

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 20TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ WRIT PETITION NO. 101748 OF 2025 (GM-CPC)

BETWEEN:

SRI. N. NISAR AHMED S/O. ABDUL JALILSAB, AGE: 46 YEARS, OCC. KALYANI FACTORY WORKER, R/O. PATANGERI, TQ. HARAPANAHALLI, NOW RESIDING AT KAMLAPURA VILLAGE, HOSPETE TALUK, DIST. VIJAYANAGARA-583201.

...PETITIONER

(BY SRI. J.S. SHETTY, ADVOCATE)

AND:

- SRI. R. D. AKBAR S/O. ISMAIL SAB, AGE: 56 YEARS, OCC. WATCH REPAIR WORKER, R/O. 4TH WARD, PATANGERI, HARAPANAHALLI, TOWN, DIST. VIJAYANAGARA-583131.
- 2. SMT. R. D. SHANU W/O. R. D. AKBAR, AGE: 56 YEARS, OCC. WATCH REPAIR WORKER, R/O. 4TH WARD, PATANGERI, HARAPANAHALLI TOWN, DIST. VIJAYANAGARA-583131.
- 3. THE CHIEF OFFICER, MUNICIPALITY, HARAPANAHALLI, DIST. VIJAYANAGARA-583131.

...RESPONDENTS

(NOTICE TO RESPONDENTS IS DISPENSED WITH)





THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO,A) ISSUE A WRIT OF CERTIORARI TO QUASH THE ORDER DATED. 17.12.2024 PASSED IN M.A. NO. 2/2024 BY THE SENIOR CIVIL JUDGE AND JMFC, AT HARAPPANAHALLI, THE COPY OF WHICH HAS BEEN PRODUCED HEREWITH AND MARKED AS ANNEXURE-A, AND ALSO THE ORDER DATED. 25.10.2023 PASSED ON I.A. NO. 1 IN O.S. NO. 97/2021 ON THE FILE OF CIVIL JUDGE AND JMFC, HARAPPANAHALLI, THE COPY OF WHICH HAS BEEN PRODUCED HEREWITH AND MARKED AS ANNEXURE-B. B) ANY OTHER WRIT OR DIRECTION WHICH THIS HONOURABLE COURT DEEMS FIT TO GRANT MAY KINDLY BE GRANTED IN FAVOUR OF THE PETITIONER BY ALLOWING THIS WRIT PETITION WITH THE COST THROUGHOUT IN THE ENDS OF JUSTICE AND EQUITY.

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

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

- Notice to respondents is dispensed with in view of the proposed order to be passed.
- 2. The petitioner is before this Court seeking for the following reliefs:
 - A) Issue a writ of certiorari to quash the order dated. 17.12.2024 passed in M.A. No. 2/2024 by the Senior Civil Judge and JMFC, at Harappanahalli, the copy of which has been produced herewith and marked as **Annexure-A**, and also the order dated. 25.10.2023 passed on I.A. No. 1 in O.S. No. 97/2021 on the file of civil judge and JMFC,



- Harappanahalli, the copy of which has been produced herewith and marked as **Annexure-B**.
- B) Any other writ or direction which this Honourable Court deems fit to grant may kindly be granted in favour of the petitioner by allowing this writ petition with the cost throughout in the ends of justice and equity.
- 3. Petitioner had filed a suit in OS No.97/2021 seeking for declaration of title and restraining the defendants therein from putting up construction in the property delimited in the map attached thereto at 'ABCD'. In the said suit an application under Rule 1 of Order XXXIX of the Code of Civil Procedure had been filed seeking for injunction restraining putting up of construction, which came to be dismissed by the Trial Court by an order dated 25.10.2023. On appeal filed in MA No.2/2024, the First Appellate Court vide order dated 17.12.2024 dismissed the appeal. It is challenging both the orders the petitioner is before this Court.



- 4. The submission of learned counsel for the petitioner is that the petitioner having sought for declaration of title, the respondents have sought to encroach upon the property of the petitioner and put up construction and as such the interim application for injunction was required to be allowed by both the Courts.
- 5. Having perused the orders passed by both the Courts, what is seen is that the respondents have also claimed title over the property and have after obtaining license putting up construction as regards which photographs have also been produced. The same would therefore establish at this stage that the construction is going on and it is not a simpliciter case for encroachment of the property of the petitioner. If the respondents are going on with any construction, knowing fully well about the pendency of the suit for declaration, such construction is at the risk of the respondents.

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I do not find any infirmity in the orders passed by 6. the Trial Court and the First Appellate Court. However, observing that any such construction shall be subject to the result of the suit, and in the event of the petitioner succeeding in the suit for declaration regards the suit schedule property, the as construction would either have to be demolished and or enure to the benefit of the petitioner/plaintiff, the petition stands dismissed.

> SD/-(SURAJ GOVINDARAJ) JUDGE

SH

CT:PA List No.: 1 SI No.: 1