



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 13130 OF 2022 (GM-CPC)

BETWEEN:

1. CITY MUNICIPAL CORPORATION OF SHIVAMOGGA
REP BY ITS COMMISSIONER
B H ROAD
SHIVAMOGGA - 577 201

...PETITIONER

(BY SRI. GANGADHARAPPA A.V., ADVOCATE)

AND:

1. NAGARAJA
S/O. KENCHAPPA
AGED ABOUT 55 YEARS
COOLIE WORKDER
R/O WARD NO.33
OPP. ANTRARAGHATTAMMA TEMPLE
SEEGEHATTI
SHIVAMOGGA CITY - 577 202

...RESPONDENT

(BY SRI. K. ABHINAV ANAND, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO-QUASH THE IMPUGNED ORDER DTD 09.04.2021 PASSED BY THE COURT OF THE I ADDITIONAL CIVIL JUDGE AND JMFC AT SHIVAMOGGA ON I.A.NO.I IN O.S.NO.602/2020 VIDE ANNEX-E AND THE ORDER DTD 07.01.2022 PASSED BY THE COURT OF THE PRINCIPAL



SENIOR CIVIL JUDGE AND CJM AT SHIVAMOGGA IN
M.A.NO.18/2021 VIDE ANNEX-H.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING
IN B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS
UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition has been filed seeking to challenge order dated 09.04.2021 passed on I.A.No.1 filed by the respondent under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908, in O.S.No.602/2020 which was allowed by the learned I Additional Civil Judge & JMFC, Shivamogga [hereinafter referred to as the "Trial Court Order"] The order dated 09.04.2021 was challenged by the petitioner by filing an Appeal being M.A.No.18/2021. By its order dated 07.01.2022, the learned Principal Senior Civil Judge and CJM, Shivamogga, dismissed the challenge to the order dated 09.04.2021 [hereinafter Appellate Court order]. The orders dated 09.04.2021 and 07.01.2022 have been challenged before



this Court and are hereinafter referred to as the "Impugned Orders".

2. The petition has been filed by the Municipal Corporation of Shivamogga. Learned counsel for the petitioner has contended that the respondent had occupied vacant land situated near Antharagattamma Temple, Ward No.33, Seegehatti, Shivamogga City, which belonged to the petitioner/corporation and have been residing for several years along with his family. It is contended by the petitioner that the suit schedule property is situated in a river belt and it is a known flood prone area.

2.1. The learned counsel for the petitioner/corporation further submits that due to heavy rains, several houses have collapsed in the past and there is a threat to the life of the inhabitants of the area. Thus, the area was identified as a danger zone in Shivamogga and people who had erected temporary shelters to occupy Government



property have voluntarily evacuated the area themselves to save their families.

2.2. The learned counsel further submits that rehabilitation work for persons in occupation of the said area commenced a few years ago as well as the area in and around the river/water body there. However, learned counsel for the petitioner contends that the names of these persons before the Court did not appear in the list of persons who were to be rehabilitated and thus, the respondent was not allotted an alternate tenement by the petitioner.

2.3. The learned counsel for the petitioner further submits that despite these facts being urged before the learned Trial Court, the learned Trial Court has proceeded to grant an injunction against the petitioner/corporation and its authorities, agents, representatives, men and servants from causing interference to the plaintiff's possession and enjoyment of the suit schedule property. It is thus



contended that the Impugned Order has effectively curtailed the rehabilitation work.

3. Learned counsel for the respondent, on the other hand, contends that the respondent has been in possession of the property for the last several years. He submits that the respondent and his family members have been residing there and that he has constructed a house after spending amounts. He also submits that he has given several representations to the authorities to confirm his occupancy rights of the schedule property. However, since there was a threat of dispossession by the officials of the said land, the present suit was filed.

4. It is however not disputed that prior to taking any action, a show-cause notice was issued by the petitioner on September 20, 2019 and on more than one occasion, the authorities had requested the respondent to vacate the subject premises. It is also not disputed that the respondent does not own any part of the suit schedule



property and that the property is owned by the petitioner. The learned Trial Court, however, by the order dated April 9, 2021; after setting out these undisputed contentions gave a finding that the petitioner/corporation is forcibly trying to evict the respondent from the property and since he is residing over in the property for the last 25 years, the respondent has rights in the property. Thus, an order was passed restraining the petitioner from dispossessing the respondent.

5. The Appellate Court, after examining the Impugned Order has found that in an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, the Court must look at *prima-facie* case, balance of convenience and irreparable injury and when a property is in danger of being wasted, damaged or alienated, an injunction should be granted to prevent a breach of contract. It was further held that since there is a threat of dispossession, the balance of convenience lies in favour of the respondent and that the Trial Court has found that the



respondent/plaintiff has made a strong *prima-facie* case before the Trial Court and thus, the order of the Trial Court has not been interfered with, by the Appellate Court.

6. The undisputed facts that can be ascertained from the pleadings record on before the Court is that the respondent is in occupation of Government land. This land is on a river belt. The land gets inundated in the rainy season and on several occasions, evacuation work was required to be undertaken by the petitioner-corporation with a view to protect persons in occupation of property in that area. The petitioner has also averred that the major portion of the property is owned by petitioner/corporation.

7. It is averred that the respondent has been in possession of the suit schedule property for the last several years and some similarly placed occupants have also filed representations for their occupation and also have some identification documents showing their address as the property in issue. The petitioner has also contended



that in order to protect the area's inhabitants, a retaining wall was being constructed by the Shivamogga Smart City Corporation. However, since the injunction order was passed by the learned Trial Court, this construction has also come to a halt. The petitioner/corporation relies on photographs, which have been annexed along with the petition in this behalf.

8. The respondent has contended that he had made several representations before the Governmental and statutory authorities regarding his possession and request for rehabilitation. It is contended that these representations have remained unanswered. The petitioner/corporation has also contended before this Court that eligible persons for the rehabilitation have already been identified and that alternative accommodation has been offered to them and more than 95% have already taken this offer of alternative accommodation.



9. The respondent, however, instead of filing appropriate legal proceedings for non-action on his representations filed a suit for injunction seeking to restrain the owner of the property, i.e., the petitioner from dispossessing him. The learned Trial Court, after examination of these undisputed facts gave a finding that the *prima-facie* case and balance of convenience lies in favour of the respondent. Given these undisputed facts, the learned Trial Court erred in giving a finding that the *prima-facie* case and balance of convenience was in favour of the respondent. The petitioner/corporation has given adequate notice to the respondent prior to undertaking their exercise. The evacuation work and other related activities has come to a halt.

10. The Hon'ble Supreme Court in ***Premji Ratansey Shah v. Union of India***¹, has held that injunction being an equitable relief cannot be granted in favour of a person who is in unlawful possession and a trespasser cannot

¹ (1994) 5 SCC 547



seek injunction against the true owner. It is apposite to extract the relevant paragraph below:

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.

[Emphasis Supplied]

11. The Hon'ble Supreme Court in ***Mahadeo Savlaram Shelke v. Pune Municipal Corporation***², has held that where a person is in unauthorised occupation of public property, the Court ought not to grant injunction restraining the statutory or municipal authorities from removing such encroachment, as no equity lies in favour of an encroacher. It is apposite to extract the relevant paragraph below:

9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession. It is true that the

² (1995) 3 SCC 33



appellants placed reliance in their plaint on resolutions passed by the Municipality on 11-11-1972 and 29-11-1972. A reading of those resolutions would prima facie show that possession would be taken where the acquisition proceedings have become final and land acquisition proceedings would not be pursued where award has not been made as on the date of the resolutions. In this case, since the acquisition proceedings have become final, then necessarily possession has to be taken by the Corporation for the public purpose for which the acquisition was made. In that context the question arises whether the appellants can seek reliance on two resolutions. They furnish no prima facie right or title to the appellants to have perpetual injunction restraining the Corporation from taking possession of the building. The orders of eviction were passed by due process of law and had become final. Thereafter no right was created in favour of the appellants to remain in possession. **Their possession is unlawful and that therefore, they cannot seek any injunction against the rightful owner for evicting them. There is thus neither balance of convenience nor irreparable injury would be caused to the appellants.**

XXX

XXX

XXX

14. It would thus be clear that in a suit for perpetual injunction, the court should enquire on affidavit evidence and other material placed before the court to find strong prima facie case and balance of convenience in favour of granting injunction otherwise irreparable damage or damage would ensue to the plaintiff. The court should also find whether the plaintiff would adequately be compensated by damages if injunction is not granted. It is common experience that injunction normally is asked for and granted to prevent the public authorities or the respondents to proceed with execution of or implementing scheme of public utility or granted contracts for execution thereof. Public interest is, therefore, one of the material and relevant considerations in either exercising or refusing to grant ad interim injunction. While exercising the discretionary power, the court should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to



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obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the order of injunction granted in p favour of the plaintiff. Even otherwise the court while exercising its equity jurisdiction in granting injunction has also jurisdiction and power to grant adequate compensation to mitigate the damages caused to the defendant by grant of injunction restraining the defendant to proceed with the execution of the work etc., which is retrained by an order of injunction made by the court. The pecuniary award of damages is consequential to the adjudication of the dispute and the result therein is incidental to the determination of the case by the court. The pecuniary jurisdiction of the court of first instance should not impede nor be a bar to award damages beyond it pecuniary jurisdiction. In this behalf, the grant or refusal of damages is not founded upon the original cause of action but the /consequences of the adjudication by the conduct of the parties, the court gets inherent jurisdiction in doing ex debito justitiae mitigating the damage suffered by the defendant by the act of the court in granting injunction restraining the defendant from proceeding with the action complained of in the suit It is common knowledge that injunction is invariably sought for in laying the suit in a court of lowest pecuniary jurisdiction even when the claims are much larger than the pecuniary jurisdiction of the court of first instance, may be, for diverse reasons. Therefore, the pecuniary jurisdiction is not and should not stand an impediment for the court of first instance in determining damages as the part of the adjudication and pass a decree in that behalf without relegating the parties to a further suit for damages. This procedure would act as a check on abuse of the process of the court and adequately compensate the damages or injury suffered by the defendant by act of court at the behest of the plaintiff.

[Emphasis Supplied]

12. The Trial Court after finding that the respondent/plaintiff is in un-authorized occupation of the suit schedule property and that the property belongs to



the petitioner/corporation has injuncted the petitioner/corporation. Such an order is sans jurisdiction and thus, is required to be interfered with.

13. Accordingly, the writ petition is **allowed**. The order dated 09.04.2021 passed on I.A.No.1 in O.S.No.602/2020 by the learned I Additional Civil Judge & JMFC, Shivamogga and the order dated 07.01.2022 passed in M.A.No.18/2021 by the learned Principal Senior Civil Judge and CJM, Shivamogga are set aside. The respondent is however at liberty to take all appropriate remedies including in respect of his representations for allotment of alternative accommodation, albeit in accordance with law. All pending applications stand closed.

14. The rights and contentions of both parties are left open to be agitated before the appropriate forum.

Sd/-
(TARA VITASTA GANJU)
JUDGE

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List No.: 2 Sl No.: 0