

(2014) 01 KAR CK 0099

In the Karnataka High Court

Case No : Writ Petition No. 19212 of 2013 (LB-BMP)

Smt. R. Prabhavathi Devi

APPELLANT

Vs

The Commissioner, Bruhat Bangalore Mahanagara Palike
Corporation Offices, The Assistant Executive Engineer, BBMP,
Director, Town Planning and Sri R. Mohan

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Citation : (2014) 01 KAR CK 0099

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Ramesh Chandra, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner is the owner of property bearing No. 34 situated at Sector VI, 14th Cross, 9th Main, H.S.R. Layout, Bangalore. Respondent No. 4 is the owner of property bearing No. 33, Sector VI, H.S.R. Layout, Bangalore. By obtaining plan and license vide Annexure-A, on 16.05.2008, respondent No. 4 has constructed a building. Petitioner alleges that the construction is contrary to the sanction plan of the building license issued by respondent Nos. 1 to 3. Long after the construction was completed, the petitioner having got caused a legal notice dated 25.02.2013 vide Annexure-C, alleging inaction by respondent Nos. 1 to 3, in the matter of initiation of legal proceedings against respondent No. 4 for the alleged deviation, etc., of the said construction, this writ petition was filed on 24.04.2013, to direct respondent Nos. 1 to 3 to take appropriate action against respondent No. 4 and also take action against respondent No. 2 and other officials, who allegedly failed to stop unauthorized construction i.e., in terms of the provision u/s 321B of the Karnataka Municipal Corporation Act, 1976.

2. Heard Sri. Ramesh Chandra, learned Advocate for the petitioner and perused the writ petition record.

3. Sri. Ramesh Chandra, conceded that the construction of the building by the 4th respondent, at site bearing No. 33 in Sector VI of H.S.R. Layout, Bangalore is complete. Learned counsel further conceded that the construction was completed during the year 2011-2012. The notice, as at Annexure-C and the writ petition are bald with regard to the period during which the construction was commenced and completed by the 4th respondent. The notice, as at Annexure-C, shows that there was an act of encroachment by the 4th respondent into the petitioners property. The matter, in my opinion, involves disputed questions of fact. Petitioner having not approached respondent Nos. 1 to 3 when the construction commenced and was in progress, cannot now, on the strength of Section 321B of the Act, seek relief in this writ petition. The petitioner has failed to identify the Officer, who failed to prevent the unauthorized deviation or construction by the 4th respondent.

In the circumstances, I do not find justification to entertain this writ petition. Without going into the merit of the case, by reserving liberty to the petitioner to institute a suit and seek relief for the alleged encroachment, unauthorized user/deviation, etc., by the 4th respondent, writ petition is rejected.

I.A. No. 1/2013 does not survive for consideration.