

Karnataka High Court

J Hemachandra vs The State Of Karnataka on 8 January, 2010

Author: D.V.Shylendra Kumar Swamy

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I? -31.3... Hléirfi GQURT QF K..A..R..HATAK.A

AT BANGALORE

Dated this the 8*-1 day <31" Januazy, 2\$;:_ '1"o« .j _
PRESENT A' T
'3'!-IE Hommm MR. JIISTICE I; v a.:{t'giLm'b:a.'
THE HOIWPBLE MR JUS'If_IGE L liIA.RAY_A:\$A;'v\$WA;i1Y
Writ Petition No 1520:} [G3\$4R};;3..f>1L;
Between: ' V ' .
1. J HEMA.Cf{A:s\$DRggég' 7 PE'T'E'I'I'IONE1R5S

~ 5lf: :j._[Bg]\$::;i P~i"E\$§§§§)11.»AdV]

1. s*m_'1*:::%o1'=* \$5 OTHERS RESPONDENTS

; 'V _ _[Zv'is'4 Gectila Manon, AGA for R»-1;
M] 2: Ashok' Associates 65 R Subramanya
"Advsfor R-2; Ms Aujana Snndar, Adv for R~3 5:. 4;
.. U Abdul Khader, Adv for R-5]

~. €*2\$'§s---.w*:\$'£% PETITEGN ES FILI3fi EENIJER AR'E'ECLES 226 ms

213? QFTHE-.v.\$GN8'FITUTEKN (BF ENDIA, PRAYENG TC} DIRECT 'THE
RESPC}iS\$DE'I'€iTS TS TAKE IMMEDIATE STEPS TC? COMPLY WFTH
THE {1E\$?;ECTI€3N ISSUE?) BY THES CGURT AS PER ANNEXURE-A

: AND FURTHER DIREC'I"E'Ir{E RESPONDENTS TO EVICT, DEMQLESH
T'HE. S"E'RUC'E'URES ON THE PARK AND QESTORE THE LANE AS A
PA.F<'.f{ AN!) f33'f'C,,

THIS PETITION IS COMING ON F03 FUEVFHER HEARENG

V' "'f'HiS DAY, SHYLENIJJRA KUKAR J., MADE THE FOLLOWING:

2

ORDER

Per L Naragarza Swamy, J:

Ms Anjana Sundar, Rearmed counsel 3 ané. 4, made submissions thgt heard in part, may be the said submission has ¥:):c*.%é,'11.._VI..}:1z;1(Vi<'-.:...<;'¥::(<x addressed by her clicfmts -- 4 -~ to her ané Inarldng cepy V<ii'-fit. , J-udgc -Justice: D V Shylendra aI1{.-?;aiI;s::i:: Chief Justice.

2. wave gi;;e4.::\$;fe::gjI%; "Sf1s:V_Eetter dated 11.1 1.2009 produced s_ui\$§titted by the Registrar (Vigilance), 'vi/'i_161";?:i11"}s1 remark has been made against aforme1? jucigé, t□lich makes me to recuse frem n;£i{téf;"L g□gcordj□gly, piace the matter before the for appropriate orders.

Per D V Shyiendra Kumar, J

3. When the matter was taken u\$ for .4 Ms Ar□ana Sunday, learned counsel for respor:fc:1:"er,1t:s:V 4,' made a submission that the m\$:>1t"t?e:" may Ecfcicegsed \$'1:()1:£1f part heard. While I was Ito:

{he request, as my leaI11Ve().vL:'L: :{')Ifothht":r'~- Swamy had some resfttijyfatiofi' fflatvjthe learned caunsei who has should mention the reason as' R} f1'i7I"1y;=___SU;iZ\$1';S'£ZIb□iSSiQI} was made.

4. :\$3i1t:iCiaTf-, COL1I"}S€1 for respoladents 3 ané 4 □f□□fitf the mason in the: court, as theV1«E::;arI1€:'tiw {;_v';f>mf1%l f._éiii the counsel and the judge are V' . gt ghe □d□eiits of the letter received from her 'VV<:,'1_:'1{V=: '2'i*.'.'\$', ' sha had been instznlcted to make a sA1:241;2I:::13;_ss:i ;;;%1j;=a Asaekirxg to release the case from hearing V n bcihi□Bmch.

H However, on counsel being apprised that she need ' not have any reserva□on in reveafig the rmsans and that §/

-w Maw" WWW-mm vowm aw»»mww~wamwm~m \$u!£K*~¢'I7'5i- my-'wwwmgi we uswwmaemawwwwazr. <2'e,:s='.x'wa uwwma the court proceedings are open proceedings; tlaatthere is no private transaction between a counsel anria' a party and a judge, and it will be in the reveal as to the reasons for nixaking j,s'u_(:1""i' s11h_□i§s§en'~.._ V and in the meanwhiie the counsel" ail_ 'jf)1.4e3e':';t in the court having been the letter had been received ' me Ms □ekashamma, President, Priyadarshi12i:'_i*»4ai□Vi1Ls1 'Ne 13, 2336' Cross, Okalipuramg i□agar, Bangalore-2 1, addressed and had been received at-griyi wtiieh-reads as 'under: 'PR:YAEARSr:i:'v;."MAH1LA MILAN _('l' Lakshmanjv-.Rc2e Itfagarg # 13, (2nd Cross 3 eAOka£r;i;u,r:arn, Bangaiore -- 560 021 w e 4V{Presidenz ; Prakashamma) Eate I 1*} }~--2009 ire:

" 53:3; Aiijana Sunder (Advomte) A' '#._1.?°o, MRCR, 18*?! Cross "\$V\$;'ayanagar, Bangelere-40 V' H H Respected Madam, Sub: Partiality by Judge Shailendm Kmnr hearing WP No 16206/2005 We, the undersigned, (on behaif (3,? _o houses) wish to submit this my kind 'letter' V. your kind consideration and favourabke Amma! we comes □hm poor ' belongs to SC community. We are; poor " and stragglng [sic] hard to :1 xsquare'-:;yedIVV per day. ' Amma! we are miaeh thomk□l V30 E<3Ye,~»for winning our cases suoéier.\$;sjix.lly émd'rii'ade: us to built [séc] our 33 houses, 'iaonowirzgiothe loan of 6! sum of R\$""«.12.'00;oDQ,'.-_ {Rupees tweive lakhs only] for expenees, it is very appreciat-able [s% '<«:l.f<=zi yaw? géod """, ?1m:i'i%z3' we""were""£?Lere at the court hall. .- "re: Kumar has neglected about V the order passed by jucigeee was shown, "said 'it is not that judge'5 " _i Vgmnd f;ther's property to change dimerttion ciimention [sic] was changed V .. _ _Vac.ccx:féi'z'ng to wrporatorz plan only.

. ' One Mr Hanumcm thappa was ::et_"z;1A any association during 1999. He has z ierétted [sic] the
faise ease against as in WP No v1_{:é910/1996 that he was a preeident of Okzalipuram Resident?
Welfare Associetiien, I8' Cross, Bcmgaiaire-21. Then □s□e Chandrashekaraialz, found the reality
and warned him not to repeat the same and stop eheaiing eouzt. The case is not public interest e/o
favour so far judge said he is confused about case.

Amma! we shail approached them -.

judge for suitab□ justice _ shailendraicwnar is doing thejudgenzént rI;\$hzLs4 - own without
hearing our Aci;n;2cates; 'A:zi'r_mc:if.we shall transfer this case toCsom'e« ether ;iuS2n_:e future.
Otherwise, 33 fari2iZie\$ »25Q.'pe'c;r:rEe will be on roads, we are poo'r. and ' Thanking you, ' T -

% Aiéiurfs faamay, {§1'HANDRAM§»IA) The " " (fourt of Kamataka, Banggaicref' .. _ é _ J.u.s£L'oe;
-.;SVLVqt'9ref§1e Gem': of India, I 4.

High Court of '□ngaiore V RE} *4}: Gundu Rao, 3 E, MLA, ' ' -« I jv ' ~ Gxznhdhinagar Meena,
Corporation ' ' « -€.?ofte3missioner, Bangaiare M wrmmu-uum max-wmm¥w1v.¥5 Wm
xwwummwxmmwrmim mwammm 't...,□EE" □'«'u2'~%\$?§E,£'%§,§-'K)g%'-:k'»~.;§"§□%
§""E§\$g:r&"□and o11 my recoliecting that a certain letter of this r1a¥:t1re{ had tbxtwarded to the
Regstrar (Vigilance) for exam□atiéij': " and to submit a report and that a report submitted by the
Regstrar (Vigilance) a se§z;u c;::'? the report; of the Regstrar Vigianance.[']»Vas
S1i□I}}DI1Ed';i(3.t:}jé V COIFL

6. it was opened irl the caf ccsunsei etc. The re1::;£>z?:t:V V{' :ourt hail by Ms Anjana counsel for
respondents the counter filed on beha}t" nqi"" 4 to the main writ petition. _ V' % ' A J '»
:§31;2_i'<i:<:ti(:I2 on behalf of the respondents 3 v3.I1ci é □atter before this bench appears to
aief□ording to mass respondents, the prsesenft Qe□□□ers have I19 bang: fades in presenting the
Writ \$2" majrztaining the petition and that they have 'V V d'eiii§é?at€iy suppressed Certain earlier
developments and %/ mwwrv-wamm wwm m"M!"onuE\M:hct-ras'\x|m',9a was wvcn
ww-wwwnmvm-m § particularly {he iéct that this court; had enquired about the facts of the case from
one R .HanumantI1appa, who had been described as the prosiciont of residents' welfexra
association, who was 1;Hr;é" 'WI'if:_T1EY(;:tiI.ii3Y1(i§"--..' in WP No 16910 of 1996 af.____
supporting a□davit to was secured before the ootifii' the □rough the good oi□tes counsel
appearing for the prostsxii; as this Court was very the said 'ocoo:'d§1g to respondents 3 and 4, is the
the present writ; pe□ion and has beé:1.____;§iayi§"Lg fraud on this court D.o§ only While o
;p;if:\$o3:?1□:1gA:V\$VP No 16910 of 3996 but also :11: date and " =t:1&io.re:i'o1'V{.=£_ "&-- _
showiizg S{I}fI€ importance or gving some promiiéotioo to the saizé person in getting facts quite V.
□a;t;1rfé;1ly has Created doubts and suspicion □; the minds of {hose respondents about they
getting a prayer order or "justice from the hancis of this court and that is to be the §"§N.;%§"%
€\$€§?U□§ wmwvm.ar-wmm van-"tw:I""'twwu"m m&i□haVWi\$ '9oou"W"4u§mni' 'k-M5"
W6»4""§«%KY\$§j1'%§W§\$*&aW§: -□□V reason £o1' seeking the matter to be reimsd □nn part
heard.

8. The mm respondent ~ Ms Prakashamma present in the court and o11 enquiring, 1'1'thE\$;i:g:h " indicated that she has no objectiofi -.tE(3:?._%tY1eA.'13c1;3.tte;*i heard by ttis bench, has :a:e;~%%--s;;ateg\$-;;\$;ii;;~eM'%1:1;ne it would be better if the matt;éf&'_T_is é□vii-'.'\$'»ent to some other bench, « 2 iV\$V\$;:')ondent-- commissiomr of Palike is not carI'ying in a gmoper raiaxmer and as 'hé is of the oxdexs and diractigns iSsa=1u1€:dVVtj:yAt11iS'"p%ic:our1: and the third and tha féiixih 1*§i\$P£.:nde.nts to harassment and in this staid €3\$T_ state that it is desirable that the . ""- "t£ratter □ghheard: heibre some ether bench. .1 .. S2';-._S Baht}, Rearmed counsei for the petitioners ._t_1_aé;- ' 1:}i;;t f\$':Asrtk1 a very streng objection for the matter being . V Aré:}.:}\$é;S\$;ci, ibr the reason that the matter had been heard by this bench earlier and frivolous and S{3'i}3'Ti.I01}S oT\$\$_ieg:tions having been raised by the respondents 3 avoid U13 bench and if the réaquest is amounts to giving around fer benches to hear't1}eir4éCaJ%€s, healthy development in 3;::*g:)pé;3i'"--\$§L:c2 IV\$iiIz1:i}snV;atjon of justice ané more <>ve::" _._□Y1t:' in the nature of a public a request for beach on the mere app1'e1;¢;*:;\$iQ1\$ of respondents 3 and ~::1:1erit acceptance, on the face of it gtrozlglly urges for rejecting the reqégtést far tfansfer. V

- } :fh¢»v44:\$e \$;r: of the Registrar {"v'ig'lan<:<:) has bcem 1:36-;_ 'us\$:{1~, givtiss the factual in□amination at' the state o1' AAa,t'i'ai;.b.~:»V_.;&:)reval}iI'zg on the civic amanjty Sit□in question and évelopments that have taken plase i:"T'om the year 44 ,_--Ei9910nwards, \$/ Ic wnwu-vmvwrr -«war Imm* 'mu\ 'amVa':€"vma" w#'?~.iW& r:>:A"om4W□ %r»'b¢si""8:«Y4Ws2'1'

16. This writ petition is in the nature of p't1.E:ii{ij"- ifitgiarest iitigation and wlaenever this court. entegiain□'--%p}1}31:Ec interest iitigation, the petitioners bI'iI}g a cause before this C{1}I'f ?35.I"}:{<€1 i19 t~.p{;rS\$11\$»V'v2ho are neither persens Vhatégtéiééi' {in tmé iitigation] I101' are par § o x 1 s' . . _ f g' : ; r a □ } ; y ' ' A p a = : i : s o n a 1 r e i i e f o r b e n e □ t , u n l i k e i n f 3 : f i , ' t z r c " ; 1' : f ; t : : " □ i V * 1 t < _ é j f < i % - - s - 3 " " i \$: : ; i " i j _ g a % : i o n , w h e r e t h e p e t i t i o n e r s i n a s u i t o r a p e t i t i o n e r " » p e \$ i ? , i G z 1 , ' : V . c i a i r ; r i i z 1 g r e i i e f f o r h i m s e l f o r h e r s e i f .

17. Whethefsuch pursue a petjijon or even 1'11; 3. F% s.eexi£:g.Vi2\$ r s.g\$ m1drawa1 of the writ petition, that .i1;sci\$' ~is--z□t2t__ the criteriën far dismissing a 'public i11ter"es1\$ f,2ctiii<\$□._ the court has a dlzty to exaxnine the '7]_ \$a:--;se a1i\$*:i }Z\$,\$\$1I.(\$i1C){1}'1C& upon the merits of the matter in .1 =.aL::c:%\$§rrcY a>:i1::e with iaw. @/ the directions ané orders, the Bnmur Baxagalore Maha-nagara Paiike may act in a to the detrinien of the fesponéents 3 and nothing beytmd putting forth :«3;"E:1t\$1':~.*zj1<i¢: 3?. A' private interest against. thug of the locality for retairxing civV1;.c"" for □e very purpose for and had been hamtied qver city carperation for such Sj□□V'a□\$£9ehensions are again specula.tiia'; ;=£:he"" }3r{ :St>\$13t."

28. In 33. acihdressed to the learned COILITISEI {qr t31é'~vr;\$'spQ:1d£:nf\$""LV3 and 4, marking capies o1' which amgl t11¢'i\$;1c;x:'b1e Chief Justice, is Concerned, it'is_.i11;\$1't:. and appears to be an attalnpt is get ""~V""\$}1e ma□? of the mnsideration by mis particular " i;ji3:¢:1'1¢:A21, faff□ze reasems best imown to the respondents 3 net on any discemabia iegitimata appreherzsion of bias on the part of one of us, constituting thddjvision bench.

2 1. Even on our repeated Ms Pmkashamma has only "

that the orders and 'may misused or abused' soda 'co;111.iié;s'ionc;:§r, Bruhat Bangalore Mananagéro :>aii:<¢ demment and therefore s1j1.€'« should go before some other 'Lf:--né:i'1§'«... 9

22. ___ it is the duty of this court to ensure that A□□ public acts in a highhanded nprzarmer oothat iaz□ is oot taken into their own hands every a(§I:ion: Is. __:o be in ful} consonance with the law and ii"; c":or100iiQ(1f:Ct: iés7it13 fa:°ir--p1ay and in compliance with :77 _ tho pzénoipleoof xi'1a'{}I'3i justice. rE1aci oariier ijtliicated in the order dated 4»1};~ that the Commissioner, Bruhat Bangaioire Mahanagara Palike should submit a report indieatfmg the pcssibiitiies for rehabilitation cf third and tile fourth respondents and ether like persons, if :beC;;mes inevitable that they may have to premises if their éweiiing {Be n amenity area. V -- 2 V x I24. On this aspect, Ms eounel for the respondents 4", 'appeam to be some measurement of ea*,rm :é;fi{e€}~.1br 8 and the subject matter of the et□□er or□y the area covered by parVi~, _ it e'u11g3t7. _g;d expanded in the present writ 11; is 1'16?2:"material for the present purpose, as to 'What iie" _jeivie amenity area bandied over by the then c::y% im~pife§:einen£ must board in favour of the Bangalore City eefpczra□en, as it) in what marmer that should have " utiizevzi er maintained is a mateer on record and does V% V. _...;§1ot admit any controversy about it. The only issue in 2 1 Okalipura, Lakshmanagar Area. Eangalore. it is"--.not an aliotment ofa house property or site itseif.

26. Be that as it may, the question is civic amenity area which 3if1ad» __,4b_sf":t":1_1 "_e'1?1t1*u's_te(VY5 :forV.._ V maintaining and admhiisteritlg fo1'. 'a civic body - the then city ---- can be diverted by the or even by the state governntentes property owned by either 1;g""ei""□1"e state government.

27. it iS:'-.§1 i11 iaw that a trustee Cannot appropriateVe1f'i3;i1:~§;;1§i4o;3riate a property held in {met £'(:1*:.%l:t';1'V1ct~ bez1ei:§t...ot' beneiciaxy and the position of the is not any di□erent from that of a to the civic amenity area for the bene□ ofthe re'3id7:§;;té',4'.oI'tI1e ioeaiity, to maizltain it as a park, to izp --- _g:o£:£st11c:tion to have a maternity home, chiid eentre and ward o□oe. It is the duty of the Atfiahanagara pahke to maintain. the civic amenity site as %/ W-WWW" we *»'wWw'wWnWAwW1s Hmww Vwmmwwi we" Wi\$W»'a\$§Ti MK/"Z.-*'§€L§ §'□\$WW £.. "€..3w□ in a matter such as the present one, which is esse11t§aH5; at public interest litigation, private interest égyen much importance or promizzenee not cane for such purpose. Apart from has been specifically directecikte 4)f)(: □§:"i":~te<1 by a special order by .;)j11ei:ice and therefore the Bench, though it €3(1)I(i_ have..bee§J 1eeI1er bench of this court.

3:2. Howe\.?e%£','~.ii1 vim t.he "§esire and sentiment expressed 4. my V .._brother Justice Narayana Swamy, Vthat W:"~i.1it1;sA"§:d""feeuse himself from further éhiswzase Hfe1""i:%1e reasen that the respondente 3 W' mm. VV. W >..x'myWAE \$ a letter to their counsel 1:o make a L"-V"euY3n1:iS\$ie1},~ recf□esting the ehange ef bench and the " i;jiee;1'*n:ed eezx□sel for respondents 3 and 4 has else filed :3. :1'}e1:1{; fe {hie effect before this court expressing nea□lr□filensien foe €O1{11Z§I1'l_£i1f}g the matter before this bench, ?% binds on the commissioner and the comnzissionée'-iT's éuty bound £o obey that order.

35. However, in the meanwhi}e, _ "wig. directed H) submit a rehabilitation of the rcspénéients ot§1ers, they are ultimately 17.9 '□a<iz'11~ present: position, if rule ot'1ax;*' provisions of the

