



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 22305 OF 2016 (LB-BMP)

R

BETWEEN:

RAMAMURTHY N

...PETITIONER

(BY SRI. T PRAKASH.,ADVOCATE)

AND:

1. BRUHAT BANGALORE MAHANAGARA PALIKE
BRIAND SQUARE,
BANGALORE-560 002,
REPT. BY COMMISSIONER.
2. THE ASSISTANT EXECUTIVE ENGINEER,
WARD NO.94 (OLD),
31(NEW), B.B.M.P.
KADUGONDANAHALLI SUB-DIVISION,
QUEENS ROAD,
BANGALORE-560 001.
3. THE EXECUTIVE ENGINEER
ROAD WIDENING, DIV.NO.III,
BBMP, QUEENS ROAD,
BANGALORE-560 001.
4. SRI.N.RADHAKRISHNA

Digitally signed
by
NARAYANAPPA
LAKSHMAMMA
Location: HIGH
COURT OF
KARNATAKA



5. KARNATAKA APPELLATE TRIBUNAL,
VIDHANA VEEDHI,
BANGALORE-560 001,
BY ITS SECRETARY.

...RESPONDENTS

(BY SMT. SARITHA KULKARNI., ADVOCATE FOR R1 TO R3;
SRI. N.K. KANTHARAJ, ADVOCATE FOR R4;
SRI. SANTOSH KUMAR, HCGP FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR WRIT, ORDER OR DIRECTION IF APPROPRIATE NATURE QUASHING THE ORDER DATED 20.02.2016 IN APPEAL NO.226/2011 (ANNEXURE-J) ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL, BANGALORE AND CONSEQUENTLY THE ORDER NO.SKNA/KGHALLI/CO/2/2009-10 DATED 18.05.2010 (ANNEXURE-G) ON THE FILE OF THE ASSISTANT EXECUTIVE ENGINEER, KADUGONDANAHALLI SUB-DIVISION, QUEENS ROAD, BBMP, BANGALORE, AND DROP ALL PROCEEDINGS IN FILE NO.SKNA/KGHALLI/CO/2/200-10 DATED 18.05.2010 ON THE FILE OF THE ASSISTANT EXECUTIVE ENGINEER (RESPONDENT NO.2) AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

1. The petitioner is before this Court seeking for the following reliefs:

a. Issue a writ of Certiorari or writ, order or direction if appropriate nature quashing the order dated 20.02.2016 in Appeal No.226/2011 (Annexure-J) on the file of the Karnataka Appellate Tribunal, Bangalore and consequently the order No.SKNA/KGHALLI/CO/2/2009-10 dated 18.05.2010 (Annexure-G) on the file of the Assistant Executive Engineer, Kadugondanahalli Sub-Division, Queens Road, BBMP, Bangalore, and drop all proceedings in File No.SKNA/KGHALLI/CO/2/200-10 dated 18.05.2010 on the file of the Assistant Executive Engineer (Respondent No.2)

b. Issue a Writ, order or direction of appropriate nature granting such other reliefs that this Hon'ble Court deems fit, in the facts and circumstances of the case, including the costs of the writ proceedings.

2. The petitioner claims to be owner of land covered under site No.3, in old survey No.140 of Nagavara village, a portion of the said land was proposed to be acquired by the Bruhat Bengaluru Mahanagara Palike [BBMP] for the purpose of widening the existing Tannery road to 24 mtr width. It is in that background, a portion of the property measuring 8



mtr x 30 ft was given up in favour of the BBMP for widening. Thereafter the petitioner is stated to have demolished the said portion and plastered the remaining portion installing a rolling shutter.

3. The BBMP, on a complaint filed by the brother of the petitioner viz., respondent No.4, issued a notice under Section 321(1) of the Municipal Corporation Act ['Act' for short] contending that the petitioner has altered the premises without obtaining plan sanction which was followed by 321(3) confirmatory order which was challenged by the petitioner before the Karnataka Appellate Tribunal (KAT) in Appeal No.226/2011 which came to be dismissed on 20.02.2016. Aggrieved by the same, the petitioner is before this Court challenging the order of the KAT, as also 321(1) and 321(3) notice issued by the Corporation.
4. The submission of counsel for the petitioner is that a portion of the land was acquired by the BBMP in



pursuance of which Transferable Development Rights were issued. The petitioner was called upon to demolish the portion acquired and it is in furtherance of the same, demolition took place and after the demolition of a portion of the building in order to make the building habitable, necessary works have carried out especially putting up a rolling shutter, the same is not an alteration and or construction, as such, he submits that there was no requirement of obtaining a plan sanction as contended by the BBMP.

5. The BBMP issued notices only on the basis of the complaint filed by the brother of the petitioner viz., respondent No.4. There being a partition suit which is pending between the petitioner and respondent No.4, respondent No.4 is abusing the process of law and instigating the BBMP to take action against the petitioner. Therefore, he submits that this fact which was placed before the KAT has not been taken into consideration and the KAT has wrongly come to a



conclusion that a plan sanction and building licence is required for repairing the building and or demolition of the building which is incorrect, more so in terms of the letter dated 9.9.2010 at Annexure-E issued by the Executive Engineer, Road Widening Division-3, wherein the said Executive Engineer has categorically stated and permitted the petitioner to go ahead with the demolition of the building as desired for reconstruction. On that basis the petitioner submits that the petition is required to be allowed and the order passed by the KAT requires to be quashed, as also notices issued and order passed be quashed.

6. Learned counsel for respondent No.4 would submit that the petitioner is not the absolute owner of the property, there being a partition suit which is pending, the petitioner cannot file the present writ petition. The petitioner has no locus and the Corporation has rightly taken action under Section



321 since the alteration of the building has been carried out. He submits that the notice under Section 321 had been issued in the name of N.Narasimhaiah, the petitioner not being issued with such notice, the petitioner has no locus on this account also.

7. Smt.Sarita Kulkarni, learned counsel for Corporation would submit that 321(1) provides for action to be taken even as regards alteration of the building, the repair carried out by the petitioner amounts to alteration of the building, the installation of the rolling shutter also amounts to alteration of the building, no sanction having been taken in relation thereto, the action taken by the Corporation is proper which has been rightly appreciated by the KAT and as such, she submits that the above petition requires to be dismissed.
8. Heard Sri.T.Prakash, learned counsel for the petitioner, Smt.Saritha Kulkarni, learned counsel for



respondents No.1 to 3, Sri.N.K.Kantharaj, learned counsel for respondent No.4 and Sri.Santosh Kumar, learned HCGP for respondent No.5. Perused papers.

9. Section 321 of the Act provides for the Corporation to take action in the event of there being any demolition, alteration of building or well which is commenced unlawfully and or carried out and completed without permission.
10. What is required to be seen in the present case is, whether there is any alteration. Since admittedly there is no construction which has been carried out by the petitioner but only an alteration in terms of repairing the existing building, post demolition, on account of widening of the road.
11. Section 320 deals with the application of the Act relating to alterations and additions. The proviso to Section 320 provides that wherever works are carried out for repair which do not affect the position or dimensions of a building or hut or any room in a



building therein shall not be deemed an alteration or addition for the purpose of said section. When proviso to Section 320 is taken into account, a mere repair work which does not affect the position or dimension of the building cannot be said to be an alteration.

12. Admittedly, what has been carried out by the petitioner is demolition of a portion of the building on account of widening of the road and thereafter repair works of the demolished portion to make it usable. There is no particular allegation has been made against the petitioner for having constructed anything more than what was available and or altering the dimension of the building. Therefore, in my considered opinion, the demolition work which was carried out for the purpose of making the building habitable and usable cannot be said to be an alteration which would come within the purview of



Section 321 of the Act, but would come under the proviso to Section 320 of the Act.

13. In view thereof, the Corporation could not have exercised powers under Section 321 of the Act, more so, on the basis of a complaint filed by the brother of the petitioner with whom there are certain disputes pending. The said complaint is only to put the State machinery in action to resolve the dispute between the petitioner and respondent No.4. It would be well advised for the Corporation to be careful in these situations and take necessary action in accordance with law and not to be used as a tool by a private party to settle private scores. Though this Court could have imposed cost on respondent No.4, it refrains from doing so.

14. In view of the above, I pass the following:

ORDER

i. The writ petition is allowed.



- ii. Certiorari is issued. The order dated 20.02.2016 in Appeal No.226/2011 by the Karnataka Appellate Tribunal is set-aside. Consequently, the confirmatory order dated 18.05.2010 passed by respondent No.2 - Executive Engineer under Section 321(3) is also quashed.

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 39