

(2023) 09 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 20574 Of 2023????????

B Nazeer Ahmed

APPELLANT

Vs

State Of Karnataka And Others

RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Citation : (2023) 09 KAR CK 0079

Hon'ble Judges : B M Shyam Prasad, J

Bench : Single Bench

Advocate : K A Harisha, Seshu V

Judgement

B M Shyam Prasad, J

The question for consideration in this petition at this stage is:

Whether there must be an interim order restraining the respondents from continuing to demolish the construction in the property identified as bearing Sy. No.175, new Sy. No.416 of Bagalur Village, Village, Jala Hobli, Yelahanka Taluk [the subject property].

According to the petitioner, he and his family members have been residing in the subject property over a period of forty five years and in fact, the old construction [as seen in the first photograph produced as Annexure-E] is demolished and reconstructed under the benefit extended by the State Government through Bagalur Grama Panchayat. The petitioner contends that a sum of Rs.74,572/- is the benefit extended to the petitioner for construction under the 'Ashraya Yojane' Scheme. However, on 04.09.2023, the Tahsildar [the fourth respondent] attempted to demolish the subject property.

Sri. K A Harisha, the learned counsel for the petitioner, submits that after he made a mention for listing of this petition today, the Tahsildar, Yelahanka Taluk has demolished a portion of the construction. He is permitted to place on record a print out of the photos to show the extent of demolition. The property as it

stood before and after the demolition started read as follows:

Sri. Seshu V, the learned Additional Government Advocate, who is called upon to accept notice for the respondents, submits that the question of unauthorized occupation and demolition has been considered after due notice and in this regard, he places reliance upon the order dated 29.08.2023 in LND[NCR]20, 38/2018-19 and he also relies upon the acknowledgement purportedly signed by the petitioner on 04.09.2023 seeking time to remove his belongings and family members from the constructed area.

These documents which are taken on record are perused. When queried about the petitioner's name not being mentioned either in the list of the respondents or in the course of the order, Sri Seshu V submits that there could be an error in mentioning the name but the petitioner has also been served with the notice. If the order dated 29.08.2023 is without notice and the demolition pursuant thereto is within seven days from the date of the order [as it appears to be], the demolition of the subject property pursuant to the impugned order must be stayed.

Further, because the demolition is undertaken despite the learned Additional Government Advocate informing the Tahsildar [the fourth respondent] that the petition is being listed today, this Court is of the considered view that the petitioner must be granted liberty to reconstruct the damaged portion subject to the outcome of the writ petition. Otherwise, if this measure not taken, the purpose of granting the interim order would be defeated. Hence the following:

ORDER

[a] The respondents are directed to further stop forthwith the demolition of the subject property and not to take any further precipitative action henceforth without the leave of this Court.

[b] The petitioner is granted liberty to reconstruct the damaged portion and not otherwise subject to the outcome of this writ petition.

[c] Sri Seshu V, who is assisted by Sri Bharath Kumar, the concerned Village Accountant, is directed to communicate this order to Sri Anil Kumar, the Tahsildar, Yelahanka Taluk [the fourth respondent] through the said Officer for immediate compliance and a report in this regard shall be filed on the next date of hearing.

[d] In addition, the Registrar [Judicial] is directed to communicate this order to Sri Anil Kumar over his mobile No.9845149689 and via email 'thasildarynk@gmail.com'..