

(2014) 03 KAR CK 0058

In the Karnataka High Court

Case No : Writ Petition No. 11780 of 2014 (LB-BMP)

Mr. S. Mohanram

APPELLANT

Vs

Smt. Susheela Ranganath, Bruhath Bangalore Mahanagara
Palike and The Assistant Executive Engineer, Shettihalli Sub-
Division

RESPONDENT

Date of Decision : 17-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227
Delhi Municipal Corporation Act, 1957 — Section 343 343(c)
Karnataka Municipal Corporations Act, 1976 — Section 321 321(2) 321(3)

Citation : (2014) 03 KAR CK 0058

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Rajeswara P.N, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner and the 1st respondent are the neighbours. The petitioner having undertaken construction in his property, noticing encroachment and also stipulated set back area having not been maintained, the 1st respondent gave a complaint on 17.12.2009 to the 3rd respondent, to take action against the petitioner. One Dodda Thimmaiah lodged a complaint before the Lokayukta against the respondents 2 and 3, for not taking action against the petitioner. Notice under S. 321(2) of Karnataka Municipal Corporations Act, 1976 (for short "the Act") was served on the petitioner and he was called upon to demolish the deviated portion of building The petitioner filed O.S. No. 25161/2010 in the City Civil Court, Bangalore against the authorities of BBMP, to pass a decree not to demolish any portion of his building. The 1st respondent filed an application to implead her as additional defendant in the suit. The suit was dismissed on the ground of availability of alternative remedy. An order under S. 321(3)" of the Act having been passed against the petitioner,

Appeal No. 38/2010 was filed in the Karnataka Appellate Tribunal, Bangalore, which has passed an ad-interim order on 01.01.2010, directing both the parties to the appeal, to maintain status quo. Respondent No. 1 having filed I.A.2 in the said appeal under Regulation 40(A) of the Karnataka Appellate Tribunal Regulations, to permit her to come on record and despite the statement of objections filed by the petitioner on 27.11.2012, the Tribunal having allowed I.A.2 and permitted the applicant/1st respondent herein, to come on record as additional respondent in the appeal, this writ petition was filed seeking to quash the order dated 31.07.2013 passed on I.A.2 in Appeal No. 38/2010 by the Karnataka Appellate Tribunal, Bangalore. Sri. Rajeswara P.N., learned advocate contended that the Tribunal has committed error and illegality in allowing I.A.2 and permitting the 1st respondent to come on record in the appeal as respondent No. 3. He submitted that Regulation 40(A) is not applicable in view of the express provision under S. 443A of the Act. He submitted that the Tribunal has not referred the decisions cited before it i.e., Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, and Hardayal Singh Mehta and another Vs. M.C.D. and others, . Learned counsel submitted that the impugned order being illegal, interference is called for.

2. Perused the writ record and considered the submissions of the learned advocate.

3. Sri. Rajeswara P.N., did not dispute the fact that the respondents 2 and 3 initiated proceedings against the petitioner under S. 321 of the Act, on a complaint dated 17.12.2009 filed by the 1st respondent. He also did not dispute the fact that in O.S. No. 25161/2010 filed by the petitioner, the respondent No. 1 had made an application seeking impleading. There is no dispute that the petitioner and the 1st respondent are neighbours and that a complaint was also lodged before the Karnataka Lokayukta against the respondents 2 and 3 for not taking action against the petitioner in the matter of alleged violation in the construction undertaken by the petitioner.

4. In Ramesh Hirachand Kundanmal, (supra), the power of the Court to add parties in exercise of the power under Order 1 Rule 10 of CPC has been considered and the scope of the provision has been explained. In Hardayal Singh Mehta, (supra), in an appeal against the order of demolishing the construction, with regard to the addition of the parties with reference to the provisions under Ss. 343 and 343(c) of Delhi Municipal Corporation Act, it was held that the grievance in the appeal being against the demolition order made by the Commissioner, he has to defend the order in the appeal and the person who may have furnished information or material to the Commissioner for initiating demolition could only be a witness and the Tribunal would not justify the addition of such a person as party to the appeal. It was held that only a person who has an interest in the subject matter of the appeal can be a party.

5. In the instant case, application filed before the Tribunal vide Annexure-E makes it clear that the 1st respondent being neighbour of the property, made an

allegation that the petitioner encroached her site to an extent of 1 1/2 feet north to south and 45 feet east to west and had promised that he will set right whole thing and when the petitioner did not do so, a complaint dated 17.12.2009 was filed with regard to unauthorized construction and the proceeding under S. 321 of the Act was initiated and order under S. 321(3) of the Act passed. The Tribunal having considered the application and the objection and the rival contentions addressed by the learned advocates, who appeared for the parties, has recorded the finding that the applicant is a necessary party to the case and thus, has allowed I.A.2.

6. Necessary party is one without whom, no order can be made effectively and a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision of the question involved in the proceeding. In the instant case, the proceeding under S. 321 of the Act by the respondents 2 and 3 having been initiated on the complaint lodged on 17.12.2009 by the respondent No. 1 and she also having sought her impleading in O.S. No. 25161/2010 filed by the petitioner, the suit was dismissed on the ground of availability of alternative remedy under the provisions of the Act. Hence, the Tribunal is justified in exercise of its discretion allowing I.A.2 filed by the respondent No. 2. No prejudice would occasion to the petitioner, on account of the presence of the respondent No. 1 herein, in the appeal. Neither of the decisions on which Sri. Rajeswara P.N., placed reliance have any application in view of the facts and circumstances of the case, noticed supra.

No ground is made out for exercising of the jurisdiction under Article 227 of the Constitution of India, to interfere with the impugned order. Consequently, the petition is rejected, by making it clear that the Tribunal shall decide Appeal No. 38/2010 on its merit and in accordance with law and it is for the respondents 1 and 2 in the appeal, to defend the order dated 19.01.2010 questioned in the appeal.

Ordered accordingly.