IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 8TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104778 OF 2023 (GM-CPC)

BETWEEN:

SHRI. YALLAPPA S/O. LAXMAN JADHAV,
AGE. 68 YEARS, OCC. RETIRED PRIVATE EMPLOYEE,
R/O. SITE NO.50, SY. NO.50,
JADHAV GALLI, SHAHU NAGAR,
BELAGAVI-590010.

...PETITIONER

(BY SRI. MADANGOUDA N. PATIL, ADVOCATE)

AND:

THE COMMISSIONER,
BELAGAVI CITY CORPORATION, BELAGAVI,
CTS NO.4821/27A, R S NO.1005,
NEAR S.P. OFFICE, SUBHASH NAGAR,
BELAGAVI, KARNATAKA-590016.

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, A) ISSUE A WRIT OF CERTIORARI OR ORDER QUASHING THE ORDER DATED. 17.01.2020 PASSED BY PRINCIPAL CIVIL JUDGE AND JMFC BELAGAVI IN OS NO. 1248/2019 ON IA NO. II FILED UNDER ORDER XXXIX RULE 1 AND 2 R/W SECTION 151 CPC VIDE ANNEXURE-S AND ACCORDINGLY THE ORDER DATED. 24.09.2021 PASSED BY HON'BLE PRINCIPAL SENIOR CIVIL JUDGE AND CJM BELAGAVI ON MISC. APPEAL NO. 05/2020 VIDE ANNEXURE-U.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

MOHANKUMAR B SHELAR
Digitally signed by MOHANKUMAR B SHELAR
Date: 2023.09.25 11:02:06 +0530

ORDER

Captioned petition is filed by the plaintiff assailing the order passed by the appellate court on an application filed under Order 39 Rule 1 and 2 of CPC.

2. Heard the learned counsel for the petitioner and perused the material on record.

3. Petitioner/plaintiff has instituted a suit for injunction simplicitor in O.S.No.1248/2019. The plaintiff filed an application under Order 39 Rule 1 and 2 restraining the defendant from demolishing the suit schedule property. The trial court rejected the application. Feeling aggrieved by the order passed by the trial court, present petitioner preferred an appeal in M.A.No.5/2020. Infact the appellate court has granted injunction. Therefore, I deem it fit to cull out the operative portion of the order, which reads as under:

> *"Miscellaneous Appeal filed by the appellant/plaintiff U/Order XLIII Rule 1(r) of C.P.C., is hereby allowed.*

The order passed by the IIIrd Additoinal Civil Judge & JMFC, Belagavi in O.S.No.1248/2019 on I.A.No.II under Order XXXIX Rule 1 and 2 CPC dated 17/01/2020 is hereby set aside.

The application filed by the plaintiff/appellant under Order XXXIX Rule 1 & 2 R/w. Sec.151 of Code of Civil Procedure is allowed.

The defendant is hereby restrained by way of temporary injunction from demolishing the structure over the suit property without following due process of law as contemplated under the provisions of Karnataka Municipal Corporation Act till the disposal of suit.

The injunction order shall not be an obstacle for the authorities to demolish the structure by following due process of law by according opportunity to the plaintiff and also conducting proper survey to fix the encroachment if any.

The plaintiff shall assist the court to dispose of the suit within 6 months from the date of this order.

Parties to bear their own cost."

4. The grievance of the petitioner is that appellate court having granted injunction erred in reserving liberty to the authority to demolish the structure by following due process of law after affording an opportunity to the

plaintiff. If construction is made by a citizen in contravention of the provisions of the Municipal Corporation Act and bye-laws, it is always open for the local body to take appropriate action. Petitioner by filing a bare suit for injunction cannot injunct the local body from initiating action against illegal construction.

5. Be that as it may, merely because liberty is reserved to respondent-corporation, they cannot hastily pass a demolition order. Any action to be taken under the provisions of the Municipal Corporation Act has to be in consonance with the procedure contemplated under the very Act. Section 321 provides procedure and the manner in which corporation is required to deal with construction made by citizens. Even if liberty is reserved to the corporation, they are bound to follow the procedure as contemplated under Section 321 of the Act.

6. It is also brought to the notice of this court that order passed by respondent-corporation is challenged by the petitioner before this court in W.P.No.103496/2023. If

the petitioner has the benefit of an interim order granted by this court, the interim order passed also does not warrant any interference by this court.

7. With these observations, writ petition stands dismissed.

Sd/-
JUDGE

MBS
List No.: 1 Sl No.: 26