
(2006) 02 KAR CK 0036
In the Karnataka High Court
Case No : Writ Petition No. 38482 of 2000

Mrs. Mariamma

APPELLANT

Vs

Mangalore City Corporation and Others

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Citation : (2006) 2 KarLJ 508 : (2006) 3 KCCR 1554

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : H. Putta Swamy, for the Appellant; K.V. Narasimhan, for Respondent 1 and K.M. Nataraj, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—The petitioner, questioning the legality and validity of the order dated 10th November, 2000 bearing No. E9/TP/481/2000-01 on the file of the second respondent vide Annexure-F, has presented the instant writ petition. Further, petitioner has sought for a direction, to the respondents to demolish the illegal construction put up in the property bearing No. 1398/2B situate at Kudroli Ward, Kasaba Bazaar Village, Mangalore.

2. The grievance of the petitioner in the instant writ petition is that, petitioner is the owner of the property bearing No. 1398/1A situate at Kudroli Ward, Kasaba Bazaar Village, Mangalore, coming within the city limits of the Corporation of Mangalore, which consists of a residential house. The adjacent property bearing No. 1398/2B belongs to the third respondent, one Smt. Khairunnisa which falls to the southern side of the petitioner's property. The third respondent has put up a new building by demolishing the old house standing in its place. When the said construction was going on, the petitioner found that, the same was being constructed without leaving any set back, touching the northern side wall of the petitioner's property and a wall was being erected by the third respondent without a compound and an RCC is put over the side wall, which covers the slab of the petitioner's property, resulting in complete blockage of air, light and

ventilation to the petitioner's property. It is the serious case of petitioner that, the said alleged construction has led to the rain water as well as the water put to the RCC to fall into the petitioner's property causing damage to the roof of the petitioner's residential house. Therefore, the petitioner requested the third respondent to stop the said illegal construction. When the petitioner could not persuade the third respondent to stop construction, she was constrained to give a representation dated 17th May, 2000 vide Annexure-B to the City Corporation of Mangalore complaining about the illegal construction being put up by third respondent on the southern side of the petitioner's property. On the basis of the complaint lodged by the petitioner and after perusal of the sanctioned plan and other material available on record, the first respondent has passed the provisional order dated 20th May, 2000 vide Annexure-C and directed the third respondent to stop the illegal construction immediately. In spite of passing the provisional order, the third respondent has not stopped the construction and again, petitioner was constrained to give one more representation. After considering the latest representation dated 31st May, 2000 vide Annexure-D, the first respondent has passed the final order dated 6th June, 2000 bearing No. E9/481/2000-01 vide Annexure-E, confirming the provisional order and directed the third respondent to demolish the illegal construction within seven days. Assailing the correctness of the said final order passed by first respondent, the third respondent has filed the appeal on the file of the Standing Committee of the Corporation and the same has been numbered as E9/TP/481/2000-Q1. Instead of confirming the order passed by first respondent, the Standing Committee of the Corporation has committed an error in not conducting proper enquiry and without reference to the order passed by the first respondent, who is the Commissioner of Corporation of the City of Mangalore and without giving any reasons whatsoever or finding to that effect, has passed the impugned order dated 10th November, 2000 vide Annexure-F. Assailing the correctness of the said order passed by the second respondent, the petitioner herein felt necessitated to present the instant writ petition.

3. I have heard the learned Counsel appearing for petitioner and learned Counsels appearing for respondents. After careful evaluation of the material available on record, the order passed by first respondent dated 6th June, 2000 vide Annexure-E and the order passed by second respondent dated 10th November, 2000 vide Annexure-F, it is manifest on the face of the order passed by second respondent that, the second respondent has committed an error much less material irregularity in proceeding to pass the order contrary to the relevant material available on record and without reference to the order passed by first respondent. The order consists of the preamble and facts of the case and then has straightaway taken the decision, holding that, when they made the spot inspection of the alleged construction taken up by third respondent, they came to know that, the said construction/repair was in the middle of the house and the said construction/repair taken up was as per the zonal regulations and hence, they imposed a fine of Rs. 3,000/- and regularised the said construction taken up

by the third respondent. The said one line reasoning given by the Standing Committee, at any stretch, cannot be accepted. It is duty cast on the said authority being the Appellate Authority to give specific finding as to the measurement of site, nature of construction taken up, percentage of violation and measurement of construction regularised, etc., as permissible under the building bye-law of the Corporation read with the zonal regulations and as per the provisions of the Karnataka Town and Country Planning Act, 1961. Without giving any reasoning or reference of the order passed by first respondent and finding as to whether the construction taken up by third respondent was permanent or not and whether it would effect the residential house of the petitioner herein, the authority has passed the impugned order. Nothing is coming forth from the order passed by the Standing Committee. Therefore, I am of the considered view that, the impugned order passed by second respondent-Standing Committee cannot be sustained. Hence, it is liable to be set aside and the matter requires reconsideration afresh and the Competent Authority has to take appropriate decision after affording an opportunity to petitioner and third respondent.

4. Having regard to the facts and circumstances of the case, as stated above the instant writ petition filed by petitioner is disposed of with the following directions:

- (i) The writ petition filed by petitioner is allowed;
- (ii) The order passed by second respondent-Standing Committee, dated 10th November, 2000 in proceeding No. E9/TP/481/2000-01 vide Annexure-F is hereby set aside and the matter stands remitted back to second respondent for reconsideration fresh and to take appropriate decision in accordance with law, after affording an opportunity to petitioner and third respondent and dispose of the same as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this order.