

**(2015) 03 KAR CK 0356**

**In the Karnataka High Court**

**Case No : Writ Petition No. 6184 of 2015 (LB-BMP)**

S.H. Malagi

APPELLANT

Vs

Bruhat Bengaluru Mahanagara Palike and Others

RESPONDENT

**Date of Decision : 10-03-2015**

**Acts Referred:**

Karnataka Municipal Corporations Act, 1976 — Section 321, 321(1), 321(2)

**Citation : (2015) 3 KarLJ 114 : (2015) 3 KCCR 2708**

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

**Bench : Single Bench**

**Advocate : V.B. Shiva Kumar, for the Appellant**

**Final Decision : Dismissed**

## Judgement

B.V. Nagarathna, J.

1. Petitioner has assailed judgment dated 14-1-2015 passed by the Karnataka Appellate Tribunal at Bengaluru (hereinafter referred to as "the Tribunal") in Appeal No. 382 of 2007. By that judgment, Tribunal has remanded the matter to the respondent-authority for the purpose of holding a spot inspection in the presence of the petitioner herein as well as the 3rd respondent herein - appellant before the Tribunal, to ascertain the deviation, if any, and then to pass fresh orders under sub-section (3) of Section 321 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "the Act" for the sake of brevity). The facts in brief are that the petitioner had filed a complaint against the third respondent alleging that she had violated the terms and conditions of the sanctioned plan as well as the Building Bye-Laws while putting up construction on her property. Petitioner is the owner of property bearing No. 525, 3rd "A" Main Road, OMBR Layout, Banaswadi, Bengaluru. Petitioner's property is adjacent to the property of the 3rd respondent. On the complaint made by the petitioner, the respondent-authorities had initiated action under Section 321(1) and 321(2) of the Act. In response to the notice issued by the respondent-authorities, respondent 3 had submitted her reply. Thereafter, an order under

sub-section (3) of Section 321 of the Act was passed against respondent 3. Respondent 3 challenged that order before the Tribunal. The Tribunal by the impugned judgment dated 14-1-2015, has set aside order dated 14-3-2007 passed by the respondent-authorities and allowed the appeal and remitted the matter to the respondent-authorities for the purpose of passing fresh orders under sub-section (3) of Section 321 of the Act after complying with the directions issued in the said judgment. That judgment is assailed in this writ petition.

2. I have heard learned Counsel for the petitioner. He submitted that the respondent-authorities had rightly passed an order under sub-section (3) of Section 321 of the Act, but the Tribunal was not right in setting aside order dated 14-3-2007 and remanding the matter for fresh consideration. He would submit that there was indeed a spot inspection conducted by the respondent-authorities and that all opportunity was given to the 3rd respondent before passing the order under sub-section (3) of Section 321 of the Act. He, therefore, contended that the Tribunal was not right in remanding the matter to respondent-authorities for a fresh consideration.

3. I have considered these submissions in light of the material on record, particularly, impugned judgment at Annexure-A. One of the contentions raised by respondent 3 before the Tribunal was that there was no spot inspection conducted by the respondent-authorities in her presence. She also contended that no mahazar was drawn and that there was no determination of the extent of deviation after conducting a spot inspection in the presence of the 3rd respondent herein. The Tribunal, on going through the record, concluded that there was no spot mahazar prepared in the presence of the 3rd respondent herein and that the alleged deviation was not ascertained in accordance with law and in the presence of the 3rd respondent herein. Therefore, holding that the order passed by authorities under sub-section (3) of Section 321 was without conducting spot inspection and preparing a spot mahazar in the presence of respondent 3 herein, the Tribunal held that such an order was in violation of the principles of natural justice and therefore, on quashing the order dated 14-3-2007, directed the respondent-authorities to conduct a spot inspection in the presence of the petitioner as well as the 3rd respondent hereinafter notifying them about the deviation, if any, and to complete the exercise within a period of six months from the date of the order i.e., 14-1-2015. Therefore, the Tribunal on perusal of the original records, has come to a conclusion that the determination of deviation by the respondent-authorities was not after conducting a spot inspection in the presence of the 3rd respondent and the procedure adopted by the respondent-authorities was in violation of the principles of natural justice. It is in that context that the Tribunal set aside the order dated 14-3-2007, but has not left the matter at that stage. The matter has been remitted back to the respondent-authorities for conducting spot inspection in the presence of the petitioner and respondent 3 herein so as to determine the extent of deviation. Such an exercise would be in compliance with the principles of natural justice.

Therefore, I find no infirmity in the impugned judgment dated 14-1-2015. There is no merit in the writ petition.

Writ petition is dismissed.