

IN THE HIGH COURT OF KARNATAKA,
CIRCUIT BENCH AT GULBARGA
DATED THIS THE 26th DAY OF JULY, 2010
BEFORE

THE HON' BLE MR. JUSTICE A.N.VENUGOPALA GOWDA
W.P.NO. 82456/2010 (LB-RES)

BETWEEN

Hussain Patel,
S/o. Ladle Patel,
Aged about 50 years,
Occ: Business, R/o. Hungunta Road,
Shahabad. District. Gulbarga. : Petitioner

(By Sri. N. Krishnacharya, Advocate)

AND:

1. Deputy Commissioner,
Gulbarga.
2. The Commissioner,
Town Municipal Council,
Shahabad.
3. Mohd Mozam Jani,
S/o. Mohd. Mehatab Patel,
Aged about 51 years,
Occ: Business, R/o. Shahabad,
District. Gulbarga. : Respondents

(By Sri. S.S. Kumman, Addl. Govt. Advocate)

THIS WRIT PETITION FILED UNDER ARTICLES 226
AND 227 OF CONSTITUTION OF INDIA, PRAYING TO ISSUE
A WRIT OF CERTIORARI, QUASHING THE IMPUGNED
ORDERS OF THE DEPUTY COMMISSIONER AT GULBARGA

IN FILE NO. SL.APM/02/2010-11, DATED 20.07.2010 AS PER ANNEXURE-E.

This writ petition coming on for preliminary hearing, this day, the Court made the following:

O R D E R

The challenge in this writ petition is to the order dated 20.07.2010 as at Annexure-E, passed by the respondent No.1 whereby, the revision petition filed by the petitioner has been dismissed on the ground that the matter relates to the civil rights of the parties, which requires adjudication by the civil court.

2. Heard the learned counsel for the petitioner and perused the writ papers.

3. The learned counsel for the petitioner contended that the objection filed by the petitioner before the respondent No.2, in the matter of sanction of plan to the respondent No.3 has not been considered and without granting any opportunity of hearing, the plan was sanctioned to the respondent No.3. In pursuance of the sanctioned plan, the respondent No.3 is constructing



the building by encroaching upon the property of the petitioner and has caused damage to the property of the petitioner and therefore, the respondent No.2 is not justified in rejecting the revision petition filed by the petitioner U/S. 322 of the Karnataka Municipalities Act and hence interference is called for.

4. Perusal of the averments made in the writ petition would indicate that, the petitioner has alleged that the respondent No.3, while constructing the building, dismantled portion of the building belonging to the petitioner and thereby caused damage to the property of the petitioner and that, there is an encroachment by respondent No.3. It is also alleged that the respondent No.3 has violated the sanctioned plan.

5. The allegations made by the petitioner in this writ petition involve disputed question of facts. Indisputably, the petitioner has instituted O.S.No.26/2010 on the file of the Civil Judge (junior



division), Shahabad against respondent No.3. As the civil rights of the petitioner are involved in the matter, the competent forum for adjudication of the said rights is the jurisdictional civil court and therefore, the writ petition is misconceived. Since the petitioner has already instituted a civil suit, there is no legal impediment for him to seek redressal of the grievances in the said suit. Thus the respondent No.1 is justified in passing the impugned order. There is no arbitrariness or illegality on the part of respondent No.1. In the circumstances, no interference is called for.

The writ petition is rejected. All the contentions are kept open for consideration by the civil court, in the pending suit.

Ordered accordingly.

Sd/-
JUDGE

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