schemes and as described in Annexure – 1 of the Government Order, it is permissible to collect the vehicles entry fees. The learned AGP has produced the said order issued by the Government of Karnataka along with the annexure. On perusal of this order, it reveals that the Eco-Development Committee is empowered to collect general entry fee for persons, fee for car parking, other special entries fees like aquarium etc at Eco-tourism spots. It has been argued that by virtue of the powers conferred under the said Government Order, the Deputy Conservator of Forest, Mysuru Division, Mysuru called tender / bid for collection of vehicles entry fees from the tourist vehicles that used to visit Panchalinga Nisarga Dhama from 01.05.2017 to 31.02.2018. Thereafter, vide Notification dated: 28.04.2017 one Sri.Muddabasappa was the highest bidder, hence the tender was given to him for collection of vehicles entry fees from the tourist vehicle. Hence, the learned AGP has argued that the 1st defendant has been collecting the vehicles entry fees strictly in accordance with law.

19. It is pertinent to mention that as per the Government Order in FEE 19 FWL 2010 Bengaluru dated: 28.01.2011, the Eco-Development Committees are empowered to collect fee for car parking provided if they made suitable arrangement for car parking. But in the case on hand, the defendant No.1 is not collecting the car parking fee. On the other hand the 1st defendant is collecting the vehicles entry fees. The car parking fee is altogether different from vehicles entry fee. The car parking fee is to be paid only if the vehicle is parked in place earmarked for parking. Whereas, the vehicles entry fee will be collected for having used a road or for having entered into a place. In the case on hand the defendant No.1 is collecting the vehicles entry fees for having used the road formed in the forest area. The devotees/pilgrims use that road to reach the river Cauvery to take holy bath before having darshan in the temples. It is not the case of the defendant No.1 that the said road has been formed by the forest department. That road seems to be in existence from the time immemorial. The Government Notification does not disclose that the 1st defendant is empowered to collect vehicles entry fee. The learned AGP has produced 19 photographs. On perusal of the photographs, it reveals that there is small shelter for parking of cycles and two wheelers. But the defendant No.1 has not identified any

place with adequate protection for car parking. More importantly the said government notification does not authorize the defendant No.1 to collect the vehicles entry fees. Therefore prima-facie in the opinion of this court the collection of entry fee on the tourist vehicles by the 1st defendant is illegal. Hence, the trial court has rightly restrained the 1st defendant from collecting the toll fee / entry fee on the tourist vehicles who used to visit Talakadu.

20. As regards the 2nd defendant is concerned as per Sec.199(4)(d) of Panchayath Raja Act, the 1st defendant is the authorized to collect pilgrims fee on person attending jatras, festival etc where necessary arrangements for water supply, health and sanitation are made by the grama panchayaths. In the case on hand, the 2nd defendant is collecting the toll fee throughout the year from the tourist vehicles. Prima-facie the 2nd defendant has not provided any material before the court to show that they have made any arrangement for water supply, health and sanitation to the pilgrims who attend Talakadu. Even if they made any such arrangements, the 2nd defendant is only authorized to collect fee on special occasions such as jatras, festival etc as pilgrims fee on persons attending such special occasions. On the other hand, the 2nd defendant is prima-facie appears to be collecting the toll fee from the tourist vehicles throughout the year and

even though without making any arrangements as per the said provision which is illegal. Therefore, in the opinion of this court the trial court has justified in permitting the 2nd defendant to collect pilgrims fee only on special occasions provided and the 2nd defendant makes necessary arrangements for water supply, health and sanitation. In these facts and circumstances of the case, I am of the considered opinion that the impugned order passed is neither perverse nor capricious calling for interference of this court. Hence, **POINT No.1** is held in the **NEGATIVE**.

21. **POINT No.2**: In view of the reasons while answering Point No.1, I proceed to pass the following:-

ORDER

Both the Appeals are hereby
DISMISSED with cost.

The original copy of this judgment
shall be kept in M.A No.1/2018, copy
thereof shall be kept in M.A.
No.2/2018.

(Dictated to the Stenographer, transcribed by him, revised, corrected and pronounced by me in the open court on this the 01st day of September 2018)

(A. Nagi Reddy)
Senior Civil Judge & JMFC,
T.Narasipura.