

**Apartment Residents Coming Together To Prevent Public Authority From Discharging Its Duty Amounts To Unlawful Assembly U/S 143 IPC: Karnataka HC**

**2022 LiveLaw (Kar) 482**

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**K. NATARAJAN; J.**

**CRIMINAL PETITION NO.6123 OF 2020; 9 November, 2022**

**UMA SHANKAR MOHAPATRA *versus* STATE OF KARNATAKA**

*Petitioners by C.K. Nanda kumar, Senior Counsel for Arjun Rao, Advocate.*

*Respondents by R.D. Renukaradhya, HCGP for R1; Amit Anand Deshpande, Advocate for R2*

**ORDER**

This petition is filed by the petitioners-accused under Section 482 of Cr.P.C. for quashing FIR in crime No.119/2020 registered by Mahadevapura police for the offences punishable under Sections 143, 353, 149 of IPC on the file of XXVII Additional City Civil and Sessions Judge, Bengaluru.

2. Heard the arguments of learned Senior Counsel appearing for the petitioners and the learned High Court Government Pleader for the respondent-State and the learned counsel for respondent No.2.

3. The case of the petitioners is that respondent No.2 Smt. Malathi, an Executive Engineer of BBMP, Mahadevapura Division, filed a complaint to the police on 21.03.2020 alleging that the High Court of Karnataka passed an order in W.P. No.14435/2019 (GM-KLA) on 16.01.2020 for removing encroachment over the Rajakaluve in Sy. Nos.151/1, 151/4 and 119 of Mahadevapura village. It is further alleged in the complaint that as per the order of the High Court, wire fencing has to be done and hence, BBMP officials went to the spot on 21.3.2020 for surveying the property. On 09.03.2020, they went along with the ADLR and police personnel for removing the encroachment and to do wire fencing work. But the petitioners who are staying in Shilpitha Splendour Annex (hereinafter after referred to as 'Apartment') said to be illegally gathered and prevented the public servant while discharging duty and executing the order of the High Court. After registering the case, the police took up investigation and the same is challenged by the petitioners, who are the occupants of the Apartment in this petition.

4. The learned Senior Counsel appearing for the petitioners' counsel has contended that the BBMP official have already removed the encroachment and surveyed the land and once again, there is nothing to survey. There was some encroachment of 0.3 guntas, which was already removed and fencing was done. The allegation against the petitioners for the offence under Section 353 of IPC does not attract. The learned Senior Counsel further submitted that the petitioners peacefully went on strike and they have not agitated against the police or the BBMP officials. They are the residents of the said Apartment and therefore, there is no unlawful assembly and there is no obstruction. Hence, conducting investigation against the petitioners is abuse of process of law and therefore, prayed for quashing the same.

5. Per contra, learned High Court Government Pleader for respondent-State and the learned counsel for respondent No.2 have categorically stated that the petitioners have obstructed the BBMP officials in executing the order of this Court for removing the encroachment and putting fence over the Rajakaluve. When the police and BBMP officials went for surveying the land, the petitioners unlawfully assembled and obstructed the discharge of duty by the public servant. The photographs and the video clips reveal the obstruction made by the petitioners-accused persons in executing the High Court order

by the public servant. Hence, prayed for dismissing the petition and sought for a direction to the police to investigate the matter.

- 6.** Having heard the arguments of learned counsel for the parties, perused the records.
- 7.** It is not in dispute that the petitioners are the residents of the Apartment. It is also not in dispute that the Division Bench of this Court in W.P. No.14435/2019 passed an order on 16.01.2020 directing the officials of BBMP to remove the obstruction and put up fencing on the Rajakaluve.
- 8.** The learned Senior counsel for the petitioners has contended that the offence against the petitioners under Section 353 of IPC would not be attracted, as they are the residents of the Apartment and there is no illegal intention in assembling together. The learned Senior Counsel also contended that right to assemble is a fundamental right guaranteed under Article 19 of Constitution of India. In fact, the BBMP officials along with the ADLR with the protection of police went to the Annexe of Shilpitha Splendour for removing the encroachment on Rajakaluve and to fix fencing as per the direction of the Division Bench of this Court. When the officials went to the spot for discharging the official duty and to execute the order of this Court, these petitioners assembled on their way and they started doing strike sitting on the way in not allowing the BBMP officers to execute the order of this Court and to discharge the official duty.
- 9.** The petitioners, being the owners of the Apartment, must be in the Apartment, but they altogether joined their hands with an intention to prevent the public authority while discharging duty, which attracts Section 149 of IPC i.e. common object and unlawful assembly under Section 143 of IPC for committing an offence on the public servant.
- 10.** A bare reading of Section 353 of IPC, defines whoever assaults or uses criminal force to any person being a public servant in the execution of his public duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- 11.** Such being the case, there is a clear case of attracting Section 353 of IPC against the petitioners for having obstructed the complainant along with BBMP officers and the ADLR while surveying the encroachment and put up fencing as per the order of this Court.
- 12.** That apart, it is an admitted fact that subsequent to the registering the case against the petitioners, the BBMP officers were able to put fencing on the area recovered from the encroachment. Therefore, it cannot be said that the offences are not made out for investigating the matter. The photographs and video clippings reveals the incident occurred for having prevented the officials of BBMP by the petitioners. There is prima facie material to show that there is cognizable offence made out for conducting investigation. Therefore, the petition is devoid of merits and is liable to be dismissed.
- 13.** Accordingly, the petition is dismissed. The police are at liberty to proceed with investigation and file charge sheet.

Pending I.As., if any, do not survive for consideration. They are accordingly dismissed.