(2018) 01 KAR CK 0107

In the Karnataka High Court

Case No : 44592 of 2016

R. ARSHIYA SHAREEF — APPELLANT

Vs

THE STATE OF KARNATAKA & ORS. — RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

Citation : (2018) 01 KAR CK 0107

Hon'ble Judges : Vineet Kothari

Bench : Single Bench

Advocate : NAVEEN REDDY M.V, H. DEVENDRAPPA

Judgement

1. The petitioner-Ms.Ashriya Shareef has filed this writ petition in this Court on 19.08.2016, aggrieved by the order passed by the learned KAT

on 28.05.2016 in Appeal No.1029/2013 (Mr.R.Ashriya Shareef vs. The Commissioner, BBMP & Another) with the following prayers:-

a) Issue a Writ in the nature of Certiorari or any other appropriate writ or direction thereby quashing the impugned judgement passed by the

Karnataka Appellate Tribunal in Appeal No.1029/2013 dated 28.5.2016 vide Annexure- H.

b) Quash the Confirmation Order passed under Section 321(3) of the Karnataka Municipal Corporations Act by the 2nd respondent in

AEE(M.SE.N)/C.O/09/2013-14 dated 19-9-2013 vide Annexure-G passed in pursuance of the provisional order dated 17.7.2013 vide

No.AEE(M.SE.N)P.O/09/2013-14 passed under Section 321(1)(2) of the Karnataka Municipal Corporations Act vide Annexure-E.

c) Allow this writ petition with costs and pass any other orders as this Hon''ble Court deems fit in the circumstances of the case, in the interest of justice and equity"".

2. The operative portion of the impugned order passed by the learned KAT is quoted below for ready reference:-

By looking at the photographs produced, it appears additional floor has been constructed much against to approved plan, added to

the same set-back has not bee maintained and the same is looked into the order passed by the 2nd respondent. Hence the order

passed by the 2nd respondent is in accordance with law, hence this authority cannot interfere in the said order. Therefore, the appeal

is not maintainable, the appellant has not proved to show that she got sufficient tenable reasons. Hence for all the reasons stated

above, we answer the Issue No.1 and 2 negatively.

9. Issue No3: For all the reasons stated above, we pass the order as hereunder.

ORDER

The appeal filed by the appellant is hereby dismissed.

The parties shall bear their own cost.

It is hereby directed to the Registrar to send a copy of the judgment to both the parties as per Rule-53A, Chapter-9 of the

Karnataka Appellate Tribunal Regulation, within 30 days.

The file along with copy of this judgment is to be returned back.

28/5

Sd/-

(Aravind Jadhav)

Hon''ble Presiding Office

Sd/-

(M. Kanumaiah)

District Judge Member

3. The learned counsel for the petitioner Mr.M.V.Raveendra Reddy has submitted before the Court that while the learned Tribunal has found that

the additional floor was constructed against the approved plan by merely looking at the photographs, the real issue before the Tribunal was with

regard to the alleged deviated construction raised by the petitioner in the set back area and not of any additional floor construction raised by the petitioner and therefore, there is a perversity in the impugned order passed by the learned Tribunal which requires interference by this Court.

4. The learned counsel for the Respondents-BBMP Mr.H.Devendrappa fairly submits that the matter may be sent back to the learned Tribunal for

reconsideration of the appeal itself.

5. Having heard the learned counsels and upon looking into the impugned order and the reasons assigned as quoted above, this Court is satisfied

that the matter is required to be reconsidered by the learned Tribunal on the basis of evidence available before it and the real issue raised before it.

6. The writ petition is accordingly allowed by setting aside the impugned order dated 28.05.2016 passed by the learned KAT in Appeal

No.1029/2013, the appeal is restored to the file of learned KAT for reconsideration and decide the appeal again in accordance with law

expeditiously. The parties may appear before the learned Tribunal in the first instance on 22.01.2018. The appeal may be disposed of within a

period of three months from today. No costs.