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IN THE COURT OF THE LXXIII ADDL. CITY CIVIL &
SESSIONS JUDGE AT MAYO HALL, BENGALURU.
(CCH-74)

P r e s e n t:

Sri.Mallikarjuna, B.Com., LL.M.,
LXXIII Addl.City Civil & Sessions Judge, Bengaluru

Dated this the 25th day of July, 2023.

OS No.26372/2021

Plaintiffs:-

Sri.Sridhar Reddy.S. and others

[By Sri.CPR-Advocate]

Vs.

Defendant:-

The Commissioner, BBMP.

[By Sri.PV-Adv]

Applicants/
Plaintiff:-

Sri.Sridhar Reddy.S. and others

Vs.

Opponent/
Defendant:-

The Commissioner, BBMP.

ORDERS ON IA Nos.1 and 3

I.A.No.1 is filed by the plaintiffs under Order-39 Rules 1 and 2 read with section 151 of the C.P.C. The I.A.No.3 is filed by the defendant under Order-39 Rule-4 r/w. Sec.151 of the CPC. These applications are inter-related and connected to each other, to avoid repetition, I have taken them together for discussion. dismissing

2. Brief facts of the annexed affidavit of IA No.1 are as under:-

That the applicants/plaintiffs had commenced construction work as per the plan issued by the defendant BBMP. Meanwhile, Sri.Jaspal Singh and after his death his children executed a Regd. Release Deed in favour of their mother i.e., wife of deceased Jaspal Singh on 15.06.2018. Thereafter she has executed Joint development agreement and GPA on 21.04.2021 in favour of the plaintiff No.3. After execution of the JDA and GPA the plaintiffs proceeded with the construction of the same

as the building was already commenced during the year 2012. After death of Jaspal Singh the defendant BBMP has conferred katha in favour of Smt.Rajinder Kaur Jolly and the plaintiff proceeded with the construction without any deviation of whatsoever. But the defendant authority during the first week of September 2021 abruptly appeared before the suit property, without issuing notice made an attempt to demolish the construction. The act of the defendant is illegal and contrary to the law and interest of the plaintiff. Plaintiff got issued legal notice as required under Sec.482(1) of KMC Act. After receiving the notice, defendant kept quiet for some time and again without sending any reply to the said notice, defendant authority sent its officials near the suit property on 26.11.2021 and threatened the plaintiffs and also tried to interfere in the construction work. The act of the defendant is illegal. Plaintiff has made out prima facie case and balance of convenience lies in his favour. If the injunction is not granted as prayed for in

the application very purpose of filing the suit will be defeated.

Hence, prayed for allowing the application.

3. These facts have been denied by the defendant in their written statement contended that it is true that one Jaspal Singh has secured the sanctioned plan and not the plaintiffs herein. The sanctioned plan vide LP No.Addl/CE/1568/11-12 dated 28.06.2012 was issued in favour of said Jaspal Singh. The defendant has permitted to construct on the stilt, ground, first and second floors for the purpose of industrial workshop/show room use only, but the contention of the plaintiffs that they have got permission to terrace floor also is false. The said plan is for a period of two years from 28.9.2012 to 27.06.2012. As already stated the sanctioned plan has been issued in favour of one Mr.Jaspal Singh who has not conducted the construction work. That in response of the order of the Hon'ble High Court in WP No.41517/2019 this authority has issued notice to the plaintiff, for which the plaintiffs have not bothered to produce

records before the defendant authority. Hence, the defendant has issued notice on 18.11.2021 as contemplated under sec. 313 of the BBMP Act, 2020 to the plaintiffs, which was duly served on the plaintiffs. But the plaintiffs have not produced fresh or extended sanctioned building plan. The construction work undertaken by the plaintiffs is illegal and unauthorized. By suppressing the material facts, the plaintiffs have filed the present suit. Plaintiffs have not made out prima face case and they are not entitled for the reliefs sought. Hence, the defendant has prayed for dismissal of the application.

4. Defendant has filed IA No.3 on the grounds as urged in their written statement and prayed for vacating the order of Temporary injunction granted in the case.

5. The plaintiffs have filed objections to IA No.3 by reiterating the contents of IA No.1 and prayed for dismissal of IA No.3.

6. Heard arguments of both sides.

7. Perused the applications, annexed affidavits, objections, pleadings and available materials on record.

8. The points that arise for consideration are:-

1) Whether plaintiffs have made out a prima-facie case?

2) Whether the balance of convenience lies in their favour?

3) Whether the plaintiffs would suffer irreparable injury, if the temporary injunction is not granted as prayed for by them?

4) Whether the defendant proves that it is entitled for vacating the order of Temporary injunction granted in this case?.

5) What order?

9. My findings on the above points are as under:-

Point No.1 : In the **affirmative**

Point No.2 : In the **affirmative**

Point No.3 : In the **affirmative**

Point No.4 : In the **negative**

Point No.5 : As per final order
for the following:-

R E A S O N S

10. Point No.1:- It is the specific case of the plaintiffs that one Jaspal Singh had obtained construction permission and approved plan from the defendant BBMP and commenced construction and meanwhile he passed away. After his death, his children have executed the registered Release Deed dated 15.06.2018 in favour of his widow. Thereafter, she had executed a Joint Development Agreement and General Power of Attorney on 21.04.2021 in favour of plaintiff No.3. Thereafter, plaintiffs proceeded with the construction of the same as the building was already commenced during the year 2012 itself. It is also contended that there is no deviation of whatsoever in the construction work. In spite of the same, during the first week of September, 2021 defendant abruptly came to the spot and threatened the plaintiffs to demolish the building without issuing notice required under the provisions of BBMP Act. The act of the defendant authority is illegal, contrary to the right and

interest of the plaintiff. Therefore, the present suit is filed. Plaintiffs are having prima facie case and every chance of succeeding in the case till then the act of the defendant interfering with the physical possession and enjoyment of the plaintiffs and demolishing the structure over the suit property is required to be restrained by way of order of temporary injunction. Otherwise very purpose of filing the suit will be defeated.

11. These facts have been denied by the defendant in their written statement contended that construction permission and approval of the plan has been obtained by one Jaspal Singh in respect of the suit property on 28.06.2012. He has obtained permission and licence to construct on the Stilt, Ground, First and Second floors for the purpose of industrial workshop/showroom only. Plaintiffs have falsely pleaded in the plaint that they have got permission to terrace floor also. Said plan would be in operative for a period of two years from the date of

sanction ie., 28.09.2012 to 27.06.2014. After 27.06.2014 said plan obtained by Jaspal Singh has not been sought any extension for construction of the building from this defendant authority. Hence, the construction being made after expiry of the time after death of Jaspal Singh is illegal and unauthorized one. Therefore, the plaintiff has not made out prima facie case. If the act of the plaintiffs is allowed to continue it amounts to giving permission to illegal construction. Hence, plaintiffs have no prima facie case and prayed for rejecting their claim.

12. On perusal of the contentions raised by both the parties in their respective pleadings one point is clear that one Jaspal Singh had obtained construction permission and approval plan from the defendant BBMP in the year 2012. It is also not in dispute that the said Jaspal Singh passed away in the year 2012 itself. According to the plaintiff said Jaspal Singh during his life time after obtaining the necessary licence and approved plan had started construction work and after his demise his legal heirs

have entered into the Joint development agreement with the plaintiffs and the plaintiffs have continued the said construction work by virtue of the JDA and GPA.

13. In support of the plaintiffs claim, they have relied on overall 13 documents. It is the specific case of the plaintiffs that the defendants abruptly without issuing notice came to the spot and threatened the plaintiffs to demolish the construction and the said act of the defendants is illegal and contrary to the principles of law. Though these facts have been denied by the defendant in their written statement categorically contended that they have got issued legal notice to the plaintiffs and also issued notice bringing notice about illegal construction taken place in the suit property. As already stated above, in support of the case of the plaintiffs over all he has relied on 13 documents. On the other hand, defendant have not produced any single piece of document before the court to show that the plaintiffs are violated the approved building plan and licence issued to them.

So also, they have not produced notices alleged to have been issued to the plaintiffs prior to the filing of the suit. Such being the case, as of now there is no material before the court to show that there is violation made by the plaintiffs in their construction work.

14. Learned counsel for the plaintiff vehemently argued and contended that if really the plaintiffs are violated the permission and plan approved issued by the defendant authority and they are constructing the building contrary to the said approved plan sanctioned by the defendant authority, they have to cause notice to the plaintiffs and allow him to rectify the same. If the plaintiffs failed to comply the terms of the notice then they have to issue final notice for demolition of illegal construction. Without doing so, the defendant authority abruptly approached the spot and threatened the plaintiff for demolishing the construction put up by the plaintiff. The act of the defendant is contrary to law. Even if there is any violation it can be cured

by following certain procedures laid down in the KMC Act, for which the defendant has to give an opportunity.

In support of his arguments learned counsel has relied on the following decisions:-

1.	<i>RFA No.234/2015 (INJ) (The Commissioner Vs. Kiran .S.Gole and another)</i>
2.	<i>RFA No.1922/2020 (Narayana Murthy Vs. The Commissioner)</i>
3.	<i>CRP No.507/2013 (Sri.P.K.Somashekara Reddy Vs. K.Amaresha Babu)</i>
4.	<i>WP No.967-968/2016(LB-BMP) (Kavita Podwal Vs. The BBMP)</i>

I have gone through the principles laid down in the above referred cases. It is clear that the Hon'ble High Court was pleased to hold that in case of any violation in the construction permission or approved plan, the defendant authority has to give ample opportunity to rectify the mistake if any and also allow to get renew the permission if it is lapsed.

15. Learned counsel for the plaintiff has also brought to the notice of the court with regard to the provisions of section 306 of the KMC Act, thus reads as under:-

“306. Lapse of permission if not acted upon within two years:- *If the construction or re-construction of a building is not commenced within two years after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this Chapter.”*

16. In the present case, construction has already been commenced by Jaspal Singh during his lifetime, due to his untimely death the construction work was struck down and same has been continued by the plaintiffs. In this regard the learned counsel for the plaintiff has relied upon a decision of the Hon'ble High Court of Karnataka in WP No.21651/2000, wherein the Hon'ble High Court was pleased to hold that plan sanctioned by the authority would lapse provided the petitioner had not put up construction within two years from the date of the sanction

of the plan, if the construction work already commenced in accordance with the said plan and licence then it does not amounts to any violation. It is the specific case of the plaintiff there that Mr.Jaspal Singh had obtained licence and approved plan from the defendant authority during his life time only he has started to put up construction of the building over the suit property as per the terms of the sanctioned plan obtained by him. Unfortunately, he passed away. Therefore, the construction work was struck down after completion of the procedure of change of katha the Lrs of the deceased Jaspal Singh entered into JDA with the plaintiff No.3 and commenced the construction work as per the plan issued by the defendant authority. There is no any violation as alleged by the defendant. Therefore, the plaintiffs are entitled to make use of the same plan for the purpose of further construction. In view of the principles laid down by the Hon'ble High Court of Karnataka, contention of the defendant authority that the plaintiffs are

violating the terms of the licence and approved plan issued by them does not hold water. Even then this is a fact to be proved by the defendant authority with cogent and convincing evidence. It requires full fledged trial at the case. Meantime, if the defendant demolished the construction then it will cause irreparable loss to the plaintiffs.

17. Taking into consideration of all these facts and circumstances if the defendant authority is not restrained from demolishing the structure, it will badly affect the right of the plaintiffs and they will put to great hardship arguments seems to be reasonable. Without establishing the alleged violation of law as well as approved plan, if the defendant allowed to demolish the structure, the very purpose of filing the suit will be defeated. The allegations made against the plaintiffs are required to be proved with cogent and convincing evidence, for which full fledged trial is required, till then suit schedule property required to be kept in tact; otherwise plaintiffs will put to

irreparable loss and injury. In my view plaintiff has made out prima facie case against the defendant. Accordingly I answered point No.1 in the **affirmative**.

18. Point No.2:- As already discussed in Point No.1 defendant authority has made several allegations against the plaintiff and one among them is violation of building plan and licence issued by them. This fact needs to be proved by convincing evidence. It requires full fledged trial. Without establishing this fact if the defendant demolish the building or structure then irreparable loss will cause to the plaintiff arguments seems to be reasonable. Defendant authority has not complied with the provisions of KMC Act before taking action for demolition of the structure. On this core also defendant's act appears to be unreasonable. If really plaintiffs are violated any provision of law and they have constructed the structure contrary to the approved building plan and licence issued by the defendant authority, defendant authority is at liberty to take

action against the same even after disposal of the suit. So balance of convenience lies more in favour of the plaintiff rather than the defendant. No reason to deny the same. Plaintiffs have proved this point Accordingly I answered Point No.2 in the affirmative.

19. Point No.3:- According to the plaintiffs defendant authority and its officials visiting the suit schedule property frequently without issuing notice and threatening to demolish the building in the suit schedule property. Very act of the defendant is illegal and contrary to law. If injunction is not granted as prayed for in the application plaintiff will put to irreparable loss which cannot be compensated by any other means. Defendant authority have not shown before the court with sufficient material about the alleged violation committed by the plaintiffs. As already discussed above if any violation is there, it has to be established before the court, for which full fledged trial is required till then property has to be kept in tact. If the

defendant allowed to demolish the suit structure very purpose of filing the suit will be defeated. Moreover defendants have not produced any single document to show that there is indeed violation nor it is their case that construction has not been commended by Jaspal Singh. In my view plaintiffs will be caused irreparable loss and inquiry if the injunction order is not granted as prayed for by them. Accordingly, Point No.3 is answered in the **affirmative**.

20. Point No.4:- For the various reasons discussed in Point Nos.1 to 3 it is clear that very conduct of the defendant causing interference in the peaceful possession and enjoyment of the plaintiffs over the suit schedule property and threatened to demolish the building without complying with the provisions of law appears to be unsustainable. Plaintiffs have proved that injunction order is very much necessary to restrain the illegal act of the defendant authority till disposal of the suit; otherwise plaintiff will put to irreparable loss and injury. Such being the

case, contention of the defendant that the temporary injunction order granted by this court requires to be vacated arguments seems to be unreasonable. Therefore, prayer sought in IA No.3 is not considerable. Defendant has failed to prove the said point. Accordingly, I answered Point No.4 in the **negative**.

21.Point No.5:- In view of the reasons given above, I proceed to pass the following:-

O R D E R

I.A.No.1 filed by the plaintiffs under Order-XXXIX Rules-1 & 2 read with sec.151 of the CPC., are **hereby allowed**. Consequently, the **interim order dated.30.11.2021** granted by this court is made absolute.

Accordingly, the defendant, its officials, agents, men or anybody under or through it,

are hereby restrained by an order of Temporary Injunction, from demolishing the suit building pending disposal of the suit.

I.A.No.3 filed by the defendant under Order-XXXIX Rule-4 read with sec.151 of the CPC., are **hereby dismissed.**

Both parties are directed to bear their own costs.

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(Dictated to the stenographer, transcribed by him and then corrected and pronounced in the open court on this day of **25th** day of July, 2023)

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(MALLIKARJUNA)
LXXIII Addl.CC & SJ,M.H.Unit,
Bengaluru.

