

(2015) 02 KAR CK 0448

In the Karnataka High Court

Case No : Writ Petition No. 4191 of 2015 (LB-BMP)

Murthuja Kureshi

APPELLANT

Vs

The Commissioner, Bruhat Bengaluru Mahanagara Palike and
Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 321, 321(2)

Citation : (2015) 4 AKR 313 : (2015) 3 KarLJ 162 : (2015) 3 KCCR 2699

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Shyam Sundar M.S., for the Appellant; Mohan Kumar K.V., Advocates for the Respondent

Final Decision : Disposed off

Judgement

B.V. Nagarathna, J.

1. Heard learned Counsel for petitioner and learned Counsel for respondents and perused the material on record. Learned Counsel for parties reiterated the submissions made by them in W.P. Nos. 4188 to 4190 of 2015 and contended that this writ petition could be disposed in terms of the order passed in the aforesaid writ petitions on 9-2-2015.

2. Petitioner has assailed judgment dated 14-1-2015 passed in Appeal No. 1044 of 2013 by the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as "Tribunal" for the sake of brevity) (Annexure-A to writ petition). Petitioner has also assailed orders dated 1-10-2013 passed under sub-sections (1) and (2) of Section 321 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "the Act") as well as the order dated 8-10-2013 passed under sub-section (3) of Section 321 of the Act (Annexures-C, D and E to writ petition respectively).

3. Briefly stated, the facts are that petitioner claims to be the absolute owner in

possession of immovable property bearing No. 3/4 (Old No. 3/3) of Pettigrew Street, Bharathinagara, Ward No. 91, Bangalore. Petitioner intended to put up a residential building on the said property and after seeking sanction of the building plan, commenced construction.

4. It appears that there were certain objections to the construction being put up by petitioner. Therefore, proceedings were initiated under Section 321 of the Act and an order was passed under sub-section (1) of Section 321 of the Act on 1-10-2013, which was followed by a notice under sub-section (2) of Section 321 of the Act. Thereafter, on 8-10-2013, confirmatory order under sub-section (3) of Section 321 of the Act was passed by the second respondent-authority. Being aggrieved by those orders, petitioner filed an appeal in Appeal No. 1044 of 2013 before the Tribunal. By judgment dated 14-1-2015, the appeal has been dismissed. Aggrieved by the aforesaid orders, petitioner has preferred this writ petition.

5. During the course of submissions, it was brought to my notice that pursuant to the order passed under sub-section (1) of Section 321 of the Act, notice under sub-section (2) of Section 321 of the Act was received by petitioner's power of attorney holder on 3-10-2013. By the time petitioner could file his reply, second respondent, giving a goodbye to the time-limit of seven days time to file reply prescribed under the notice issued under Section 321(2) of the Act, has passed the impugned order at Annexure-E on 8-10-2013. Learned Counsel for petitioner, therefore, contended that the order dated 8-10-2013 is in violation of the principles of natural justice and a nullity and therefore the Tribunal ought to have set aside that order and given an opportunity to petitioner to submit his reply to the orders passed under sub-sections (1) and (2) of Section 321 of the Act. He therefore would contend that the judgment of the Tribunal is also not in accordance with law.

6. Per contra, learned Counsel for the respondents supported the impugned orders and contended that there is no infirmity in those orders inasmuch as the impugned orders passed under sub-sections (1) and (2) of Section 321 of the Act, were served on petitioner, but he did not choose to file any reply and that the second respondent was justified in proceeding with the making of the order on 8-10-2013.

7. Having heard learned Counsel for the parties and on perusal of the material on record, it is noted that second respondent initiated proceedings under Section 321 of the Act and passed an order under sub-section (1) as well as sub-section (2) of Section 321 of the Act, on 1-10-2013. In those orders, petitioner was given seven clear days to reply before a final decision could be taken in the matter. It is noted that on 1-10-2013 orders under sub-sections (1) and (2) of Section 321 were issued and final order under sub-section (3) of Section 321 of the Act was passed on 8-10-2013. It becomes apparent that there was no seven clear days given to petitioner to submit his reply.

8. The fact remains that the impugned order passed under sub-section (3) of Section 321 of the Act, on 8-10-2013 is within the period of seven days given to petitioner to submit his reply to second respondent, which implies seven clear days.

9. In that view of the matter, order dated 8-10-2013 (Annexure-E) is liable to be quashed and is quashed. Consequently, the judgment passed in Appeal No. 1044 of 2013, dated 14-1-2015 is also quashed.

10. As petitioner states that his power of attorney holder was served with the orders dated 1-10-2013 passed under sub-sections (1) and (2) of Section 321 of the Act only on 3-10-2013, petitioner is at liberty to submit his reply to orders passed under sub-sections (1) and (2) of Section 321 of the Act, on 25-2-2015, without insisting on a separate notice from the second respondent-authority. On receipt of the reply, the second respondent shall consider the same and give an opportunity of hearing to petitioner and pass fresh orders under sub-section (3) of Section 321 of Act, in accordance with law. Writ petition is disposed in the aforesaid terms.