IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 17097 OF 2023 (LB-RES)

BETWEEN:

1. SRI. UMESH,
   S/O NAGARAJU
   AGED ABOUT 40 YEARS,
   R/AT NO. 31, AMMAJI ENCLAVE,
   8TH MAIN ROAD, 1ST CROSS,
   MAHESHWARI NAGAR,
   DASARAHALLI, BENGALURU NORTH,
   BENGALURU - 560 057

2. SRI. LOKESH
   S/O NAGARAJU
   AGED ABOUT 42 YEARS,
   R/AT NO. 31 AMMAJI ENCLAVE,
   8TH MAIN ROAD, 1ST CROSS,
   MAHESHWARI NAGAR,
   DASARAHALLI, BENGALURU NORTH,
   BENGALURU - 560 057

... PETITIONERS

(BY SRI. R. SUBRAMANYA, ADVOCATE FOR
SRI NARASIMHARAJU., ADVOCATE)

Digitally signed by PRAKASH N
Location: HIGH COURT OF KARNATAKA

AND:

1. THE STATE OF KARNATAKA
   REPRESENTED BY ITS SECRETARY,
   REVENUE DEPARTMENT

DR . AMBEDKAR VEEDHI,
BENGALURU - 560 001

2. THE COMMISSIONER
CITY MUNICIPAL COUNCIL,
DODDABALLAPURA - 561 203

… RESPONDENTS

(BY SMT. B.P. RADHA, AGA FOR R1;
SRI SRINIVASA K.N., ADVOCATE FOR R2)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED PROVISIONAL ORDER DTD 22.12.2022 PASSED BY THE R2 AS PER ANNEXURE-A AND ETC.

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

ORDER

The petitioner has sought for issuance of writ of certiorari to quash the provisional order dated 22.12.2022 at Annexure-'A' pointing out deviations insofar as construction made by the petitioner.

2. Learned counsel Sri. R.Subramanya appearing on behalf of learned counsel for petitioner would submit that the provisional order at Annexure-'A' is in the nature of a final order and that respondent no.2 has not taken steps to communicate the order at Annexure-'A', nor has

followed the procedure as mandated under Section 187(9) (b), (c) of the Karnataka Municipalities Act, 1964 ("the Act", for short) whereby copy of the provisional order made under Section 187 (9) (a) (ii) is required to be served on the owner of the building and it is only if the owner fails to show-cause to the Municipal Commissioner as to why provisional order need not be confirmed and an order could be passed under Section 189 (9) (c) of the Act. It is further submitted that as on date, no final order has been passed under Section 187 (9) (c) of the Act.

3. In light of the statutory scheme under Section 187 of the Act, provisional order at Annexure-A is required to be served on the owner. In the present case, the petitioner who is the owner of the building has however obtained copy of the provisional order at Annexure-'A'.

4. Accordingly, it would be appropriate to grant time of two weeks from the date of receipt of certified copy of the order to the petitioner to make out his reply to the provisional order at Annexure-'A'. The authority to follow

the procedure under Section 187 of the Act as is provided for.

5. Learned Counsel Sri.R.Subramanya submits that during the pendency of the such proceedings, the petitioner has sought for issuance of sanction plan which is pending consideration and no order is passed by the second respondent and requests for direction to be made to the second respondent to take decision on the request made by the petitioner.

6. Though it is noticed that the said submission is not the subject matter of the present pleadings, however taking note of the submission that the request for plan would have consequence on the proceedings initiated by the respondents, respondents to consider taking appropriate decision as regards the request made by the petitioner for sanction of plan as per law.

7. Accordingly, the petition is disposed off.

Needless to state, till the confirmation order is passed, question of taking any action on the basis of provisional order does not arise.

Sd/-
JUDGE

NP