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**Vinay Developers and Builders vs the President**

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**Court** : Karnataka Orders

**Decided On :** Oct-29-2024

**Judge** : Pradeep Singh Yerur

**Appeal No.** : WP/103238/2024

**Appellant** : Vinay Developers and Builders

**Respondent** : The President

**Judgement** :

-1- IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE 29TH DAY OF OCTOBER, 2024 BEFORE THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR WRIT PETITION NO. 103238 OF 2024 (LB-RES) BETWEEN:

1. VINAY DEVELOPERS AND BUILDERS,

A REGISTERED PARTNERSHIP FIRM, UNDER THE PARTNERSHIP ACT, 1932, OFFICE AT KADOLKAR GALLI, BELAGAVI, REPRESENTED BY ITS PARTNERS, MR. NITIN S/O. VINAYAKRAO BHATKANDE, AGE: 50 YEARS, OCC: BUSINESS, R/O. C/O. VINAY DEVELOPERS & BUILDERS OFFICE AT KADOLKAR GALLI, BELAGAVI.

2. MRS. PRATIBHA W/O. NITIN BHATKHANDE,

AGE: 49 YEARS, OCC: BUSINESS, R/O. C/O. VINAY DEVELOPERS & BUILDERS MALLIKARJUN OFFICE AT KADOLKAR GALLI, BELAGAVI. RUDRAYYA KALMATH PETITIONERS Location: HIGH (BY SRI PRASHANT F. GOUDAR, ADVOCATE.) COURT OF KARNATAKA DHARWAD BENCH AND:

1. THE PRESIDENT, BENAKANAHALLI VILLAGE PANCHAYAT, BENAKANAHALLI, TQ: DIST: BELAGAVI-590011.

2. THE PANCHAYAT DEVELOPMENT OFFICER, BENAKANAHALLI VILLAGE PANCHAYAT, BENAKANAHALLI, TQ: DIST: BELAGAVI-590011. RESPONDENTS (BY SRI SHIVARAJ HIREMATH, ADVOCATE.) -2- THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS DIRECTING THE RESPONDENT AUTHORITIES TO CANCEL THE IMPUGNED NOTICE ISSUED AGAINST THE

PETITIONER BEARING NO. 2023-24 DATED 16.03.2024, CANCELLING THE PERMISSION GRANTED FOR PUTTING UP A CONSTRUCTION OF A BUILDING TILL THE ORDER OF THE HIGHER OFFICERS AS MADE UNDER ANNEXURE-A AND ETC. THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

## ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR) Heard the learned counsel for the petitioners and learned counsel for the respondents.

2. This petition is filed by the petitioners seeking a

writ of mandamus for a direction to respondent authorities to cancel the impugned notice issued against the petitioners dated 16.03.2024 whereby the permission granted to the petitioners was cancelled for construction of a building. The petitioners are the registered partnership firm engaged in the business of construction of apartment and development of properties. They purchased the

residential properties

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which is the subject matter of the Annexure-A herein and after getting the mutation of the property in his name, the petitioners applied for grant of permission for construction of an apartment building in the property purchased by them under section 64 of the Karnataka Gram Swaraj and Panchayat Raj Act. Respondents No.1 and 2 after receiving necessary fee granted permission to construct the building by imposing certain conditions.

3. It is the contention of the learned counsel for the petitioners that they have been putting up construction in accordance to the permission granted by the respondent after obtaining huge financial assistance from various

financial institutions. This being the state of affairs, respondents No.1 and 2 issued a notice to the petitioners to stop construction on the ground of violation of building permission and later issued multiple notices to the petitioner and thereafter cancelled the permission. Aggrieved by the same, the petitioners approached this Court in W.P.No.100276/2024 (LB-RES), which came to be disposed of with a direction to the appellate authority to dispose of the -4- matter as expeditiously as possible, by fixing outer limit of time from the date of receipt of a copy of the order.

4. Pursuant to the order passed by this Court, the

Executive Officer passed an order on 08.02.2024 in Appeal No.10/2023 for an inspection to be carried out within 15 days. Thereafter on 15.03.2024 the property was inspected by the respondents in the presence of the petitioners and thereafter a notice came to be issued by the respondent to the petitioners for removal of the illegal construction put up on the property vide notice dated 27.02.2024.

5. It is the contention of the petitioners that pursuant to the said notice they have removed the illegal construction so pointed out by the respondents. Pursuant to

which respondents issued a notice dated 16.03.2024 cancelling the permission granted to the petitioners based on the minutes of meeting conducted by the

respondent authority bearing Gram Panchayat General Meeting No.10 on 16.03.2024. Aggrieved by this, the petitioners are before this Court. -5-

6. It is the contention of learned counsel for the

petitioners that there is a violation of principles of natural justice. No notice or enquiry has been conducted before issuing the impugned notice dated 16.03.2024 at Annexure- A. Therefore, petition presently filed against Annexure-A is sustainable before this Court. Accordingly, he seeks suitable remedy and relief. He relies on the Judgment of Honble Apex Court in the case of Whirlpool Corporation vs. Registrar of Trade Marks Mumbai and Others, reported in 1998 (8) SCC 1.

7. Per Contra, the learned counsel for respondents

No.1 and 2 vehemently contends that while conducting the 2nd inspection pursuant to the orders passed by the appellate authority, the petitioners were notified and their presence the spot inspection has been conducted as produced in Annexure-N, where petitioners participated and they are the signatories to the said document. Under the circumstances, it cannot be contended by the petitioners that they were not notified and not participated in the spot inspection so conducted by respondents No.1 and 2.

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8. It is further contended by learned counsel for

respondents No.1 and 2 that if at all the petitioners are aggrieved by any such orders passed under Section 64(1), the petitioners are entitled to and are at liberty to challenge the same by way of an appeal to the Executive Officer from any order or direction or notice of the Grama Panchayat under sub-section (1), (2) and (3) of Section 64 by filing an appeal under Section 64(5) read with Section 296 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (for

short, the Act, 1993) which on an earlier occasion petitioners had availed by approaching the said appellate authority, hence he therefore contends that it cannot be said now by petitioners that the writ petition would be maintainable in

view of violation of principles of natural justice and fundamental right of the petitioners being infringed.

9. On the contrary, learned counsel for petitioners

contends that pursuant to Annexure-N spot inspection was conducted which the petitioners participated. Even according to this document, there is no serious violation committed by -7- the petitioners. Hence, he contends that in view of huge financial loss suffered by the petitioners, they would be put to serious hardship. Be that as it may, when there is specific provision provided under the Act, 1993 for redressal of grievances of certain mechanism by appeal against any such

## order passed by the authority i.e., respondents No.1 and 2

herein. It is incumbent upon the petitioners to first approach and explore the possibility of appellate remedy which is alternative efficacious remedy available rather than rushing to this Court to invoke the writ jurisdiction under Article 226 of the Constitution of India.

10. Under the circumstances, it cannot be said that the petitioners would squarely fall within the ambit of the

## Judgment of the Honble Apex Court in the case of Whirlpool

Corporation referred supra unless they can show and establish that there is jurisdictional error committed by the authority in passing such impugned order or there was violation of serious fundamental rights against the petitioners, which is not the case herein. Under the circumstances, I am afraid of contention put forth by the -8- petitioners cannot be accepted. They will have to be relegated to the appellate Court remedy available under the statute for redressal of their grievance.

11. It is seen that vide interim order dated 10.06.2024,

petitioners had benefit of an interim order of stay, however the same would not enure to the benefit in view of disposal of this petition. Accordingly, I pass the following :

## ORDER

(i) Writ petition is disposed of reserving liberty to the

petitioners to approach the appellate authority for redreesal of their grievance against the impugned order at Annexure-A by urging all such grounds urged herein.

(ii) Appellate authority on such appeal being filed shall

consider the case of petitioners expeditiously and decide the application for interim order, if any, filed within a period of 15 days from the date of filing of such application and appeal.

(iii) In view of disposal of this petition, application filed by Sri D.M.Kulkarni appearing for impleading applicants -9-

would not arise. He is at liberty to make such application before the appellate authority; same shall be considered independently without being influenced by the order passed by this Court. Ordered accordingly. Sd/- (PRADEEP SINGH YERUR) JUDGE MRK-para 1 to 5. CKK-para 6 to end. CT-MCK

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