



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO.3170 OF 2024 (LB-BMP)

BETWEEN:

SRI. G R ASHOK KUMAR
S/O SRI G RATHNAIAH SETTY
AGED ABOUT 61 YEARS
R/A NO.18/202, RADHAKRISHNA NIVAS
15TH CROSS, 4TH TEMPLE ROAD
MALLESHWARAM, BENGALURU – 560 003.

...PETITIONER

(BY SRI. JNANESH KUMAR K, ADVOCATE)

AND:

1. THE CHIEF COMMISSIONER
BRUHAT BENGALURU MAHANAGARA PALIKE
HUDSON CIRCLE,
N R SQUARE, BENGALURU – 560 002.
2. THE ASSISTANT DIRECTOR OF TOWN PLANNING
DASARAHALLI ZONE,
BBMP, BENGALURU – 560 073.
3. THE ASSISTANT ENGINEER
DASARAHALLI ZONE
BBMP, BENGALURU – 560 073.
4. E. DEEPAK VARMA
S/O E. UDAY VARMA
MAJOR, NO.541, 2ND CROSS,
HMT LAYOUT, NAGASANDRA POST,
BENGALURU- 560 007.





(AMENDMENT IS CARRIED OUT AS PER ORDER
DATED 02.02.2024)

...RESPONDENTS

(BY SMT. CHAITHRAVATHI B S, ADVOCATE FOR R1 TO
R3;
SRI. NANDISH PATIL ADVOCATE FOR R4)

THIS WP IS FILED UNDER ARTICLE 226 AND 227
OF CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ORDER AT ANNEXURE-J DATED
12/01/2024 PASSED BY THE R1 IN APPEAL NO.
80/2023. GRANT AN INTERIM ORDER TO STAY THE
OPERATION AND EXECUTION OF THE IMPUGNED
ORDER AT ANNEXURE-J DATED 12.01.2024 PASSED BY
THE R1 IN APPEAL NO.80/2023.

THIS PETITION, COMING ON FOR ORDERS, THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner, who has begun construction in
the property No.540, HMT Layout, Nagasandra,
Bengaluru, has filed this petition impugning the first
respondent's order dated 12.01.2024 in his Appeal in
No.80/2023 under Section 253 of the Bruhat
Bengaluru Mahanagara Palike Act, 2020 [for short,
'BBMP Act']. The petitioner has filed this appeal



calling in question the Confirmation Order dated 21.06.2023 under Section 248(3) of the BBMP Act, and the first respondent has dismissed this appeal by the impugned order dated 12.01.2024.

2. The petitioner's grievance as against the first respondent's order dated 12.01.2024 in Appeal No.80/2023 must necessarily be considered in the peculiarities of this case. The petitioner, while calling in question the Confirmation Order dated 21.06.2023 in the aforesaid appeal, has also preferred the writ petition before this Court in W.P.No.25716/2023 impugning the very Confirmation Order and the earlier Provisional Order under Section 248(1) of the BBMP Act.

3. However, on 30.12.2023 the petitioner has filed a memo with the first respondent for withdrawal of the appeal referring to the writ petition filed in W.P.No.25716/2023. Notwithstanding this memo the first respondent has disposed of the appeal on



12.01.2024 on merits, and this Court on 17.01.2024 has disposed of the writ petition observing *inter alia* that the petitioner could not have filed simultaneous proceedings and there could be suppression of facts but reserving liberty to the petitioner to call in question the first respondent's order dated 12.01.2024.

4. Mr. Jnanesh Kumar K, the learned counsel for the petitioner, submits that it is in exercise of the liberty that is so reserved, the present writ petition is filed, and on the merits of the petitioner's grievance, the learned counsel for the petitioner submits that the primary ground is because the petitioner is not served with a copy of the Provisional Order under Section 248(1) of the BBMP Act. Ms. Chaithravathi B.S., the learned counsel for the BBMP, refuting these submissions asserts that a copy of the Provisional order is served on Sri.Srinivas, who was executing the construction of behalf of the petitioner



and she submits that in any event, the petitioner cannot dispute that the construction is without the necessary set back.

5. Sri.Nandish Patil, the learned counsel for the complainant, at whose instance the proceedings are initiated, is heard in the light of these rival submissions and peculiar circumstances. This Court has indeed reserved liberty to the petitioner to call in question the first respondent's order dated 12.01.2024 in Appeal No.80/2023 and it is asserted that the present writ petition is filed in exercise of such liberty. However, if the questions for consideration are whether a copy of the Provisional Order is served on the petitioner and whether there could be a Confirmation Order without a copy of the Provisional Order being served on the petitioner, these questions must be considered by the Appellate Authority after due opportunity to the petitioner, and this Court, under Article 226 of the Constitution of



India, cannot examine facts to decide that the petitioner is not served with a copy of the Provisional Order.

6. Therefore, there must be appropriate orders for restoration of the appeal for reconsideration in the light of the petitioner's grievance as canvassed before this Court. The next question is whether the petitioner must be permitted to resume construction in the meanwhile. This Court, while disposing of the petition in W.P.No.25716/2023, has directed the petitioner not to carry on any construction in the property. When material circumstances are to be considered by the first respondent in the restored appeal, the petitioner cannot be permitted to restart the construction. In the light of afore, the following:

ORDER

- (i) The petition is ***allowed in part***
quashing the first respondent's order



dated 12.01.2024 restoring the
appeal in No.80/2023 for
reconsideration.

(ii) The petitioner and the respondents,
without further notice of first hearing
of the appeal after this order, shall
appear before the first respondent on
02.04.2024.

(iii) It is needless to observe that the
second respondent shall consider,
amongst others, whether the
petitioner is served with the notice of
the Provisional Order and the
petitioner is directed not to
commence any construction until the
final adjudication in the appeal.

**SD/-
JUDGE**

DR