KABC010090062020

IN THE COURT OF I ADDL. CITY CIVIL & SESSIONS JUDGE AT BENGALURU (CCH.No.2)

Present: - **SRI.SREENIVASA,** B.A., LL.B.
I Addl. City Civil & Session Judge,
Bengaluru.

Dated this the 13th day of July 2023

O.S.No.2249 / 2020

Plaintiff:

M/.s All India Street Vendors Public and Charitable Trust and also called as AISVPCT (R)

Having registered office at Shop No.15, Jayanagar, Shopping Complex, 4th Block, Bengaluru-560 011.

and also at No.1/A, Cold Store, C Block, New Kalasipalya Market, Bengaluru-2.

Rep. by its authorised person
Mr.Mohammed Javeed,
Aged about 43 years,
S/o. Nawab Jan.

By Mr.Hussain Mueen Farooq, Adv.)

- VS -

Defendants:

1. **Mr.Mohammed Mudassir**,
Aged about 37 years,
S/o. Mohammed Peer Sab,
No.3/1, D.S.Lane, S.P.Road Cross,
Kumbarpet, Bengaluru-560 002.

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2. **Mr.Niyamatulla,**
S/o. Syed Abdul Razack,
Aged about 39 years,
No.226, Flat No.T3, 4th Floor,
N.H.Khan Road, Opp. KPM Beam Fort Apartment, Bengaluru-560 002.

3. **Mr.Mohammed Azmath,**
Aged about 41 years,
S/o. S.Pyarejan,
No.226, Ameena Bell Fort,
Flat No.S8, 3rd Floor, Nawab Hyder Ali Road, Kalasipalyam, Bengaluru-2.

4. **Smt. Suma,**
Aged about 48 years,
Father's name not known to plaintiff,
Claiming to be Secretary of Agricultural Producers, Market Corporation (APMC),
Agrahara Tankbund Road, Binnypet,
Bengaluru-560 023.

(By Sri.Abhimanyu Singh, Adv. for D1 to D3,

Sri.T.Swaroop, Adv. for D4)

Date of Institution of the suit	**26.05.2020.**
Nature of the Suit (suit for pronote, Suit for declaration & possession, Suit for injunction, etc.):	**Injunction suit.**
Date of the commencement of recording of the Evidence:	**15.10.2022.**
Date on which the Judgment was pronounced:	**13.07.2023.**

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Total duration:	Year/s	Month/s	Day/s
	03	01	17

(SREENIVASA)
I Addl. City Civil & Sessions Judge,
Bengaluru.

JUDGMENT

This suit is filed by the plaintiff against the defendants for a judgment and decree to declare that, the defendants, their henchmen, representatives, attorneys, officials, or any person/s claiming under them or through them etc., have no legal sanctity or locus standi or any right to interfere with the day today affairs of the schedule property or in the business of the plaintiff members / trustees / stockiest / retailers etc., in the schedule property, of whatsoever manner and for permanent injunction restraining the defendants, their henchmen, representatives, attorney/s, or any person claiming under them or through them from interfering / blocking the plaintiff members / trustees / stockiest / retailers from opening and running the fruits business in the schedule property in any manner.

2. **The brief facts of the plaintiff's case are that:**

a) The plaintiff is the registered trust duly registered as document No.JAY-4-00318/2017-18, Book-1, Stored in CD No.JAYD297 in the office of the Sub-Registrar, Jayanagar, Bengaluru and abiding to its aims and objectives. The 1st plaintiff trustees and their families are depending on their vending

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business. Except the vending business, the plaintiff trustees do not know any other business. Till this date, the plaintiff's trustees / members are running the fruits business smoothly without causing any disturbance to the neighbours, public etc., in turn their business are very helpful for the public nearby as they get their required items for a reasonable price, rather than excess price in big showrooms, malls etc. The plaintiff trust is represented by its trustee / authorised person in the above case. The members of the plaintiff trust are the fruit wholesale merchants / commission agents / stockists in Kalasipalya, Chickpet etc. They are doing business in rental shop. They have obtained valid licences from the concerned authorities by paying the necessary fees to the concerned authorities / Department of Agricultural Marketing. They are carrying out the business in the schedule property since 35 years. The plaintiff trustees / members are carrying out of their fruit business in various areas in City Market, Chickpet area at Bengaluru, which is more fully described in the plaint schedule and the plaintiffs are representing its members in the above case.

2b) The plaintiff has further submitted that, the plaintiff trust members are eking their livelihood by doing business on day today basis in the schedule property. It is pertinent to state that, the plaintiff trust has filed a suit in O.S.No.4605/2017 against the Commissioner of Police and also Commissioner, BBMP before the LXVIII Addl. City Civil and Sessions Judge, Bengaluru (CCH-69) wherein, the Court was pleased to grant an interim order dated 13.02.2019 in O.S.No.4605/2017 and the same is still pending. When such being the case, due to natural emergency of Corona Pandemic, the Hon'ble Prime Minister of India has ordered for Lock

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down for 21 years from 23.03.2020, due to which, the jurisdictional Police had ordered to close down all the shops in Kalasipalya, Bengaluru for few years. Thereafter, the Hon'ble chief Minister of Karnataka had granted permission to run their shops, which comes under essential commodities services. Accordingly, the members of the plaintiff trust / association started running their business in the schedule property by abiding to the conditions imposed by the Government of Karnataka by making blocks for social distancing, sanitizer etc. It is pertinent to state that, wherein exception has been given to shops dealing with food, groceries, fruits and vegetables, dairy and milk booths, meat and fish, animal fodder in the guidelines of Ministry of Home Affairs, Union of India.

2c) The plaintiff has further submitted that, when such being the case, the defendant Nos.1 to 3 who are strangers at the instigation of defendant No.4 claiming to be the Secretary of APMC came to the schedule property demanding the plaintiff members to close down the shops in the presence of the jurisdictional Police, as the schedule shops are adjacent to the K.R.Market. When the plaintiff questioned the same and stated as per Rule / condition, their business come under essential commodities list and the Chief Minister have given permission to carry out the business, for which, the defendant Nos.1 to 4 have threatened the plaintiff members with dire consequences. It is the plaintiff members are doing business, which comes essential commodities list and the said defendant Nos.1 to 4 have no legal sanctity / right or locus standi to interfere with the business affairs in the schedule property. The defendants with the active collusion of jurisdictional Police are not allowing them to run the business in the schedule property. The

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plaintiff members and their families, farmers, retailers, street vendors / stockists are put to great hardship and loss. Even the public at large are put to great hardship due to non-availability of essential products. Even though, the Government of Karnataka and Union of India have given permission to open the shops, such as fruits shop, vegetable shops, provision stores, which comes under essential commodities list, the defendants are not allowing to open the shops of the plaintiffs in the schedule property. The Act of the defendants are illegal and abuse / misuse of law. The defendants have no locus standi to interfere with the schedule property or in the business of the plaintiffs or its trustees / members.

2d) The plaintiffs have further submitted that, they have every right to run the business in the schedule property and the plaintiffs undertake to abide to the lock down rules imposed by the Government of Karnataka and Union of India. After the extension of lock down till 03.05.2020, direction was given to open the fruits shops, when the plaintiff members went to open the shops in the schedule property on 15.04.2020, the defendants and their henchmen and Police are restraining the plaintiff members from entering the schedule property, when questioned, they are threatening of arrest with dire consequences. The plaintiffs are seeking for life and liberty of them and their family members, families, farmers, retailers, street vendors / stockists. When the plaintiff lodged the complaint, the Police are not entertaining any complaint as they are also involved. The plaintiffs have every right to run their business in the schedule property, but their rights are being curtailed by the defendants herein.

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2e) It is further submitted that, it is pertinent to state that, Writ Petition (Civil) Diary No.10893/2020 was filed before the Hon'ble Supreme Court of India stating that, the Police authorities have not fully implemented the guidelines issued by the Ministry of Agriculture and Farmers Welfare, wherein, the Union of India through its solicitor general has given statement. It will ensured that, the concerned Police authorities would also naturally follow these guidelines and accordingly, the writ petition has disposed off on 15.04.2020. In view of extreme urgency, the plaintiff has come before this Court seeking appropriate reliefs. The illegal acts of the defendants are very vexatious, and tainted with illegal motives, objects and nothing but extortion and that, apart they are not at all justified to resort to the aforesaid high handed illegal acts and misuse of power. On these grounds, the plaintiff has filed this suit.

3. After receipt of suit summons, the defendants have appeared through their counsels and the defendant Nos.1 to 3 have filed their written statement. In their written statement, they have contended that, the suit is false, frivolous and not maintainable either in law or on facts. The averments made in para 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 are put to strict proof of the same. The averments made in para 14 and 15 of the plaint are not concerned to this defendant Nos.1 to 3. There is no cause of action to file this suit. Therefore, the defendant Nos.1 to 3 pray to dismiss the suit.

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4. Based on the pleadings, my learned predecessor-in-office framed the following issues are as under :-

ISSUES

1. Whether the plaintiff Trust proves that, their members are in lawful possession and enjoyment of the suit schedule property as on the date of the suit ?

2. Whether the plaintiff Trust further proves that, the defendants are trying to interfere in the suit schedule property ?

3. Whether the plaintiff Trust is entitled for the reliefs as sought for ?

4. What Order or Decree ?

5. In order to prove the case, the representative of the plaintiff No.1 Trust examined as PW.1 and got marked the documents at Ex.P.1 to Ex.P.7. On the other hand, the defendants have not adduced any oral and documentary evidence.

6. Heard the arguments from the side of the plaintiff. No representation from the side of the defendants. Hence, the matter is posted for judgment with liberty to file their written arguments within 19.06.2023. Perused the entire materials on record.

7. My findings on the above issues are as under :-

Issue Nos.1 to 3 :- In the affirmative,

Issue No.4 **:-** As per final order;

for the following **:-**

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REASONS

8. ISSUE Nos.1 to 3: All these issues are interconnected with each other, hence they are taken together for discussion in order to avoid repetition of facts.

9. To prove the facts in issue, the representative of the plaintiff Trust examined as PW1. and he has reiterated the plaint averments in his examination-in-chief. He has stated that, the plaintiff trust is the registered trust duly registered as document No.JAY-4-00318/2017-18, Book-1, Stored in CD No.JAYD297 in the office of the Sub-Registrar, Jayanagar, Bengaluru and abiding to its aims and objectives. The 1st plaintiff trustees and their families are depending on their vending business. Except the vending business, the plaintiff trustees do not know any other business. Till this date, the plaintiff's trustees / members are running the fruits business smoothly without causing any disturbance to the neighbours, public etc., inturn their business are very helpful for the public nearby as they get their required items for a reasonable price, rather than excess price in big showrooms, malls etc. The plaintiff trust is represented by its trustee / authorised person in the above case. The members of the plaintiff trust are the fruit wholesale merchants / commission agents / stockists in Kalasipalya, Chickpet etc. They are doing business in rental shop. They have obtained valid licences from the concerned authorities by paying the necessary fees to the concerned authorities / Department of Agricultural Marketing. They are carrying out the business in the schedule property since 35 years. The plaintiff trustees / members are carrying out of their fruit business in various areas in City Market, Chickpet area at Bengaluru, which is

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morefully described in the plaint schedule and the plaintiffs are representing its members in the above case. The plaintiff trust members are eking their livelihood by doing business on day today basis in the schedule property. It is pertinent to state that, the plaintiff trust has filed a suit in O.S.No.4605/2017 against the Commissioner of Police and also Commissioner, BBMP before the LXVIII Addl. City Civil and Sessions Judge, Bengaluru (CCH-69) wherein, the Court was pleased grant an interim order dated 13.02.2019 in O.S.No.4605/2017 and the same is still pending. When such being the case, due to natural emergency of Corona Pandemic, the Hon'ble Prime Minister of India has ordered for Lockdown for 21 years from 23.03.2020, due to which, the jurisdictional Police had ordered to close down all the shops in Kalasipalya, Bengaluru for few years. Thereafter, the Hon'ble chief Minister of Karnataka had granted permission to run their shops, which comes under essential commodities services. Accordingly, the members of the plaintiff trust / association started running their business in the schedule property by abiding to the conditions imposed by the Government of Karnataka by making blocks for social distancing, sanitizer etc. It is pertinent to state that, wherein exception has been given to shops dealing with food, groceries, fruits and vegetables, dairy and milk booths, meat and fish, animal fodder in the guidelines of Ministry of Home Affairs, Union of India. When such being the case, the defendant Nos.1 to 3 who are strangers at the instigation of defendant No.4 claiming to be the Secretary of APMC came to the schedule property demanding the plaintiff members to close down the shops in the presence of the jurisdictional Police, as the schedule shops are adjacent to the K.R.Market. When the plaintiff questioned the same, the defendant

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Nos.1 to 4 have threatened the plaintiff members with dire consequences. It is the plaintiff members are doing business, which comes essential commodities list and the said defendant Nos.1 to 4 have no legal sanctity / right or locus standi to interfere with the business affairs in the schedule property. The defendants with the active collusion of jurisdictional Police are not allowing them to run the business in the schedule property. The plaintiff members and their families, farmers, retailers, street vendors / stockists are put to great hardship and loss. They have every right to run the business in the schedule property and the plaintiffs undertake to abide to the lockdown rules imposed by the Government of Karnataka and Union of India. After the extension of lockdown till 03.05.2020, direction was given to open the fruits shops, when the plaintiff members went to open the shops in the schedule property on 15.04.2020, the defendants and their henchmen and Police are restraining the plaintiff members from entering the schedule property, when questioned, they are threatening of arrest with dire consequences. The plaintiffs are seeking for life and liberty of them and their family members, families, farmers, retailers, street vendors / stockists. When the plaintiff lodged the complaint, the Police are not entertaining any complaint as they are also involved. The plaintiffs have every right to run their business in the schedule property, but their rights are being curtailed by the defendants herein. It is pertinent to state that, Writ Petition (Civil) Diary No.10893/2020 was filed before the Hon'ble Supreme Court of India stating that, the Police authorities have not fully implemented the guidelines issued by the Ministry of Agriculture and Farmers Welfare, wherein, the Union of India through its solicitor general has given statement. It will ensured

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that, the concerned Police authorities would also naturally follow these guidelines and accordingly, the writ petition was disposed off on 15.04.2020. In view of extreme urgency, the plaintiff has come before this Court seeking appropriate reliefs.

10. PW.1 in support of their case, has produced the documents at Ex.P.1 to Ex.P.7. Ex.P.1 is the list of members / trustees, who are fruit vendors / stockists / wholesale dealers near Sri.Krishna Rajendra Market and surrounding areas. Ex.P.2 is the authorisation letter dated 16.04.2020 authorising one Sri.Mohammed Javeed to prosecute the suit. Ex.P.3 is the certified copy of the trust deed dated 05.07.2017. Ex.P.4 is the certified copy of the order on I.A.No.2 dated 13.02.2019 passed in O.S.No.4605/2017, which was filed by M/s.All India Street Vendors Public and Charitable Trust and also called as AISVPCT against the Commissioner of Police and others, wherein it is held like this " I.A.No.2 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC seeking temporary injunction is hereby allowed. The defendant Nos.1 to 4 are hereby restrained from interfering with the plaintiff's Trustees day today business i.e., street vending business in the plaint schedule property in any manner until disposal of the suit, except under due process of law," the said suit is pending for adjudication. Ex.P.5 is the PAN card of All India Street Vendors Public and Charitable Trust. Ex.P.6 is the aadhaar card of representative of the plaintiff trust. Ex.P.7 is the certificate under Sec.65B of the Indian Evidence Act.

11. From the documents, it discloses that, the plaintiff trustees / members are carrying out of their fruit business in various areas in City Market, Chickpet area at Bengaluru i.e., suit schedule properties.

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12. The defendants in their written statement have denied the entire case pleaded by the plaintiff. To disprove the case of the plaintiff, the defendants have not stepped into the witness box and not offered other side for cross-examination. Under the said circumstances, I would like to refer the citation reported in **AIR 1999 SC page 1441 in the case of Vidhyadhar Vs Mankikrao and another**, wherein, it is held that: (A) Evidence Act (1 of 1872), S.114 – Adverse inference – Party to suit – Not entering the witness box – Give rise to inference adverse against him. Where a party to the suit does not appear into the witness box and states his own case on oath and not offered himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct." Thus, The facts and circumstances discussed in the above respected judgment and the facts and circumstances of the present case are one and the same. Therefore, the principles laid down in the above respected judgment is aptly applicable to the case on hand. Under the said circumstances, in the absence of supporting cogent and documentary evidence, there is no reason to disbelieve the case putforth by the plaintiff.

13. Further, the plaintiff has contended that, they filed W.P. (Civil) Dairy No.10893/2020 before the Hon'ble Supreme Court of India stating that, the Police authorities have not fully implemented the guidelines issued by the Ministry of Agriculture and Farmers Welfare, wherein, the Union of India through its Solicitor General has given statement, it will ensured that, the concerned Police authorities would also naturally follow these guidelines and accordingly the said Writ Petition was disposed off on 15.04.2020. Further, it is contended that, the illegal acts of the defendants are

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very vexatious and tainted with illegal motives, objects and nothing but extortion and that apart, they are not at all justified to resort to the aforesaid high handed illegal acts and misuse of power. When the plaintiff made allegations against the defendants, it is the duty of the defendants to approach before this Court and take action and also it is their duty to say that, the plaintiff's business is causing nuisance to them and also to the neighbouring people. In this regard, the defendants have not produced any supporting documents. On perusal of copy of order passed by the Hon'ble Supreme Court of India in Writ Petition (Civil) Diary No (s).10893/2020, as per the statement by the learned Solicitor General appearing on behalf of the Union of India before the Hon'ble Supreme Court of India states that, there is full monitoring and implementation of the guidelines issued by the Ministry of Agriculture and Farmers Welfare dated 28.03.2020 and it will be ensured that, the concerned police authorities would also naturally follow these guidelines.

14. Further, in the instant case, this suit is filed only for injunction praying not to cause any interference to the plaintiff trustees to run their fruit businesses. Till the defendants take the action in accordance with law, it is necessary to grant permanent injunction. Further the Hon'ble High Court of Karnatak in **1999(1) K.L.J. page 536** have held that, mere treat in the mind of the plaintiff is sufficient to grant injunction and real treat is not necessary. Hence, I am of the opinion that, the plaintiffs have proved that, the plaintiff trust members are in lawful possession and enjoyment of the suit schedule property and and defendants are causing interference to their possession. Accordingly, I answer **issue Nos.1 to 3 are in the affirmative**.

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15. **ISSUE NO.4:** In view of my aforesaid discussions, I proceed to pass the following: -

ORDER

The suit of the plaintiff is hereby decreed with cost.

It is declared that, the defendants, their henchmen, representatives, attorneys, officials, or any person/s claiming under them or through them etc., have no legal sanctity or locus standi or any right to interfere with the day today affairs of the schedule property or in the business of the plaintiff members / trustees / stockiest / retailers etc., in the schedule property, of whatsoever manner.

Permanent injunction is granted till the defendants initiate action against the plaintiff as per the statement given by the learned Solicitor General appearing on behalf of the Union of India before the Hon'ble Supreme Court of India in Writ Petition (Civil) Diary No (s).10893/2020.

The defendants, their henchmen, representatives, attorney/s, or any person claiming under them or through them are hereby restrained from interfering / blocking the plaintiff members / trustees / stockiest / retailers from opening and running the fruits business in the schedule property in any manner.

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Draw the decree accordingly.

(Dictated to the Stenographer, transcription computerised by her, corrected and then pronounced by me in the open court on this the **13th day of July 2023**.)

(SREENIVASA)
I Addl. City Civil & Sessions Judge,
Bengaluru.

ANNEXURE

WITNESSES EXAMINED ON BEHALF OF PLAINTIFFS:

PW.1 : Sri.Mohammed Javeed.

DOCUMENTS MARKED ON BEHALF OF PLAINTIFFS:

Ex.P.1	:	List of members / trustees.
Ex.P.2	:	Authorisation letter dated 16.04.2020.
Ex.P.3	:	CC of the trust deed dated 05.07.2017.
Ex.P.4	:	Certified copy of the order on I.A.No.2 dated 13.02.2019 passed in O.S.No.4605/2017
Ex.P.5	:	PAN card of All India Street Vendors Public and Charitable Trust.
Ex.P.6	:	Aadhaar card of representative of the plaintiff trust.
Ex.P.7	:	Certificate under Sec.65B of the Indian Evidence Act.

WITNESSES EXAMINED ON BEHALF OF DEFENDANTS:
NIL

(SREENIVASA)
I Addl. City Civil & Sessions Judge,
Bengaluru.

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