

KABG040019132022



**IN THE COURT OF THE II ADDL. CIVIL JUDGE
& JMFC, AT: BELAGAVI**

Present: Sri. Nagaraj Barki. B.A., LL.B.,
C/c III Addl. Civil Judge & JMFC.,
Belagavi.

Dated: This, the 10th day of March 2023
ORIGINAL SUIT NO.1155/2022

1. Smt. Anita. Shivputra. Halawai,
Age: 48 Years, Occ: Pharmacist,
R/o. Plot No:399, CTS No.8838
Sector No.03, ShivBasava Nagar,
Belagavi-590 010 and another

(By A.K.Athaani, Adv.)

.... Plaintiffs

Vs.

1. The Corporation City of Belagavi
Represented through its Commissioner & office at
Corporation Building, Opposite S.P.Bungalow,
Old PB Road, Belagavi-590 016.

(Deft by learned ADGP)

.... Defendant

Parties to I.A.No.II

Applicant/Plaintiffs :

Smt. Anita. Shivputra. Halawai and another

Vs.

Opponent/Defendant:

The Corporation City of Belagavi

ORDERS ON I.A.No.II FILED BY THE PLAINTIFF
U/O XXXIX RULE 1 & 2 R/w. SECTION 151 OF C.P.C

This is an application filed by the plaintiffs with a prayer to grant of temporary injunction to restraining defendants, their servants, agents, or anybody acting on their behalf from interfering in the completion of internal finishing work in the apartment building of the suit property.

2. In support of affidavit to the application wherein she has stated that the competent authority after due verification of the documents of title, possession & all required conditions for the grant of building license for construction of building has been sanctioned by an online procedure and accordingly as per the building license, the plaintiffs have completed construction by leaving proper set back of 1 meter towards left side and 1.5 meters towards rights side, 1.5 meters towards back side and 2 meters on the front side, maintaining proper FAR and terrace pent house. Having completed the construction,

the intending buyers are approaching the plaintiffs, the defendants knowing full well that there are no violations of building permissions, FAR, set back, etc, under misconception at the instant of neighbor is harassing and not allowing to complete the internal finishing work in the suit property, therefore, the plaintiffs are constrained to file this suit. The plaintiffs have got prima facie case and balance of convenience leans in favour of plaintiffs. If adinterim injunction granted, no prejudice or loss caused to other side. Hence, prayed to allow the application.

3. The defendant has resisted the said applications by filing objection to I.A. No.II, wherein he has denied the averments of the plaint and he is contending that the plaintiffs have constructed the multistoried ground and four floors R.C.C. Commercial Building in Plot No.3, CTS No.8838, Sector No.3, Shivabasav Nagar, Belagavi by violating the building permission, terms and conditions, building bye laws, zonal rules and regulations as per their convenience. Later on in view of complaints made by the neighbors i.e. residents of that locality Mr. P. Shiva and

others, this defendant through officials made inspection of the said commercial building constructed in the residential area on 27.09.2022 and found that the plaintiffs have made construction of FAR and Terrace Floor, Paint House excessively against the approved building plan and permission. Thereby the defendant has got issued first notice to the plaintiffs on 27.09.2022 calling upon the plaintiffs to furnish the relevant documents with respect to construction made in the aforesaid property within 7 days, failing which further necessary action will be initiated against the plaintiffs in accordance with provisions of section 321 of K.M.C. Act 1976. The said notice was duly served upon the plaintiffs. But, however inspite of service the plaintiffs have neither complied with the said show cause notice nor made any efforts to approach the defendant with clarification. Thereafter due to non-compliance of said notice dated 27.09.2022, the defendant has issued second notice to the plaintiffs on 11.10.2022 calling upon the plaintiffs to furnish the relevant documents with respect to construction made in the

aforesaid property for having violated a FAR and Terrace Floor, Paint House excessively against the approved building plan and permission by violating the building permission, terms and conditions, building bye laws, zonal rules and regulations as per their convenience and also directed the plaintiffs to stop the further construction immediately within 3 days from the receipt of this notice, failing which further necessary action will be initiated against the plaintiffs in accordance with provisions of section 321 of K.M.C.Act 1976.

4. Thereafter due to noncompliance of aforesaid notices dated 27.09.2022 and 11.10.2022 by the plaintiffs, the defendant Corporation have initiated proceedings under section 321 (1) of K.M.C.Act 1976 by issuing temporary order and show cause notice dated 18.10.2022 directing the plaintiffs to demolish the excess illegal and unauthorized construction made in the said property as per details given in the said order and further directed the plaintiffs to appear either personally or through duly instructed Counsel along with documents and clarification

within 7 days from the receipt of said notice, otherwise final demolition order will be passed as per first hearing on 22.11.2022 at 4.00 p.m. in the office of defendant. The said notice was duly served upon the plaintiffs on 22.10.2022 itself. Hence, prays to reject the application.

5. On perusal of the pleadings, documents, and applications, the points that arise for my consideration are as follows;

POINTS

- I) Whether the plaintiffs have made out prima-facie case?
- ii) Whether the balance of convenience lies in favour of the plaintiffs?
- iii) Whether irreparable loss and hardship would be caused to the plaintiffs if a temporary injunction is not granted?
- iv) What order?

6. Heard the argument on behalf of the plaintiffs and learned ADGP for defendant. Perused the material placed on record carefully.

7. To the above points have been answered as follows:

Point No.1: Partly In the Affirmative

Point No.2: Partly In the Affirmative,

Point No.3: Partly In the Affirmative,

Point No.4: As per the final order,

for the following:

REASONS

8. Point No.1 to 3:-These points are taken up together for discussion to avoid the repetition as they require same set of pleadings and documents.

The plaintiffs have filed the present suit against the defendant for the relief of permanent injunction to restrain the defendant from interfering in the peaceful possession, enjoyment, wahivat and completion of remaining small parts of internal construction in the suit property.

9. In order to show prima facie, the plaintiffs have produced the documents of CTC extract, building permission license issued by the Corporation Belagavi,

building plan along with photos in respect of suit property. As per documents of the plaintiffs it is specifically mentioned holder of the suit property in the CTS extract as Anita Shivaputra Halawai who is plaintiff No.1. Apart from that measurement is also clearly mentioned as 227⁴/₉ square yards. No doubt, the defendant has permitted to the plaintiffs for construction the building from ground floor to 4th floor within the property area 222.96 sq.mtr, after obtaining no objection certificates during the period from 23.11.2020 to 22.11.2022 in the property No.8838. That being the fact, the plaintiffs have asserted that the defendant authority has granted the building license for construction of the building after due verification of the documents and required conditions. Further, the plaintiffs have completed construction by leaving set back area without any violations of the building permission.

10. Per contra, the defendant authority has produced the documents relating to notice dated 19.01.2021, 27.09.2022, 18.10.2022 and order sheet in enquiry conducted by the defendant authority for unauthorized

construction of the plaintiffs in the suit property. Only contention of the defendant authority is that the plaintiffs have violating the terms and conditions of building permission granted by the defendant as per complaint made by the neighbors i.e., P. Shiva and others. It is relevant to note that, before taking the contention of the defendant, the plaintiffs have clearly observed in 5th para of the plaint that, when the building is comepleted as per building license, Mr. P. Shiva for extraneous reasons apperas to have made false complaint to the town planning officer. Therefore, the defendant has taken action against the plaintiffs Under Provisions of Section 321 of KMC Act, 1976. It is clear that the contention of defendant is only that the plaintiffs have violated the terms and conditions of building permission after complaint of local people.

11. It is very interesting that, even though the defendant authority has granted building license to the plaintiffs after verify the documents, the defendant authority has initiated proceedings U/Section 321 of KMC

Act after complaint of the local people. However, the learned counsel for the plaintiffs has argued that, the defendant authority has not inspected the suit property in physically without any spot panchanama, only instigation of P. Shiva, who is local leader of locality in the suit property, the defendant authority has initiated proceedings against the plaintiffs without following procedures and due enquiry in local. Per contra, the learned ADPG has argued that after due enquiry by the defendant authority, the defendant has initiated the proceedings U/Section 321 of KMC Act. On perusal of the records it appears that, the defendant authority has issued notice to the plaintiffs, but at this juncture there is no documents to show local inspection and drew spot mahajar in the suit property. If the defendant authority has made local inspection by the official, then they will definitely produced the said documents before the Court to convince, for plaintiffs have made unauthorized construction and violated the terms and conditions of the

building permission, i.e., spot mahajar and local inspection report of the official.

12. Admittedly, the learned counsel for plaintiffs and learned ADGP have been submitting that the proceedings U/Section 321 of KMC Act is not completed and the same is pending. It is relevant to note that, the defendant himself has admitted that after complaint of the local person i.e., P. Shiva, the defendant authority has inspected the suit property. It is material to note that, after granting the permission for construction in the suit property, the defendant authority has not inspected during the construction of the plaintiffs over the suit property. No doubt, the proceedings U/Section 321(1) of KMC Act 1976 is initiated against the plaintiffs. It is important to note that without due enquiry on unauthorized construction in the suit property, the plaintiffs will be put to untold hardship if any demolished the building by the defendant authority. It is not disputed that if the plaintiffs have made out any unauthorized construction in the suit property, the defendant authority got power to remove illegal

construction after verify and confirm the unauthorized construction. However, at this juncture there is no materials available on the behalf of the defendant to show due enquiry on unauthorized construction of the plaintiffs. On considering all these facts and circumstances, the plaintiffs have shown prima-facie and balance of convenience infavour of the plaintiffs. Considering apprehension of the plaintiffs it is suitable to order of status-quo in the suit property until due enquiry/proceedings in respect of suit property for unauthorized construction of the plaintiffs. Accordingly, this Court answered point No.1 to 3 partly in the **Affirmative.**

13. POINT NO.4:- In view of above discussion, I proceed to pass the following;

O R D E R

**IA No. II filed by the plaintiffs U/O 39
Rule 1 and 2 R/w Section 151 of CPC is
hereby partly allowed.**

**In the result of above observation,
it is directed to maintain status-quo till**

due enquiry/proceedings by the defendant authority in respect of unauthorized construction of the plaintiffs in the suit property or till disposal of the suit whichever is earlier.

No order as to cost.

(Directly dictated to the Stenographer on the computer, typed by her, corrected by me, and then pronounced in the open Court on this 10th day of March 2023)

**(Nagaraj Barki)
III Addl. Civil Judge & JMFC,
Belagavi.**