
(2014) 12 KAR CK 0291

In the Karnataka High Court

Case No : Writ Appeal No. 3151 of 2014 (LB-BMP)

Zubda Nazir

APPELLANT

Vs

The Zonal Joint Commissioner, B.B.M.P. and Others

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 321(3)

Citation : (2015) 2 KarLJ 463 : (2015) 3 KCCR 2630

Hon'ble Judges : D.H. Waghela, C.J.; Budihal R.B., J

Bench : Division Bench

Advocate : Anant Mandgi, Senior Counsel and Amit A. Mandgi, Advocates for the Appellant; B.V. Shankaranarayana Rao, C.M. Poonacha and Lex Plexus, Advocates for the Respondent

Judgement

D.H. Waghela, C.J.—The appeal is filed from order dated 4-12-2014 of learned Single Judge of this Court in W.P. No. 48729 of 2014 whereby, notice was ordered to be issued and service of notice on the appellant herein was dispensed with. The appellant was required to rush to the appellate forum on the basis that even without a notice of petition being served upon the appellant, the work of demolition had started and hence, an urgent order of ad interim relief was required to be made. Under the circumstances, interim order dated 9-12-2014 was made herein on the basis of submissions made before this Court and ad interim relief was granted against demolition of the residential apartment stated to be owned or occupied by the appellant. Upon the notice being issued and served, parties to the original writ proceeding have appeared and it is pointed out from the record that, on 8-12-2014 further order was made in the original writ proceeding indirectly compelling the municipal authorities concerned to take action and execute the order made under Section 321(3) of the Karnataka Municipal Corporations Act, 1976. It was on that basis submitted for the respondents herein that, they were only discharging their duties in consonance with the order dated 8-12-2014. The fact, however, remains that the appellant herein did not get any opportunity of hearing before the Court and according to

the application made today, respondents have carried out the work of demolition of the building right upto 4.30 p.m. on 9-12-2014.

2. Since it is fairly conceded for the respondent that the appellant ought to have been granted an opportunity of being heard before the Court even as she was joined as party respondent 5, and since no mandatory injunction is as yet granted in the original proceeding, the appellant is required to be heard in the original proceeding and the work of further demolition of the building is required to be halted till the order, after hearing the appellant herein, is made. It would, however, be necessary that in equal fairness the appellant should co-operate in further proceeding and would not seek any unnecessary adjournment for avoiding hearing and making of appropriate order by learned Single Judge. Therefore, on the basis of limited consensus, appeal is disposed, without entering into other contentions of the parties, only with the direction that appellant will appear before learned Single Judge in the original proceeding i.e. W.P. No. 48729 of 2014, on the next date of hearing which is stated to have been fixed on 12-12-2014. We are sure that appellant will get a fair hearing and the contentions and issues that may be raised by the appellant herein will be duly dealt with by learned Single Judge before making any mandatory order against her. Till such order is made, respondents herein shall refrain from carrying out any further demolition of the premises in question. It is needless to clarify that the appellant having made the grievance of not having been even served the notice of petition, she would get reasonable opportunity of obtaining copies of all the pleadings in the original proceeding and file a reply or statement of objections, as the case may be, before the arguments are heard before learned Single Judge. The legal contentions of all the parties are left open. The appeal stands disposed accordingly, with no order as to cost. I.A. No. IV of 2014 is not pressed at this stage and it stands disposed.