NC: 2024:KHC-K:4872
WP No.200394 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 12TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT PETITION NO.200394 OF 2023 (GM-RES)

BETWEEN:

NIMBEWWA
W/O MALKAJAPPA KALABURAGI
AGED ABOUT 65 YEARS,
OCC: AGRICULTURE,
R/O: BOMMANAHALLI,
TQ: TALIKOTE,
DIST: VIJAYAPURA – 586 101.

...PETITIONER

(BY SRI HARSHAVARDHAN R. MALIPATIL, ADVOCATE)

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

AND:

THE ASST. EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT,
SUB-DIVISION, BASAVANABAGEWADI
DIST: VIJAYAPURA – 586 101.

...RESPONDENT

(BY SMT. MAYA T.R., H.C.G.P)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI AND QUASH THE ORDER OF

RESPONDENT, DATED 27.01.2023 BEARING NO.ಲೋಇ/ಉವಿ/ಬಬಾ/ಕ.ಬಾ/2022-23/956 VIDE ANNEXURE-E, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

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

ORDER

The petitioner being aggrieved by the Notice dated 27.01.2023 vide Annexure-E issued by the respondent, filed this writ petition.

2. Brief facts leading rise to filing of the writ petition are as under:

It is the case of the petitioner that, the petitioner is the owner of land bearing Sy.No.211/3, measuring 06 acres and land Sy.No.211/4 measuring, 02 acres situated at Takalaki village, Tq. Basavanabagewadi, Dist. Vijayapura. The said land is part of land bearing Sy.No.211, which was totally measuring 23 acres 02 guntas which came to be divided into 04 parts and the petitioner is the owner and in possession of two parts

totally measuring 08 acres. The petitioner is in possession and enjoyment of the said lands without any interference. It is contended that the respondent having no jurisdiction has issued Notice dated 27.01.2023 for removal of standing crop on the land of the petitioner along with the bore-well and set up attached to the same. The petitioner aggrieved by the Notice dated 27.01.2023, filed this writ petition.

3. Heard the learned counsel for the petitioner and also learned High Court Government Pleader for the respondent.

4. Learned counsel for the petitioner submits that, the respondent has issued Notice dated 27.01.2023 without mentioning in the notice the provisions under which the notice is issued. He submits that the notice issued by the respondent is without jurisdiction. Hence, on these grounds he prays to allow the writ petition.

5. *Per contra*, learned High Court Government Pleader fairly concedes that there is no provision mentioned in the impugned Notice dated 27.01.2023. Hence, she submits that the writ petition may be disposed of.

6. Perused the records and considered the submissions of the learned counsel for the parties.

7. It is not in dispute that, the petitioner is the owner of land bearing Sy.No.211/4 and further the petitioner is in possession of the subject land and has dug bore-well in Sy.No.211/4. The respondent has issued notice dated 27.01.2023 vide Annexure-E. From perusal of Annexure-E, which does not indicate under which provision the notice is issued. The said notice is silent in regard to the provisions under which it is issued. The learned High Court Government Pleader could not point out the provision under which the respondent has issued the impugned notice. Hence, on this count alone the

impugned notice itself liable to be set aside. Hence, the following:

ORDER

i) The writ petition is allowed

ii) Notice dated 27.01.2023 issued by the respondent *vide* Annexure-E is quashed.

iii) However, liberty is reserved to the respondent to initiate action against the petitioner by mentioning the provision under which Act proceedings to be initiated and after providing an opportunity of hearing, pass appropriate orders in accordance with law.

Sd/-
JUDGE

Bl
List No.: 1 Sl No.: 11
Ct;Vk