



**IN THE COURT OF THE X ADDL. CITY CIVIL & SESSIONS
JUDGE, BENGALURU (CCH-26).**

Dated this the 3rd day of February, 2025.

Present

Sri Vijaya Kumar Rai, B.Com., LL.B.,
X Addl. City Civil & Sessions Judge,
Bengaluru.

O.S.No.4952/2023

<u>Plaintiffs:</u>	<p>1) Sri M.B. Manjunath s/o Late A.G. Mahadevaiah Aged about 52 years R/at No.90, 6th Main 3rd Stage, 4th Block Basaveshwara Nagar Bengaluru-560 079.</p> <p>2) Sri M. Nagaraj s/o Late Mahabalappa Aged about 70 years R/at No.91, 6th Main 3rd Stage, 4th Block Basaveshwara Nagar Bengaluru-560 079.</p> <p>3) Sri Krishnoji Rao s/o A. Venkoba Rao Aged about 71 years r/at No.72, 6th Main 3rd Stage, 4th Block Basaveshwara Nagar Bengaluru-560 079.</p> <p>4) Sri S. Harish s/o Late A. Sadashivaiah Aged about 62 years R/at No.121/A, 6th Main 3rd Stage, 4th Block Basaveshwara Nagar</p>
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	Bengaluru-560 079. (By Sri D.S. Jayaraj, Adv.)
Vs.	
<u>Defendants:</u>	<ol style="list-style-type: none">1) The Commissioner Bruhath Bengaluru Mahanagara Palike N.R. Square, Bengaluru2) Joint Commissioner Bruhath Bengaluru Mahanagara Palike (West) Malleshwaram Bengaluru.3) Assistant Executive Engineer Town Planning Bruhath Bengaluru Mahanagara Palike (West) Basaveshwaranagar Bengaluru.4) Assistant Director Town Planning Bruhath Bengaluru Mahanagara Palike (West) Bengaluru.5) Sri Vamana Acharya Aged about 65 years R/at No.249, 7th 'C' Main 3rd Stage, 4th Block Near Central Bank Of India Basaveshwaranagar Ward No.101 Bengaluru-560 079.6) Glens Bake House Rep By Sai Surya G No.89 3rd Stage, 4th Block Basaveshwaranagar Ward No.101 Bengaluru-560 079.

	(By Sri K.V. Bathegowda, Adv. for D1 to 4; Sri Abhinav, R., Adv. For D.5 and Sri Krishnamurthy, R., Adv. For D.6)	
Date of institution of the suit	03.08.2023	
Nature of the suit	For mandatory injunction and permanent prohibitory injunction	
Date of the commencement of recording of evidence	-	
Date on which the judgment/Orders Pronounced	03.02.2025	
Total duration	Years Months Days 01 06 00	

(Vijaya Kumar Rai)
X Addl. City Civil & Sessions Judge,
Bengaluru.

ORDERS ON PRELIMINARY ISSUES

This suit is filed by the plaintiffs to pass a decree by way of mandatory injunction directing the defendants No.1 to 4 to demolish the alteration/renovation/modification made by defendants No.5 & 6 in the suit schedule property made contrary to the building bye-laws and town planning regulations of BBMP Act 2020 and also to restrain the defendants No.5 & 6 from proceeding with further construction in the suit schedule property.

2. The case of the plaintiffs in brief is as hereunder:-

The plaintiffs are the residents of Basaveshwara Nagar locality in Ward No.101. It is a residential locality and no commercial establishments are permissible in the locality. The width of the road therein is only 20 feet. The cause of the plaintiffs is in the public interest and they have filed this suit in the representative capacity to prevent the defendants No.5 & 6 from using the residential area for commercial purpose by violating the building bye-laws and concerned rules.

3. It is specifically pleaded by the plaintiffs that the defendant No.5 owns the suit schedule property, which is a residential property and he has let out it to defendant No.6 for hotel business in the name of Glen Bake House, which would run for 24×7 by altering the building. In the process of reconstruction of the building in the suit schedule property, the defendants No.5 & 6 have only retained the pillars and all the internal walls are demolished and putting up construction without leaving setback. When the plaintiffs have lodged the complaint, the defendants No.1 to 4 have issued provisional Order dated 17.06.2023 and confirmation order dated 26.05.2023. But, inspite of issuing the confirmation order, it is not executed and thereby the plaintiffs were constrained to institute this suit.

4. The defendants entered appearance through their respective counsels. During the course of hearing, the Court has framed the following preliminary points/issues on 24.09.2024:-

- 1) Whether the plaintiffs can maintain the suit for the construction put up by the defendants No.5 & 6 by violating the BBMP bye-laws in the absence of infringement of their civil rights?
- 2) Whether the plaintiffs can maintain the suit without obtaining permission under Order I Rule 8 CPC?

5. Heard the arguments.

6. Finding of this Court on the above issues are:-

Issue No.1:- In the *negative*,

Issue No.2:- In the *negative*, for the following:-

- : REASONS : -

7. **Preliminary Issues No.1 & 2**:- The plaintiffs No.1 to 4 have instituted this suit in the public interest to direct the defendants No.1 to 4, who are the authorities of Corporation to demolish the construction put up by defendants No.5 & 6 in the suit schedule property which is contrary to the building bye-laws and town planning regulations of BBMP Act 2020 and to further restrain them from proceeding with the construction. As per the case of the plaintiffs, the defendants No.5 & 6 in the residential

area using the suit schedule residential building for commercial purpose and they have altered the construction by violating the building bye-laws and also without leaving setback which is required to be demolished. It is also contended that though the defendants No.1 to 4 have issued provisional order and confirmation order after noticing the violation, the confirmation order is not executed and therefore the intervention of the court is required.

8. Admittedly, the construction is carried out by defendants No.5 & 6 in the property of defendant No.5. It is not the case of the plaintiffs that either their property or the public property is encroached is encroached. It is true that the defendants No.5 & 6 cannot carry out the business in the residential area and they cannot put up construction by violating the building bye-laws. But, the question for consideration is whether the violation said to be committed by defendants No.5 & 6 results in infringement of civil rights.

9. The main grievance claimed by the plaintiffs is that the width of the road in the locality is only 20 feet and the use of residential area for commercial purpose affects the enjoyment of the plaintiffs' residential property in the locality. But, it is not the specific case of the plaintiffs that use of property by the defendants No.5 & 6 has obstructed their passage or caused

actionable nuisance. Therefore, merely because the defendants No.5 & 6 have used the residential area for commercial activity without there being specific acts or admissions results in infringement of civil right, the civil court cannot entertain the grievance of the plaintiffs. No doubt the provisional order and confirmation order issued by defendants No.1 to 4 indicative of the violation of building bye-laws by the defendants No.5 & 6. The question for consideration is whether the plaintiffs can invoke the jurisdiction of the civil court for remedy. In this regard, it is relevant to point out that as per the BBMP Act 2020, certain powers are conferred to the Chief Commissioner of BBMP. He is the Appellate Authority to deal with the matter. If the parties are aggrieved by the provisional order or confirmation order, the remedy to them is to approach the Chief Commissioner of BBMP to challenge the order. The Chief Commissioner is entitled to ascertain the same and pass necessary orders. Therefore, the jurisdiction of the civil court is impliedly ousted from deciding the question as to whether there is violation of building bye-laws. Similar is the case of setback. Therefore, if the present suit is entertained and if an inconsistent order is passed by the Chief Commissioner of BBMP by exercising his statutory power, it would lead to inconsistent orders. Therefore, the only remedy available to the plaintiffs for non-execution of the confirmation

order is to seek appropriate relief before the appropriate Court or forum in accordance with law. The civil court cannot deal with this matter and decide whether the building bye-laws are violated or not.

10. In this regard, in the case of **A Sundar Raj Vs. Vijayendra Kumar and Others 2001 (1) LJ 468** the Hon'ble High Court has held that if building bye-laws are violated, the building regulation authorities have got exclusive right to control the constructions and therefore mere violation of bye-laws without there being infringement of civil rights will not give cause of action to institute the suit. It is well settled that controlling construction is the exclusive domain of the regulatory authorities and not the Civil Court. Court is required to take note that there are certain provisions under law for compounding the illegalities also. In case of violation of bye-laws without there being any encroachment and infringement of civil laws the Civil Court cannot determine the question of extent violation and the subsequent course of action to be followed. In this regard, in the decision of **A Sundar Raj Vs. Vijayendra Kumar and Others** referred to above, the our Hon'ble High Court has observed as hereunder.

“The learned Counsel appearing for the respondent has relied on a judgment of this Court in Fakirappa

v. Basalingappa to contend that an injunction can be granted at the instance of the neighbour. That was a case clearly distinguishable on facts. In that case the Court found on evidence that there was factually violation by the party in the matter of construction. It further found that the permission granted by the Corporation was quashed by the High Court. It was in those set of facts the Court ruled that an injunction can be granted. That was not a case like the present one. Therefore, the said judgment cannot be relied upon by the defendant to seek an injunction. In the circumstances, I am of the view that no temporary injunction can be granted at the instance of the neighbour on the sole ground of violation of the sanctioned plan or the Building Bye-laws. As rightly held by this Court in Dr. K. Panduranga Nayak's case, supra, that when there is a violation of bye-law the appropriate Court can direct the Commissioner to take action or on complaint to him in this behalf. The Act itself has provided a machinery to enquire into such grievances. At the same time I clarify that in the event of any inaction on a complaint by the neighbour of violation on the part of the Municipal Commissioner the party is at liberty to seek a remedy to take action against an erring party. Merely on a complaint to the Commissioner or merely on the ground of violation of bye-laws as rightly held by this Court in Dr. K. Panduranga Nayak's case, supra, no injunction can be granted since a comprehensive machinery is available

under the Municipal laws for an action against an erring party. The judgment of the Supreme Court in *Rajatha Enterprises v. S.K. Sharma* relied on by the respondents of no use since that was a case dealing with the breach of statutory duty. Similarly, on the other hand the Supreme Court has itself noticed in that judgment that if any such duty is cast on the Municipality to take action against the erring party. Similarly, decision in *Onkar Nath v. Ram Nath Gupta* is also not available to the respondents since that was a case where an unauthorised construction was put up without obtaining sanction from the authority. A construction without sanctioned plan and a construction in contravention of sanctioned plan stands on two different footings and therefore *Onkar Nath's* case, *supra*, is not available to the respondents. No doubt judgment of Calcutta High Court in *Krishna Kali Mallik v. Babulal Shaw* 6 , provide for an injunction in the event of construction in violation of statutory rules but that relief has to be given as I mentioned earlier in the earlier paragraph only in the event of violation of a plan or a licence resulting in an injury or a violation of right in favour of neighbouring owner. Therefore, the Counsel for the appellant is right in his submission with regard to a right of the party in the matter of injunction in the light of these two judgments of this Court”.

11. The above ratio laid down by the Hon’ble High Court makes it clear that the neighbouring owner cannot maintain a suit

for violation of by laws unless he is able to show the infringement of his civil rights.

12. It is also relevant to note that though this suit is instituted in the representative capacity by filing an application under Order I Rule 8 CPC. The plaintiffs neither insisted to pass orders on that application nor the court has passed any order. Paper publications are also not issued. Learned counsel appearing for the plaintiffs relied upon the decision of our Hon'ble High Court in the case of Ramachandra Laxman Doddamani and another v/s Thilakaraj Bhakthavarmal Mahajanshet and others (ILR 2000 Karnataka 1511) contending that permission can be granted even during the pendency of the case. But, while considering the question of grant of permission, the court is required to consider the maintainability of the reliefs sought by the plaintiffs also. Therefore, unless the permission is granted to institute the representative suit, the plaintiffs cannot maintain the suit.

13. It is true that violation of building bye-laws is a serious issue and cannot be taken lightly. Therefore, if the defendants No.1 to 4 fails to execute their confirmation order issued for removal of the violations, the plaintiffs are at liberty to take appropriate legal remedy in accordance with law including lodging complaint before the Lokayuktha or Upa Lokayuktha for the

dereliction of the duty committed by the concerned Engineers in not executing the confirmation order. On these observations, above preliminary issues No.1 & 2 are answered in the negative and the following order is passed:-

ORDER

Suit is dismissed as not maintainable.

Draw decree accordingly.

(Order prepared through Speech to Text App with the assistance of Senior Sheristedar, carried out corrections, print out taken and then pronounced in the Open Court on this the 3rd day of February, 2025)

(Vijaya Kumar Rai)
X Addl. City Civil & Sessions Judge,
Bengaluru.