

(2016) 06 KAR CK 0140

In the Karnataka High Court

Case No : Writ Petition No. 24831 of 2016 and Writ Petition No. 45037 of 2015
(LB-BMP)

Smt. Godha Krishna Prasad

APPELLANT

Vs

The Commissioner, Bruhath Bengaluru Mahanagara

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 461

Citation : (2016) 5 KantLJ 305

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri. C.R. Gopalaswamy, Advocate, for the Petitioner; Sri. Sreenidhi, Advocate, for the Respondent Nos. 1 and 2; Sri. M.K. Venkatramana, Advocate, for the Petitioner; Sri. V. Sreenidhi, Advocate, for the Respondent Nos. 1 and 2; Sri. K.L. Prabhakara, Advoc

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—; Heard the learned Counsels for the parties. Both these petitions are being disposed of by this common order.

2. The petitioner-landlady Smt. Godha Krishna Prasad in W.P. No. 24831 of 2016 has filed the present writ petition seeking a direction against the respondent-BBMP and private respondent, the petitioner's tenant Smt. B.R. Shruthi to consider her representation dated 22-7-2015 Annexure-A and application dated 28-7-2015 Annexure-C against the private respondent 3 Smt. Shruthi who is carrying on the business of commercial activity of paying guest house in the premises leased to her by the petitioner.

3. The connected W.P. No. 45037 of 2015 has been filed by the 3rd respondent—the tenant, Smt. B.R. Shruthi impleading the landlady also as respondent therein and challenging the impugned notice of the respondent-BBMP Annexure-J, dated 9-10-2015, by which, the respondent-BBMP refused to grant the requisite "Trade Licence" upon the application of the tenant-petitioner Smt. B.R. Shruthi, in the

absence of the "No Objection Certificate" of the landlady.

4. Mr. M.K. Venkataramana, learned Counsel for the petitioner-tenant Smt. B.R. Shruthi, submitted that the tenant has already filed a civil suit i.e., O.S. No. 6057 of 2015 in the Court of 22nd Additional City Civil Judge, Bangalore, for injunction, in which, the interim order has already been granted in favour of the plaintiff/petitioner not to dispossess the plaintiff-tenant from the said suit premises and copy of that temporary injunction order dated 9-11-2015 is placed on record as Annexure-D in W.P. No. 45037 of 2015.

5. Mr. V. Sreenidhi, learned Additional Government Advocate for BBMP brought to the notice of the Court that Section 461 of the Karnataka Municipal Corporations Act, 1976, which is reproduced below, permits the Commissioner to initiate action against the person, if he is carrying out any such trade or commercial activity without due licence or permission of the Corporation. He also submitted that the requisite action against the tenant has been initiated in terms of that provision of the Act.

6. Having heard the learned Counsels for the parties, this Court is satisfied that as far as the eviction of the tenant from the premises is concerned, that lis between the parties is pending in the Competent Court by way of O.S. No. 6507 of 2015, which the tenant has filed against the landlady seeking an injunction that she may not be dispossessed from the suit premises without adopting due process of law. Pendency of this suit between the parties has nothing to do with the carrying on of the business activity or commercial activity which she can be done, only after obtaining the requisite permission from the Competent Authority of the respondent-Municipal Corporation. The interim order granted in favour of the tenant, therefore, cannot affect any action which is to be initiated by the Competent Authority of the Municipal Corporation-BBMP in terms of Section 461 of the Act.

7. Section 461 of the Karnataka Municipal Corporations Act, 1976 reads as under:

"461. Consequences of failure to obtain licences, etc., or breach of the same.-(1) If, under this Act, or any rule, bye-law or regulation made under it the licence or permission of the Corporation, the Standing Committee or Commissioner or registration in the office of the Corporation is necessary for the doing of any act, and if such act is done without such licence or permission or registration then.

(a) the Commissioner may, by notice, require the person so doing such act to alter, remove, or as far as practicable restore to its original state the whole or any part of any property, movable or immovable, public or private, affected thereby within a time to be specified in the notice;

(b) the Commissioner or any officer duly authorised by him may also enter into or on any building or vacant land where such act is done and take all such steps as may be necessary to prevent the continuance of such act; and

(c) if no penalty has been specially provided in this Act for so doing such act, the

person so doing it shall be liable on conviction by a Magistrate to a fine not exceeding fifty rupees for every such offence.

(2) No, claim shall lie against the Commissioner or any other person for any damage or inconvenience caused by the exercise of the power given under this section or by the use of the force necessary for the purpose of carrying out the provisions of this Section."

8. In view of the aforesaid, both these writ petitions are liable to be disposed of with a liberty to the respondent-BBMP to proceed further in accordance with law, irrespective of the pendency of the suit between the parties in O.S. No. 6507 of 2015.

9. Both the writ petitions are disposed of accordingly. No order as to costs.