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**(1987) 06 KAR CK 0015**  
**In the Karnataka High Court**  
**Case No : W.P. Nos. 3715 and 3716 of 1983**

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|------------------------------------------|----|------------|
| Vaman Nayak M. and Another               | Vs | APPELLANT  |
| Planning Authority, Mangalore and Others |    | RESPONDENT |

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**Date of Decision :** 16-06-1987

**Acts Referred:**

Karnataka Municipal Corporation Act, 1976 — Section 299  
Karnataka Town and Country Planning Act, 1961 — Section 14

**Citation :** (1987) 2 KarLJ 235

**Hon'ble Judges :** M. P. Chandrakantharaj Urs, J

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## Judgement

Chandrakantharaj Urs, J.-The short question which falls for determination in these writ petitions is whether the petitioners are entitled to the relief against the 4th respondent. The prayer is to quash the licence or permission granted by the Commissioner of the Corporation of the City of Mangalore in favour of 4th and 5th respondents to renovate the then existing building as well as to quash the commencement certificate granted by the 1st respondent-Planning Authority, Mangalore, for renovating the building in question of the 4th respondent.

2. It would be necessary to state that the 5th respondent is the proprietor of the firm which is the 4th respondent. The 4th respondent had a shop premises on what is called "Market Road" in Mangalore City. The Mangalore City is quite an ancient City. According to the provisions contained in the Karnataka Town and Country Planning Act, 1961, (hereinafter referred to as the Act) the Outline Development Plan as well as a Comprehensive Development Plan has been drawn and approved for the City. The petitioners grievance is that in the guise of renovating the building, the 4th respondent has contravened the provisions of the Outline Development Plan and therefore the commencement certificate issued by the 1st respondent and the approval of the plan for renovation by the Commissioner, the 3rd respondent, are without the authority of law and liable to be quashed as such.

3. The attack is essentially on the ground that if the renovation is permitted, the

floor area ratio to the width of the road prescribed for that particular zone in the Outline Development Plan will be contravened in as much as the required amount of car parking space will not be available for the renovated building.

4. I do not think there is much substance in the contention advanced. It is nobody's case that the renovation now sanctioned by the Corporation has in any way increased the plinth area of the construction sought to be renovated by the 4th respondent. Even according to the documents produced (photographs) by the petitioners themselves, the 4th respondent has converted the existing building by change of facade by providing for steel rolling shutters fitted on to the existing pillars. The ceiling of the ground floor as well as the first floor are now of reinforced concrete in place of the original tiled roofing and wooden ceiling common in that area.

5. From the series of photographs produced by the petitioners, it is seen that there is no encroachment on to the road. That renovation is going to alter the facade and the type of construction does not make it a new construction. It will remain an old building. The impugned commencement certificate granted by the 1st respondent does no more than to issue the same in writing subject to the Outline Development Plan. Therefore, the Town Planning Authority has not contravened any of the provisions of the Outline Development Plan. The Corporation will not sanction the renovation plan unless the commencement certificate is obtained from the Town Planning Authority. The 4th respondent is not offending the Outline Development Plan. He has not developed the land in any manner different in user assigned in the Outline Development Plan in that particular zone. The object of the Outline Development Plan is to freeze user planned by the Planning Authority unless it permits in writing the change sought for. That is the purpose of Sec. 14 of the Act. Sec 14(1) of the Act does no more than prohibit the user and development contrary to the Outline Development Plan. But sub-sec. (2) of Sec. 14 of the Act is the exception when the Planning Authority in writing may sanction such different user or development of a particular land contrary to the Outline Development Plan. That is not the case here at all. They have done no more than issue a formal commencement certificate to enable the 4th respondent to obtain the licence from the Corporation for renovation. As is clear from the language of the commencement certificate, it is subject to the Outline Development Plan or the restrictions imposed by such Plan. In the absence of any proof of contravention of the Outline Development Plan, it is difficult to grant the prayers.

6. No building law of the Corporation prohibits the renovation. On the other hand, the Karnataka Municipal Corporations Act, 1976, (hereinafter referred to as the Corporations Act) clearly defines what constitutes renovation. In Sec. 299 of the Act a specific provision is made for a person to apply to the Commissioner in writing for permission to execute the work together with the site plan of the land, ground-plan, elevations and sections of the building when he wants to construct or reconstruct the building. The explanation to that sub-sec. (1) of Sec. 299 of

the Corporations Act, it is stated that building includes a wall or fence of whatever height bounding or abutting on any public street. From that it is clear that the 4th respondent has the right to reconstruct the existing building as well as the walls of the building if he satisfies the other requirements of the building bye-laws of the Corporation. When there is no material placed before this Court that such building bye-laws are violated, question of quashing the licence granted by the Corporation, does not arise.

7. The petitions are misconceived and they are rejected. No costs.

Writ Petitions Rejected.