

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT BANAHATTI.**

Present : Sri. ASHAPPA, B.Com., L.L.M.,
Senior Civil Judge & JMFC,
Banahatti.

DATED THIS THE 31st DAY OF JANUARY -2025.

M.A.No.2/2025

APPELLANTS_:

1. Farooq S/o Rajesab Pakali,
Age: 48 years, Occ: Business.
2. Mahalingappa S/o Basappa Tattimani,
Age: 52 years, Occ: Business & Agri.
3. Mallikarjun S/o Basappa Tattimani,
Age: 37 years, Occ: Business.
4. Shivanand S/o Basappa Koligudd,
Age: 40 years, Occ: Business & Agri.

All R/o: Mahalingapur, Tq: Rabakavi-
Banahatti, Dist: Bagalakot.

(By **Sri L.B.C, Adv**)

-V/s-

RESPONDENTS_:

1. The State of Karnataka, represented by its Chief
Secretary, Vidhan Soudha Bengaluru.
2. The Executive Engineer,
PWD Sub-division, Bagalkote.

3. The Executive Engineer,
PWD Sub-Division Mudhol.
4. Kashinath.N. Kankale,
Construction Pvt Ltd., Class-I contractor House
No.29 Sector No.63A, Navanagar
Bagalkote.
5. The Chief officer, TMC Mahalingapur.
6. The President, TMC Mahalingapur.

Cause title in IA No.II

Farooq S/o Rajesab Pakali and others.

.V/s.

The Chief officer TMC Mahalingapur.

ORDER ON IA No.I

This an IA filed by the appellants/plaintiffs U/sec. 94 R/w Sec. 151 of CPC, with prayer pass prohibitory order in the form of temporary injunction against the respondents authority restraining them from creating new road in the suit properties without acquiring any portion suit properties till disposal of the miscellaneous appeal.

2. The present IA under discussion supported with the affidavit of plaintiff No.4, wherein it is stated that, the

miscellaneous appeal filed U/. 43 rule 1 of C.P.C, against the order of dismissal on IA NO.II, filed under order 39 rule 1 and 2 of CPC, in OS.NO.273/2024 by the Hon'ble Civil Judge and JMFC Banahatti dated 24.01.2025.

3. It is further contended that, the defendants authority creating new road in the suit properties. The very defendants authority who have admitted the construction of RCC building, Tin shed and also ownership, possession of the plaintiffs over suit properties and also boundaries mentioned in the sale deed. The plaintiffs purchased the suit properties in the year 1992 which is more than 30 years back. The defendants taking law into their hands and undue advantage of the order passed on IA No.II, the respondents are bent upon to create new road. So, it is just and necessary to pass prohibitory order restraining the defendants authority from creating new road in the suit properties without acquiring any portion of suit property till disposal of the appeal.

4. After registering the appeal, the respondent No.5 appeared sue-moto through counsel and filed objection to IA No.II. The notice to the other respondents not yet issued.

5. The brief facts of the objections of respondent No.5 as under:

a). In the objection, it is stated that, order 39 rule 1 and 2 of C.P.C and section 94 of C.P.C both deals with injunctions. The key difference is that, order 39 outlines the specific conditions under which the court can grant Temporary injunction, where as section 93 of C.P.C addresses the consequences of breach of violation of injunction, essentially providing the legal framework for punishing someone who disobey's a court issued injunction. Essentially order 39 is about granting the temporary injunction and section 94 is about enforcing temporary injunction.

b). It is stated that, a temporary injunction may be granted U/sec. 94 (c) of C.P.C, if a case satisfies the ingredients of order 39 rule 1 and 2, section 36, 37, 38 and 41 of CPC relates

to prohibitory injunction and section 39, 40 and 42 relates to mandatory injunction.

c). The averments of affidavit are specifically denied and stated that, the IA is not at all maintainable in eye of law or facts. The trial court already invoked the provisions of order 39 rule 1 and 2 of C.P.C and disposed the IA, therefore the applicants can not invoke said provision seeking the interim order.

d). It is submitted that, the present Misc. Appeal is filed U/O-43 Rule-1 of C.P.C, but it is to be noted that, the relevant provision to file the instant appeal is U/O-43 Rule-1 (r) R/w. Sec-104 of C.P.C. To appeals from others, the rules of Order-41 of CPC shall apply. As such, in view of Order-41 Rule-5 (1) of C.P.C, the appellate court may for sufficient cause order stay of execution of the impugned order. But as the impugned order is not the executable order and hence, this IA is not tenable in law as the appellants by suppressing the material facts, in order to misguide to the court fraudulently

invoked Sec-94 of C.P.C to get the interim relief by hook or crook to half the infrastructure public road work.

e). It is stated that, in view of Order-41 Rule-5 (2) of C.P.C, the trial court which passed the impugned order can stay the execution of impugned order on sufficient cause being shown. As such, the applicants cannot invoke the provisions of Sec-94 of C.P.C and cannot seek prohibitory order in the form of temporary injunction against this respondent/authority and others. Further stated that, on 25.01.2025, the very appellants filed an application U/Sec-94 of C.P.C seeking the same prohibitory order against this respondent authority and others till expiry of appeal period before the trial court. During the pendency of said application before trial court hurriedly a preliminary hearing was made on IA.No.I filed U/Sec-94 of C.P.C in this appeal before this court can very well look in to the conduct of the appellants in seeking interim order by one or other pretexts behind the back of the respondent No.5 and others and to help up the

infrastructure road work by the respondent government authorities.

e). It is stated that, Sec-94 of C.P.C pertains to supplementary proceedings. The term supplemental general means in addition to what is already present or available, to complete or enhance it. The supplemental proceedings are instituted along with the main proceedings in which the pending action is called upon after the institution of the suits and prior to their final disposition by the court on various grounds as a means of protecting justice's end from being defeated. The main object of supplemental proceedings is to give relief to the parties to suit if any person or defendant create obstacles to the enforcement of a decree, order or judgment. Supplemental proceedings offer an exceptional remedy to ensure that the plaintiff's decree if issued would be honored and hence, Sec-94 of C.P.C is not applicable to the appeal proceedings.

f). It is stated that, in view of Sec-94 (c) of C.P.C, the court may issue temporary injunction, additionally, if the offender fails to comply, his assets would be attached and sold by the court. Furthermore, he may be sentenced to civil prison.

g). It is stated that, in view of Sec-94 (e), the court is empowered to make other interlocutory orders as it deems just and convenient apart from arrest before judgment, attachment before judgment, temporary injunctions and appointment of the receiver.

h). As such in view of provisions of Sec-94 (c) of CPC, the injunction can be issued under following three significance viz-

I) Whether the plaintiff's claims have prima-facie validity?

II) In the event that temporary injunction is denied, will the plaintiff suffer irreparable harm?

III) Does the plaintiff's convenience outweigh the defendant's convenience?

i). It is to be noted that, to seek the relief as prayed in IA.No.I in this appeal, provisions of supplemental proceedings cannot be invoked and this court has no jurisdiction to pass any order on such provision of supplemental proceedings.

j). It is stated that, as per Sec-94 of C.P.C, in the context with the word "If it is so prescribed", Hon'ble Supreme Court has expressed the view that the courts have inherent jurisdiction to issue TI in circumstances not covered by Order-39 of CPC.

k). Further stated, in view of provisions of Order-41 Rule-5 of C.P.C, in an appeal from an order granting TI the appellate court has power to order the stay of the operation of the injunction during the pendency of the appeal. As such in an appeal from rejecting IA for TI, the appellate court has no power/jurisdiction stay the impugned order during the pendency of the appeal by virtue of IA U/Sec-94 of C.P.C.

l). It is stated that, when there is no provision for stay the impugned order on IA.No.II & III filed U/O-39 rule-1 & 2, the appellants cannot invoke the provisions of Sec-94 of C.P.C in

this appeal for seeking prohibitory order in the form of TI against the respondent authorities.

m). It is stated that, as shown in the hand sketch map of defendant No.5 in the suit, the public road measuring 98 feet (30 meters) is situated towards Eastern side of their plot No.25 to 29 as described in their respective sale deeds. In front of their properties the plaintiffs/appellants have encroached a portion measuring 25 feet in the said public road and illegally constructed temporary tin sheet shops and thereby made hurdle for the improvement of the existing 98 feet road abutting the suit properties bearing CTS.No.1247-A/8/25, 1247-A/8/26 and 1247-A/8/27 each measuring 17.56 sq.mtrs., as per the CTS extracts. Further it is submitted that there are also various properties towards the Eastern side of said 98 feet public road.

n). It is stated that, the respondent No.5 TMC Mahalingapur applied for the survey of the measurement of said public road and all the properties situated towards Eastern and

Western side of said public road on 01.08.2024 to Assistant Director of Land Record Mudhol & City Surveyor Mahalingapur. The City Surveyor Mahalingapur conducted the survey of all the properties situated towards Eastern side of said public road and accordingly, issued survey map on 06.12.2024. But due to the pressure tactics used by the plaintiffs/appellants, the City Surveyor Mahalingapur could not conduct the measurement and survey of properties of plaintiffs till this date and same has been reported to the trial court by virtue of memo. As such, the present respondent No.5/defendant No.5 constrained to annex a separate hand sketch map showing the encroachment made by the plaintiffs in the said 98 feet public road which may be treated as part and parcel of this objections. From the perusal of the annexed hand sketch map, it is crystal clear that the appellants have made an encroachment to the extent of 25 feet in the said 98 feet public road.

o). It is stated that, the subject matter of this appel/original suit pertains to the improvement to existing public road project/infrastructure project under taken by respondent No.2, 3 and 5 through respondent No.4 road contractor. As such in view of Sec-20(A) & Sec-41(ha) 41(i) of Specific Relief Act 1963 and the Schedule 2(a), an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or serviced being the subject matter of such project. Hence, the instant appeal is not maintainable and as such the interim prayer sought by the petitioners is also not tenable in law.

p). It is stated the present appeal is misconceived one and it is wholly unsustainable either on facts or in law. The allegations made in the appeal memo paras are false and frivolous and same are liable to be rejected at the threshold.

q). It is stated in the present appeal has been filed after through and just to harass the respondent No.5/defendant

No.5 and other respondents only on false facts without disclosing the real facts of the case. The present appellants have filed this appeal with a dishonest intention to misguide the court.

r). It is stated that, the said Eastern 98 feet public road belongs to PWD department and passes through the limits of respondent No.5 TMC Mahalingapur. As such the respondent No.2, 3 & 5 have under took the work of improvement of said existing public road through respondent No.4 contractor and not creating any sort of new road by encroaching the adjoining private properties/appellants. Hence, there is no question of acquisition of adjoining properties and payment of compensation to them arise.

s). It is stated taking into consideration the vast growing population of Mahalingapur city, surrounding sugar factories, cement and allied industries and transportation of sugar etc., through tractors and trucks, frequent accidents happens in the said public road due to traffic congestion and hence, the

respondent No.5 TMC Mahalingapur and respondent No.2 to 4 under took the improvement of existing 98 feet/30meters road as per the Government Gazette dated 26.04.2002, Government Circular dated 27.04.2017 and Government Order dated 23.09.2022 produced before the trial court.

t). It is stated that, the respondent No.2 to 6 have not engaged under the scheme of improvement to Jamkhandi to Rabkavi SH-54 road to create a new road. The respondent No.2 to 6 are not creating any sort of new road in front of their properties as described in their respective sale deeds.

u). By suppressing the aforesaid material facts, in order to halt the improvement to Jambotti -Rabkavi SH-54 road project passing through TMC Mahalingapur limits, the appellants filed original suit bearing OS.No.273/2024 before Civil Judge and JMFC Banahatti seeking bare permanent injunction against respondent No.5 herein and others without seeking declaration restraining them from creating new road in the suit properties bearing CTS.No.1247-A/8/26, 27 & 25 each

measuring 17.56 sq.mtrs., without acquiring any portion of the petition property under the guise of improvement of Jambotti-Rabkavi road along with IA.No.II & III U/O-XXXIX Rule-1 & 2 of CPC. The learned trial court after meticulous perusal of the documents on record and well settled principles of law of injunction, by well reasoned findings, the trial court was pleased to reject said IA.No.II & III on 24.01.2025 and hence, interference of this court is unwarranted in the said well reasons findings of the trial court and the said IA filed U/Sec-94 of C.P.C liable to be rejected as not maintainable either in law or facts.

v). Further it is stated that, the party who approaches the court praying for an injunction against a public authority such as a threat of demolition of construction, the Hon'ble Supreme Court of India has come down heavily on subordinate courts that have been mechanically passing interim orders and facility related thereto or services being the subject matter of such project. Hence, the instant appeal

is not maintainable and as such interim prayer sought by the petitioners is also not tenable in law.

w). It is stated the Hon'ble Supreme Court of India in a landmark judgment held that, in cases of demolition of buildings, where the plaintiffs fails to make out of a prima-faice case for grant of an injunction and document produced clearly show that, the structures to be unauthorized, temporary injunction may not be granted merely on the ground of sympathy or hardship. As such the instant applications is not maintainable.

x). It is stated that, the intended demolition is lawful one and within the portion of public road illegally encroached by the appellants and hence same is not high handed and same within the authority of law. The respondent No.5 has taken all the procedural safe guards before intended demolition action and fully protected the rights of the property owners/appellants. Further sated that before intended action of demolition, ascertained the existing road width from official records, intimated to the encroacher/appellants,

provided sufficient opportunities and given sufficient time to get remove the encroachment and not violated the principles of natural justice.

y). It is stated that, the respondent No.5 i.e. TMC Mahalingapur is not constructing/creating any new road by encroaching the suit properties owned and possessed by the plaintiffs/appellants as described in their sale deeds.

z). The impugned order on IA.No.II & III is not executable order. Hence, there is no question of issuing any prohibitory order restraining the respondent No.5 from executing the infrastructure work relating to the public road.

aa). If prohibitory order is issued it amounts to stoppage of public work which will cause very much inconvenience to the public at large and traffic congestion.

ab). It is submitted that, the trial court has rejected, the I.A No.II and III on the ground that the plaintiffs have not made out the prima facie case for grant of temporary injunction, and hence, the instant I.A filed U/Sec-94 is not tenable in law.

The matter of granting or refusing the grant of T.I, the power of appellate court is very limited. Granting or refusing to grant T.I is purely within the domain / discretion of trial court. The appellate court would normally not be justified in interfering with the exercise of discretion of trial court unless, the order of trial court is arbitrary, capricious and unreasonable. On these and other grounds sought to reject the IA.

6. On the basis of the said pleadings, the following points arise for consideration:

P O I N T S

1. Whether the appellants have made out sufficient grounds to grant such prohibitory orders as sought ?

2. What order?

7. My findings on the above points are as under:

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

Point No.2: As per final order,
for the following:

REASONS

8. Point No.1 : On perusal of trial court records, it is clear that, the plaintiffs/appellants filed suit in OS.No. 273/2024 seeking the relief of Permanent injunction against the defendants/respondents. Along with suit the IA No. I filed U/sec. 80 (2) of C.P.C with a prayer to institute suit against the defendants without issuing the notice. Accordingly the trial court allowed and dispensed the notice period to file the suit against the defendants. IA No. II filed U/o. 39 rule 1 and 2 of C.P.C, with a prayer to grant temporary injunction restraining the defendants or any persons claiming through them from creating new road in the suit properties TMC No.127A/8/26, 1247A/8/27 and 1247A/8/25 each measuring 17 x 56 sq meters situated at Mahalingapur. IA No. III filed U/o. 39 rule 1 and 2 of C.P.C, with a prayer to grant temporary injunction restraining the defendants or any persons claiming through them from widening the existing road in the in the suit

properties TMC No.127A/8/26, 1247A/8/27 and 1247A/8/25 each measuring 17 x 56 sq meters situated at Mahalingapur.

9. It is specific case of the plaintiffs/appellants that, they are owners and possessors of suit properties consisting of shops, hotels, buildings constructed in the suit properties. The plaintiffs purchased the suit properties under registered sale deed from its previous owners for valuable consideration in the year 1992. Accordingly, the plaintiffs have constructed the buildings, shops with the permission of the T.M.C Mahalingapur. With the permission of the TMC Mahalingapur, they running the hotels, bakery's, water filter etc., in the suit properties.

10. It is further stated that, towards east of the said properties there is road is existence which leading Mahalingapur to Rabakavi. The existence of road is also shown in the sale deeds. Till western side edge of road, the plaintiffs are in the possession and enjoyment of over suit proprieties and their family depending on income of the

shops situated in the suit properties. The defendant No. 2 and 4 engaged under the scheme of improvement to Jambotti -Rabakavi road as SH-54 and accordingly they have issued notice to defendant No.4 carrying out their work at the instance of defendant No. 5 and 6. The defendants creating new road in the suit properties without acquiring any portion from the suit properties. The widening the road under the guise of improvement of Jambotti-Rabakavi SH 54. No such work is approved by the competent authority for widening existing road. The defendants authorities without acquiring the portion of the suit properties taking law in their hands creating new road in the suit properties. They have no power to create in the name of improvement in the properties of the plaintiffs. The plaintiff requested the defendants, not to create new road in the suit properties but they have not heeded the request and therefore suit is filed before trial court.

11. The defendants/ respondents appeared through their counsel and contested the case by filing written statement as well as objection to IA No. II and III. In the written statement, the averments of plaint are categorically denied including cause of action. At para 5 of written statement wherein it is admitted that, the plaintiffs are the absolute owners and possessors of suit properties CTS No. 127A/8/26, 1247A/8/27 and 1247A/8/25 each measuring 17 x 56 sq meters situated at Mahalingapur. It is further admitted that, the plaintiffs are purchased the suit properties under registered sale deeds from its previous owner in the year 1992. They further admitted that, on the basis of sale deeds the plaintiffs acquired the title of suit properties and they are in absolute possession and enjoyment. They clearly admitted that, the plaintiffs are the owners and in possession of suit properties under the boundaries mentioned in the sale deeds. But it is denied that, the plaintiffs constructed the buildings like shopping complex in the suit properties by obtaining the

permission from TMC. Further, it is admitted that, the defendants authorities taken for widening the road under the scheme of state highway at the instance of defendant No.5 and 6. It is denied that, they have widening the road and creating the new road. It is stated the plaintiffs filed suit on false grounds without any cause of action. It is stated the suit of the plaintiff itself is not maintainable and therefore sought to dismiss the suit.

12. The trial court after hearing both sides on the IA No. II and III, rejected the IA's as per order dated 24.01.2025. Being the order of rejection of the IA's by the trial court, the plaintiffs/ appellants before this court by setting out some grounds in filing appeal. Along with appeal memo IA No.I filed U/se. 94 of C.P.C seeking the temporary order of injunction in the form of prohibitory order against the respondents. The brief facts of the IA and detailed objection filed by the respondents narrated above.

13. Though it is not required much arguments while deciding the the present IA is concerned but respective counsels appearing for the appellants and respondent No.5 argued vehemently in detail not only the IA but on main appeal. Respective counsels also relied the Judgments of Hon'ble Apex court and Hon'ble High courts. The arguments of the respective counsels is almost reiterating the facts of the case, appeal memo, order on IA's, objections etc.,. The judgments also cited by the both parties on the main appeal. Therefore it is not so much important to mentioned the arguments of both side at this stage as the court not heard on main appeal.

14. As stated, the notice to the respondent No. 1 to 4 and 6 not yet issued and at initial stage, the respondent No.5 appeared su-moto through his counsel. At this stage the court not go through the orders of the trial court and can not come to be conclusion that, the order passed by the trial court on IA No.II and III is erroneous, perverse, capricious and illegal, thereby impugned order is not sustainable in law.

While considering the present IA the court has to look whether the appellants are causing injustice and hardship if such order as sought in IA No. I is not granted.

15. Looking to the trial court record and admission in the written statement of defendants, the prima facie reveals that, the plaintiffs are the owners and in possession of suit properties, which were purchased by the appellants under registered sale deeds. It further reveals that, on the basis of sale deeds, the name of plaintiffs came to be entered in the T.M.C records as owner and possessor. The sale deeds, reveals that, towards eastern side of suit properties there is road in existence. Admittedly, the measurement of said road is not shown in the sale deeds and there is no any such documents produced by any of the parties to show the exact width of the road. As per the sale deeds, the property of plaintiffs is existence up to the edge of said road. Meaning thereby by attaching the Rabkavi-Mahalingapur road, the suit properties are in existence. The certified copy of map issued

by the respondent No.5 produced by the plaintiffs also reveals that, the suit properties are abutting to the Mahalingapur-Rabkavi road. The defendants denied the existence of shops and buildings in the suit properties in the written statements but in the objections to present IA it is stated the plaintiffs constructed buildings by encroaching 25 feet road. Further the photos produced herein by the plaintiffs reveals that, there is buildings in the suit properties and business is running in the name of Cakewala Bakery and sweets, Raghavendra Bakery corner and Hotel Malisa Mangalya. It is not the case of the defendants that, these building were constructed without the permission of the T.M.C authorities illegally and highhandedly. Further it is not the case of the defendants that, the plaintiffs encroached the public property and constructed the buildings. On perusal of entire written statements, no such defence taken by the defendants that, these plaintiffs encroached the property of TMC and constructed the buildings. The written statement

and map filed along with written statement are corroborates with the claim of the plaintiffs. Though these are all the mater of trial but the prima facie material itself shows in favour of plaintiffs case but not the defence of defendants. No single documents filed by the defendants to show the road is 90 feet width nor taken such contention in the written statement.

16. For the first time in the objection to IA No.I herein the appeal, the defendants set out some new defence and stated that, the plaintiffs alleged that, the plaintiffs encroached the 25 feet property of T.M.C and constructed the buildings. If at all the plaintiffs encroached the public property, the T.M.C authorities having power under the Municipality Act, to remove the structures made illegally by using notice to such persons. Herein, there is no any material to show that, they have issued notice to the plaintiffs before proceedings the widening the road. In the objections it is stated that, the intended demolition is lawful one and within the portion of

public road illegally encroached by the appellants and hence same is not high handed and same within the authority of law. The respondent No.5 has taken all the procedural safeguards before intended demolition action and fully protected the rights of the property owners/appellants. On the other hand the respondents further stated the respondent No.5 T.M.C Mahalingapur applied for the survey of the measurement of said public road and all the properties situated towards Eastern and Western side of said public road on 01.08.2024 to Assistant Director of Land Record Mudhol & City Surveyor Mahalingapur. The City Surveyor Mahalingapur conducted the survey of all the properties situated towards Eastern side of said public road and accordingly, issued survey map on 06.12.2024. But due to the pressure tactics used by the plaintiffs/appellants, the City Surveyor Mahalingapur could not conduct the measurement and survey of properties of plaintiffs till this date. So, these are sufficient that, without conducting the survey the defendants

came to conclusion that, the plaintiffs encroached the 25 feet of public road and constructed the buildings. The defence of the defendants itself contradictory and not supported with material documentary evidence.

18. It is further pertinent to note that, in suit for injunction restraining the defendant from interference with peaceful possession and enjoyment, the person in possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of property may retake possession if he can do so peacefully and without use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law, he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of the person in peaceful and settled possession by injunction even a rightful owner from using

force or taking law in his own hands and also by restoring him in possession even from the rightful owner, if the latter has dispossessed the prior possessor by use of force. In absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presume the possession to go with the title unless rebutted. The owner of the any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character or recurring, intermittent, stray or casual in nature or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser just entered into would not be called as one acquiesced to the true owner.

19. Herein learned counsel for the appellants relied one ruling of Hon'ble Apex court in WP No.1294/2020 in the case of **In Re Manoj Tibrewai Akash**, wherein the Hon'ble

Supreme court has issued certain guidelines which are as under ;

25. The following position emerges from the narration of facts:

i) The state of Uttar Pradesh has produced no document to establish that, the original width of the state High way which was notified as NH 730, a national highway.

ii) No material has been produced by the state of Uttar Pradesh to indicate whether any enquiry or demarcation was carried to earmark the encroachments.

Iii) There is no material to indicate that, the land had been acquired before the work of demolition was carried out beyond a statement on affidavit that, there was encroachments

iv) The state has failed to disclose;

a). The precise extent of the encroachment

b). The width of the existing road

c). The width of the notified highway

d). The extent of the property of the petitioner

which actually fell within the notified width and

e). Any justification for why demolition was required to be carried out beyond even the area of alleged encroachment as the report which has been submitted by the NHRC would indicate that the demolition was far in excess of the alleged encroachment which was to the extent of 3.70 meters.

26. The demolition was preceded only by a munadi.

There was no written notice and no discloses of the basis of demarcation or the extent of the demolition to the occupiers. Even in respect of the area allegedly encroached no due process was followed and a written notice was not issued.

27. From the above facts that have emerged based on very discloses made by the state of Uttar Pradesh, it is clear that, the demolition was high handed and without the authority of law.

20. Herein the case also, no such any guidelines followed by the respondents. Learned counsel for the appellants while arguments clearly stated that, the plaintiffs are ready to survey of the property and if any encroachment of public property found, the appellants voluntarily removing. So, considering the arguments of the learned counsel and the law lay down by the Hon'ble Supreme court, the respondents are having power to remove of encroachment by disclosing all details and issuing the notice to the appellants in accordance with law, for which the court also no power to grant injunction in such cases. Without following due process of law, the defendants have no authority to demolish the buildings constructed in the area of property purchased under the sale deeds by the plaintiffs. So, herein taking the

order of trial court on IA No.II and III there is ever possibilities to demolish the buildings constructed in the suit properties. If the respondents are not restrained as sought in IA No.I then the very purpose of filing of this appeal will be defeated and it leads multiplicity of proceedings. If the prohibitory order of injunction issued against the respondents until disposal of this appeal no loss or injury would be caused to Respondents. Since the money invested by the government for the project widening the road is kept for that purpose only and it can not used for other purposes. Therefore without much discussion, I come to conclusion that, the appellants made out sufficient grounds to grant order as sought in IA No.I, on the other hand the respondents failed to establish prima facie material of encroachment property, following due process of law etc., accordingly, the **point No. 1 answered in the Affirmative.**

21. Point No.2: For the forgoing reasons and in view of answering the point No. 1 in the Affirmative I proceed to pass the following :

ORDER

The IA No. I filed by the appellants U/sec.94 R/w section 151 of CPC is hereby allowed.

The respondents are hereby prohibited an order of temporary injunction for creating new road in the suit properties without following due process of law till disposal of the present appeal.

No orders as to costs.

(Dictated to the Stenographer, directly on the computer typed by her and after corrections, pronounced by me in the open court on this day of 31st day of January 2025).

(Sri. Ashappa)
Senior Civil Judge & JMFC,
Banahatti.