

KAMS010052902025



**IN THE COURT OF THE III ADDL.DISTRICT &
SESSIONS JUDGE: MYSURU.**

Dated this the 28th day of January 2026

:PRESENT:

Sri **Gururaj Somakkalavar**, M.A.,LL.B.,
III ADDL.DISTRICT & SESSIONS JUDGE:
MYSURU.

M.A./43/2025

Appellant: Smt.Arathi Kiran

V/s

Respondents: The Mysuru City Corporation &
another

I.A

applicant Smt.N.K.Nagalakshmi
W/o Late H.S.Shankaralingegowda,
Aged about 72 years,
R/at D.No.85, Sahukar Chennaiah
Road, 4th Stage, T.K Layout,
Kuvempunagar, Mysuru-570009.

Proposed respondents No.3.

V/s

Respondents: The Mysuru City Corporation &
another

**ORDER ON APPLICATION FILED U/O.1 RULE 10(2) OF
CPC.**

The applicant has filed the present application to implead her as respondents No.3.

2. It is contended by the applicant that, she is applicant/proposed respondent No.3 in the above case. The appellant has filed the above appeal against the order passed by the respondent No.2. On the Northern side of the schedule property belongs to her which is door No.21, New No.CH-26 which is absolute property of her, as the appellant has intended to put up the construction by abutting the Northern side of the schedule property which belongs to her as per the schedule mentioned in the notice caused by the Respondent No.2. Even though at the time of construction she stated that, as per the plan and license obtain by the appellant has to leave the set back according to norms of the Corporation Bylaws and the first instance the appellant has admitted the said facts, as she is residing alone and taking advantage of

the same, the appellant has intended to put up the construction in her absence in the schedule property on the Northern side. The appellant erecting the staircase by demolishing her property compound wall on Southern side of the property and intended to erect molding abutting to her property. She has filed the complaint to respondent No.2 including respondent No.1. The respondent No.1 & 2 inspected the spot and informed to remove construction by the appellant. Since, it is not in accordance with sanctioned plan and license. After that, the respondent has caused notice on the basis of the complaint by her.

Further contended that, in turn the appellant has filed suit OS No.368/2025 against respondent No.1 & 2. In which she has filed application to implead her. Respondent No.2 initiated action as per the provisions of the Act. The appellant without complaining the direction of respondent No.1 & 2 and without leaving the set back and putting up the construction the appellant approached the court. She is the owner of the property of adjoining property of the appellant. It is very much necessary to implead her as proposed respondent No.3 in the present appeal for proper adjudication.

3. On the other hand, the appellant has filed her objections and denied the contentions of the application. It is contended that, the applicant has suppressed the facts she filed the frivolous application in this appeal. The Appellant's mother Smt.Javalakshmamma is the original owner of the property situated towards Northern side of the suit schedule property i.e., property bearing No.21. The above said Smt.Jayalakhmamma and her husband Kambaiah residing in the said house. The said Smt. Jayalakshmamma have 3 daughters i.e., the applicant, Vedavathi and Smt. Bhagyalakshmi. During the life time of applicant's parents the applicant fraudulently obtained Gift Deed from her mother and in that Gift mentioned her Deed Smt.Jayalakshmamma as husband Late Kambaiah, but he is alive at that time. The applicant has changed the Khatha in her name. The applicant's mother and father are in possession of the said property. After the death of her mother, the applicant was tried to disposes her father from the said house. The applicant's father Kambaiah was filed a suit for permanent injunction against the applicant before II Addl. I Civil juddge (Jr.Dn) at Mysuru in O.S.No.355/1996, the said suit was decreed in favour of applicant's father Kambaiah. The

applicant disclosed her mother has gifted the said house property in her name. Thereafter, the applicant's sisters Smt.Vedavathi and Smt.Bhagyalakshmi have filed a suit against the applicant and their father Kambaiah for partition before the II Addl. Civil judge (Sr.Dn) at Mysuru in O.S.No.182/1996. In the above said suit, the Court has observed that, the Gift Deed executed by Smt.Jayalakshmmamma is not in accordance with law. Further observed the applicant's father Kambaiah and his 2nd daughter Smt.Vedavathi are residing in the said house. The Court has decreed the said suit declaring that the applicant, her two sisters and her father are entitled for 1/4th share each over the property bearing No.21 Northern side of the suit schedule property.

Further contended that, the applicant preferred an appeal against the above said judgment and decree before the Prl. District and Sessions Judge, Mysuru in R.A.No.81/2010 the said appeal was dismissed. The applicant filed RSA. No.2488/2011 before the Hon'ble High Court of Karnataka the said RSA was also dismissed. The applicant's sister have filed FDP No.56/2016 before II Addl. Civil Judge (Sr.Dn), Mysuru, the said FDP is pending for division of the property.

Hence, the applicant is not the absolute owner of the Northern side of the suit schedule property. The applicant sister Smt.Vedavathi her family members are residing in the property bearing No.21. The applicant is not in physical possession of the property bearing No.21. Hence, the applicant is not necessary parties to the appeal. Hence, prays to dismiss the application with exemplary cost.

4. Having heard the arguments, the points that arise for my consideration is:

(1) Whether the applicant has made out justifiable grounds to allow the application under Order 1 Rule 10(2) of CPC?

(2) What order?

5. My findings to the aforesaid points is:

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

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

REASONS

POINT No.1:

6. The present appeal is preferred by the appellant challenging the provisional order dated

16.06.2025 by the respondent. Where the respondents have passed order and directed to remove the unauthorized construction constructed in violation of sanctioned plan and license.

7. The order passed by the respondent is under scrutiny in this present appeal. When the matter is for pending for adjudication, the applicant by name N.K.Nagalakshmi files the application under Order 1 Rule 10(2) R/w Sec.151 of C.P.C to implead her as respondent No.3. It is mainly contended by the applicant is that, the property at Northern side of schedule property belongs to her i.e., D.No.121, New CH-26, she is the absolute owner of the property. The appellant has intended to put up construction abutting the Northern side of the schedule property. She has stated that, as per the plan and license obtained by the appellant she has to leave set back. She is residing alone, taking advantage of the same the appellant intended to put up construction on the Northern side. The appellant erecting the staircase by demolishing her property compound wall on Southern side of the property and intended to erect molding abutting to her property. She has filed the complaint to respondent No.2 including respondent No.1. The

respondent No.1 & 2 inspected the spot and informed to remove construction by the appellant. Since, it is not in accordance with sanctioned plan and license. After that, the respondent has caused notice on the basis of the complaint by her. In turn the appellant has filed suit OS No.368/2025 against respondent No.1 & 2. In which she has filed application to implead her. Respondent No.2 initiated action as per the provisions of the Act. The appellant without complaining the direction of respondent No.1 & 2 and without leaving the set back and putting up the construction the appellant approached the court. She is the owner of the property of adjoining property of the appellant. It is very much necessary to implead her as proposed respondent No.3 in the present appeal for proper adjudication.

8. On the contrary the appellant has filed detailed objection countering the contentions in the application. Appellant has denied all the contentions raised by the applicant. It is contended that, filing of the complaint by the applicant is not within the knowledge of the appellant. The respondent No.2 issued notice to appellant to stop construction after appellant filing the OS

No.326/2025 against respondent No.1 & 2. It is admitted that, the application filed by the applicant in the suit is pending. The appellant is not seeking any relief against the applicant. The construction made by the appellant will not affect the rights of the applicant or the public. If, the application is allowed applicant will give unnecessary trouble for construction. The appellant has also contended about other proceedings.

9. After going through the rival contention of the parties it is relevant to note that, the appellant herein has questioned the provisional order dated 16.06.2025, wherein the respondent is directed to the appellant to remove alleged unauthorized construction, constructed in violation of sanctioned plan and license. The said matter is under scrutiny before this court. The applicant is filed application to implead her in the present appeal as she is adjoining owner and her right is affected due to construction by the appellant. It is to be noted here that, the appellant is putting up construction. This said fact is not in dispute. It is also not in dispute that, the propose respondent No.3/applicant, owner of the adjoining property. This is also fact that, the respondent has

initiated proceedings against appellant. The said proceedings is under scrutiny. Though, there is contest between the appellant and respondent herein in respect of the subject matter. Now, it is under scrutiny whether the construction by the appellant is proper and in accordance with provisions. But, since the question involved with regard to the construction of the building. The adjoining owner is necessary party to the proceedings as the applicant may substantiate the fact regarding implications of the construction and if any right being violated same has to be adjudicated. It is also to be noted here that, as per the say of the applicant she has lodge complaint before the authority about the construction by the appellant. On her complaint the respondent has initiated proceedings. It is also the fact that, the legality and correctness of the order by the respondent is to be analyzed. But, the say of the adjoining owner of the applicant is also to be heard. Further, she is the complaint, upon which the respondent has initiated the proceedings. Under given facts and circumstance of the case, the applicant is proper and necessary party to the proceedings. In this regard it is worth the rely upon the observation of Hon'ble

High Court of Karnataka in **Shivaprasad Navada V/s Leonard W.P No.18150/2018 judgment dated 30.11.2021**. The Hon'ble High Court of Karnataka have discussed about the impleading of the adjoining owner. The Hon'ble High Court of Karnataka has observed as under:

4. The issue with regard to whether a complainant is entitled to be a party to the proceedings instituted pursuant to a complaint registered by the complainant albeit the proceedings being between the owner of the property and the BBMP need not detain this Court for long or delve deeper into the matter, as judgments of the Apex Court, the Division Bench and the Co-ordinate benches of this Court in plethora of cases have considered the issue and ordered that the complainant at whose instance the entire proceedings have emanated against an owner of the property is entitled to be a party to the proceedings before the Tribunal.

*5. The Division Bench in the case of **SHANTESH GUREDDY AND ANOTHER VS. COMMISSIONER BRUHAT BANGALORE MAHANAGAR PALIKE AND OTHERS** has held as follows:*

"3. The litigation has a chequered history. Adjacent owners residing in Cunningham Cross Road, Bengaluru, are fighting to establish their respective rights concerning a construction put up in premises bearing No.40, Cunningham Cross Road.

4. It is an admitted position that the residents of Cunningham Cross Road have formed a

Forum known as 'Citizens Forum for Safe Environment,' (hereinafter referred to as the Forum, for short) of which they are the members.

5. The owner of the premises bearing No.40, Cunningham Cross Road, allegedly made a construction in violation of the sanctioned building plan.

6. The Forum and some of its members filed a complaint before the Bruhat Bengaluru Mahanagara Palike.

7. Our understanding of the Forum is that it is nothing but an assured name by a group of persons, who have assembled themselves under one umbrella.

8. However, the Bruhat Bengaluru Mahanagara Palike issued a notice under Section 321(1) of the Karnataka Municipal Corporations Act, 1976, asking responsible for the violation, to answer the person Ultimately, on September 17, 2014, an 1 ILR 2017 KAR 15836 order of demolition of the unauthorized structure was passed.

9. The person responsible for the alleged unauthorized construction preferred an appeal and obtained an order of status quo.

10. An application is filed by the Forum and some of its members seeking for their additions as parties in the appeal. The Tribunal rejected their application, but the Hon'ble Single Judge allowed the application.

11. Mr.D.L.N.Rao and Mr.Ananth Mandagi, learned senior advocates appearing for the appellants, strenuously argues that the application filed by the Forum was not maintainable as it is not a body corporate. It is submitted that an unregistered body cannot maintain a writ petition.

12. Secondly, it is submitted, relying upon a decision of the Supreme Court of India, in the case of RAMESH HIRACHAND KUNDANMAL – versus- MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS reported in (1992) 2 Supreme Court Cases 524 that complainants are not necessary and proper parties in such a proceeding.

13. Mr.D.L.N.Rao has cited a decision of the Delhi High Court in the case of HARDAYAL SINGH MEHTA AND ANOTHER –versus- MUNICIPAL CORPORATION, DELHI AND OTHERS reported in AIR 1990 DELHI 170 to contend that the Tribunal has no power to add anyone except the Corporation.

14. We first deal with the judgment in Hardayal Singh Mehta (supra). In the said case, the Delhi High Court was dealing with the provisions of the Delhi Municipal Corporations Act, and held that the Tribunal had no power to add anyone except the Corporation.

15. In the Karnataka Appellate Tribunal Regulations, 1979, Regulation 40 (a) expressly provides for the power of the Tribunal to add any party at any stage of the proceeding. Thus, the judgment in the case of

Hardayal Singh Mehta has no application to the facts of this case.

16. Now, let us deal with the decision in the case of Ramesh Hirachand Kundanmal (supra). In a suit, the issue was whether the complainant was a 'necessary or a proper party' to be joined as the defendant. The Supreme Court of India recorded that a party could not be added, unless it has been proved that his presence was necessary for the effectual and complete adjudication of the dispute.

17. The judgment in the case of Ramesh Hirachand Kundanmal is also distinguishable, as the complainants who sought to add them as parties did not raise any objection as to the two chattels on the terrace stated to have been erected by the owner of the property. It was established on facts that the chattels were movable and meant for storing implements of the mechanics.

18. We are of the opinion that the power to add a party to a proceeding is not of initial jurisdiction, but of a discretionary nature.

19. We feel that some of the residents of the locality have pointed out that another resident of the same locality has constructed a building in deviation of the sanctioned building plan. The municipal authorities have passed an order of demolition. Against it, an appeal was filed by the residents and there is an order of status quo.

20. There is no attempt on the part of the authorities of the Mahanagara Palike to get that order vacated and get the alleged unauthorized construction demolished.

21. Under the apprehension that the matter may not be pursued before the Tribunal properly, some of the complainants have come forward seeking for their addition as parties.

22. The Hon'ble Single Judge, in exercise of his sound discretion, felt that they are proper parties. We, also, feel that no prejudice will be caused to the appellants if those persons are added as parties before the Tribunal. On the contrary, better justice is always done if a lis is decided upon a contested hearing.

23. We are, therefore, not inclined to interfere with the discretion exercised by the Hon'ble Single Judge directing addition of parties."

A little earlier to the judgment in the case of **SHANTESH GUREDDI** (supra), the Division Bench in the case of **M.A.MOHAMMED AMANULLAH V. SATYA ACHAYYA** has held as follows:

"3. Appellant is putting up construction on property bearing No.4, Old No.7, 2nd Cross, Nandi Durga Road Extension, Bangalore. On the complaint of respondent No.1 and others the Bangalore Bruhuth Mahanagara Palike got issued notice to the appellant under Section 321(1) of the Karnataka Municipal Corporation Act, 1976. Aggrieved by the same appellant has filed an appeal before the Karnataka Appellate

Tribunal in Appeal No.767/2013, which is pending decision. In the appeal the appellant has prayed for an order of stay of demolition. Therefore, respondent No.1, who was instrumental for initiation of the action by the BBMP filed an application to come on record as additional respondent to support her case. The application filed by the respondent No.1 for impleading had been rejected by the Tribunal. Aggrieved by the same she filed writ petition. The learned Single Judge after hearing the parties allowed the writ petition on the premise that respondent No.1 is a necessary party and she is also required to be heard in the matter by the Tribunal. In the circumstances, the present appeal is filed by the appellant.

4. Having heard the learned counsel for the appellant, we do not see any merit in this appeal because admittedly the respondent No.1 was also one of the Complainants' before the BBMP complaining against the appellant herein for constructing the building in violation of the sanctioned plan. Therefore, BBMP has passed an order under Section 321 (1) (2) & (3) of the KMC Act on the complaint of respondent No.1 and others. It cannot be held that respondent No.1 is not a necessary party before the KAT, even after the application is allowed by the learned Single Judge allowing respondent No.1 to come on record before the KAT. If really the appellant is constructing the building in accordance with sanctioned plan, mere giving an opportunity to respondent No.1 to redress her grievance, this court cannot interfere with the same."

The judgment of the Division Bench in the case of **SHANTESH GUREDDY** (supra) was taken in appeal before the Apex Court in SLP No.24083-24087/2017. The Apex Court by its order dated 05.09.2019 disposed the SLP by the following order:

"The present Special Leave Petitions have been filed to challenge the Order dated 14.03.2017 passed by the High Court, whereby the Respondents 3 to 7 have been allowed to be impleaded in Appeal No. 863/2014 filed by the Petitioner before the Karnataka Appellate Tribunal at Bangalore.

The Karnataka Appellate Tribunal had rejected their application for impleadment vide order dated 26.06.2015, which was set aside by the learned Single Judge of the High Court, on the ground, that Respondents 3 to 7 are not total strangers, but members of the Citizens Forum for Safe Environment who had filed the complaint before the Municipal Corporation regarding the unauthorised construction on the Terrace Floor, and additional floor above the Terrace Floor for commercial purposes. The Single Judge held that Respondents 3 to 7 are necessary and proper parties to the proceedings. The Division Bench dismissed the Appeal filed by the petitioner herein. We have heard the counsel for the parties. We permit Respondents 3 to 7 to participate in the proceedings as Intervenors before the Karnataka Appellate Tribunal as they are proper parties to the proceedings.

The Division Bench dismissed the Appeal filed by the petitioner herein.

We have heard the counsel for the parties.

We permit Respondents 3 to 7 to participate in the proceedings as Intervenors before the Karnataka Appellate Tribunal as they are proper parties to the proceedings.

The Interim order granted by this Court on 01.09.2017 is vacated.

The Special Leave Petitions are disposed of accordingly.

Pending applications, if any, shall also stand disposed of. "

It is also necessary to notice that this has been the consistent judicial view of this Court that a complainant must be permitted to be a party in the proceedings before the Tribunal. It is apposite to refer to the order passed by the Co-ordinate Bench of this Court in W.P.No.11780/2014 disposed on 17.03.2014, wherein it is held as follows:

"5. In RAMESH HIRACHAND KUNDANMAL, (supra), the power of the Court to add parties in exercise of the power under Order 1 Rule 10 of CPC has been considered and the scope of the provision has been explained. In HARDAYAL SINGH MEHTA, (supra), in an appeal against the order of demolishing the construction, with regard to the addition of the parties with reference to the provisions under Ss.343 and 12

343(c) of Delhi Municipal Corporation Act, it was held that the grievance in the appeal being against the demolition order made by the Commissioner, he has to defend the order in the appeal and the person who may have furnished information or material to the Commissioner for initiating demolition could only be a witness and the Tribunal would not justify the addition of such a person as party to the appeal. It was held that only a person who has an interest in the subject matter of the appeal can be a party.

6. In the instant case, application filed before the Tribunal vide Annexure-E makes it clear that the 1st respondent being neighbour of the property, made an allegation that the petitioner encroached her site to an extent of 1½ feet north to south and 45 feet east to west and had promised that he will set right whole thing and when the petitioner did not do so, a complaint dated 17.12.2009 was filed with regard to unauthorized construction and the proceeding under S.321 of the Act was initiated and order under S.321(3) of the Act passed. The Tribunal having considered the application and the objection and the rival contentions addressed by the learned advocates, who appeared for the parties, has recorded the finding that the applicant is a necessary party to the case and thus, has allowed I.A.2.

7. Necessary party is one without whom, no order can be made effectively and a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and

final decision of the question involved in the proceeding. In the instant case, the proceeding under S.321 of the Act by the respondents 2 and 3 having been initiated on the complaint lodged on 17.12.2009 by the respondent No.1 and she also having sought her impleading in O.S.No.25161/2010 filed by the petitioner, the suit was dismissed on the ground of availability of alternative remedy under the provisions of the Act. Hence, the Tribunal is justified in exercise of its discretion allowing I.A.2 filed by the respondent No.2. No prejudice would occasion to the petitioner, on account of the presence of the respondent No.1 herein, in the appeal.

8. Neither of the decisions on which Sri.Rajeswara P.N., placed reliance have any application in view of the facts and circumstances of the case, noticed supra.

No ground is made out for exercising of the jurisdiction under Article 227 of the Constitution of India, to interfere with the impugned order. Consequently, the petition is rejected, by making it clear that the Tribunal shall decide Appeal No.38/2010 on its merit and in accordance with law and it is for the respondents 1 and 2 in the appeal, to defend the order dated 19.01.2010 questioned in the appeal."

Later, another Co-ordinate Bench in W.P.No.37915/2014 disposed on 09.09.2014 holds as follows:

"5. During last 1½ month, I have come across several writ petitions wherein orders

under Section 321 of the Act or the orders cancelling building licence were under consideration, and in most of the petitions, such orders were passed at the instance of the applications made by private individuals complaining that construction was being carried out deviating from sanctioned plan or in violation of building regulations. I have observed that the deviations and violation of the building regulations were brought to the notice of the authority/Corporation by the people in the neighbourhood/locality where the constructions were going on. Despite the deviations and the violations of building regulations are brought to the notice of the Corporation/authority, I often find, they do not act promptly/swiftly and as a result thereof, the persons making construction complete the same and then apply for regularization. If the persons, like the petitioner in the present case, are allowed to approach the authorities complaining deviation from the sanctioned plan and violation of the building regulations on time, that would definitely help the concerned authorities to either stop or to initiate appropriate action against such constructions. I am of the opinion that whenever such persons, such as the petitioner, come forward to bring to the notice of the concerned authority or the Courts, he should be allowed to intervene.

6. In this view of the matter and in the light of the observations made by this Court in *Smt. Susheela Ranganath (supra)*, I am inclined to allow this writ petition. ***It is pertinent to note***

that the respondent- Corporation did not notice irregularities/illegalities being committed or allegedly committed by respondent No.1 while constructing the building in question and it was the petitioner who brought that to the notice of the Corporation. Moreover, respondent No.1 is carrying on further construction in view of the order of stay granted by the KAT. In the circumstances, I am of the opinion that the petitioner would be proper party to the proceedings.

The impugned order is accordingly set aside. Respondent No.1 is directed to add the petitioner as party- respondent in the appeal within a period of two weeks from today. It is open to the petitioner to file application for either vacating interim order of stay or for modification of the order of stay or for expeditious hearing of the appeal. If any such application is made, I hope and trust that the Tribunal shall consider the same in proper perspective.

With these observations, the writ petition is disposed of."

In the light of the afore-quoted judgments of the Apex Court, the Division Bench and that of the Co-ordinate Benches, the order of the Tribunal is rendered unsustainable.

6. It is not in dispute that the proceedings before the Tribunal have emanated pursuant to notices issued by the BBMP under Section 321 of the KMC Act and such notices were issued against the owner of the property pursuant to a complaint registered by the petitioner. This fact not being in dispute, the Tribunal ought to

have permitted the petitioner to come on record as a party respondent, particularly, in the light of the observations made by several Co-ordinate benches of this Court (supra), that the defence of the BBMP before the Tribunal is sometimes doubtful and it is the complainant who should be heard in the matter.

10. Here, the applicant submits that, she is the complainant and upon her complaint the proceeding is initiated. To that effect the complaint dated 17.04.2025 is also placed on record. It is also the fact that, the applicant is the owner of the adjoining property. In view of the observation of the Hon'ble High Court of Karnataka, the applicant may be permitted to be impleaded. It is also to be noted here that, in view of the discussion above the applicant is to be heard. It is relevant to note that, no right of the appellant will be affected if the applicant is heard in the appeal. The correctness of the order of the respondent will be decided after hearing all the parties to the proceedings. Hence, this court is of the view that, the application filed by the applicant is to be allowed and applicant is impleaded. Hence, the present application deserves to be allowed. Accordingly, I answer **Point No.1 in the Affirmative.**

POINT NO.2:

11. In the result, I proceed to pass the following:

ORDER

The application filed by the applicant U/o.1 Rule 10(2) R/w Sec.151 of CPC is hereby **allowed**.

The applicant is hereby directed to implead applicant as respondent No.3 in the present appeal.

For Amendment.

[Dictated to the stenographer on computer, corrected by me and then pronounced in Open Court, this the **28th day of January,2026**]

(Gururaj Somakkalavar)
III Addl District & Sessions Judge,
Mysuru.