IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 18TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 200043 OF 2025 (LB-RES)

BETWEEN:

SURESH
S/O RAJARAM DEVGIRI,AGED ABOUT 78 YEARS,
OCC: BUSINESS, R/O: GACCHINAKATTI COLONY,
NEAR AMBABHAVANI TEMPLE,
TQ: AND DIST: VIJAYAPURA – 586 101.

…PETITIONER

(BY SRI GANESH SUBHASHCHANDRA KALBURGI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY,
DEPARTMENT OF MUNICIPAL
ADMINISTRATION,
M.S. BUILDING, BENGALURU - 01.

2. DEPUTY COMMISSIONER,
VIJAYAPURA,
TQ: AND DIST: VIJAYAPURA – 586 101.

3. THE COMMISSIONER,
CITY MUNICIPAL CORPORATION,
GANDHI CHOWK,
VIJAYAPURA – 586 101.

4. MOHEMMAD HASAN BAGAWAN
S/O KHALIL AHAMED,

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

AGED ABOUT 40 YEARS,
OCC: BUSINESS,
R/O: HABIB NAGAR,
CIVIL HOSPITAL, BACK SIDE ROAD,
VIJAYAPURA– 586 101.

5. ABUBAKARBAGWAN
S/O KHALIL AHMED,
AGED ABOUT 37 YEARS,
OCC: BUSINESS,
R/O: HABIB NAGAR,
CIVIL HOSPITAL, BACK SIDE ROAD,
VIJAYAPURA– 586 101.

…RESPONDENTS

(BY SRI SHESHADRI JAISHANKAR, A.G.A. FOR R1 AND R2;
SRI AMARESH S. ROJA, ADVOCATE FOR R3;
SRI A.M. NAGRAL, ADVOCATE FOR R4 AND R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING ISSUE A WRIT OF MANDAMUS DIRECTING RESPONDENT NO.3 TO TAKE IMMEDIATE AND EFFECTIVE ACTION AGAINST RESPONDENT NO.4 AND 5 FOR ENCROACHING UPON THE PETITIONERS PROPERTY (CTS NO.1604 SITUATED IN WARD III VIJAYAPURA) AND THE MUNICIPAL ROAD LOCATED AT THE SOUTHERN PORTION OF CTS NO.1604 AND ETC.

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

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

(PER: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE)

Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents.

2. Writ petition is filed seeking writ of mandamus to direct respondent No.3 to take immediate and effective action against respondents 4 and 5 from encroaching upon the petitioner's property bearing CTS No.1604 situated in Ward III, Vijayapura and municipal road located at the southern portion of CTS No.1604. Second prayer is to direct respondent No.3 to consider and act upon the legal notice dated 02.01.2025 at annexure – F.

3. Learned counsel for the petitioner submits that petitioner is the owner of property bearing CTS No.1604. It is his submission that respondents No.4 and 5 are trying to encroach upon the petitioner's property by wrongly interpreting the order passed in Writ Petition No.203385/2024 disposed of on 02.12.2024.

4. The aforementioned writ petition was filed by respondents No.4 and 5 against the State of Karnataka and Commissioner of City Municipal Council, Vijayapura. Petitioner is not party to the said proceeding. In the aforementioned writ petition, it is noticed that the Court has accepted the memo filed by the Commissioner, City Municipal Council, Vijayapura wherein 2nd respondent – Commissioner undertakes to restore the possession of the petitioner with liberty to proceed against the petitioner in accordance with law under the provisions of the Karnataka Municipal Corporation Act, 1976.

5. It is stated by the learned counsel for respondents No.4 and 5 that respondents No.4 and 5 do not claim any right, title and interest over the property bearing CTS No.1604. Earlier writ petition 203385/2024 is allegedly filed in respect of CTS No.1614/1615 in Ward No.3, Jowlak Bazar, Vijayapura.

6. Since respondents No.4 and 5 are not claiming any right over the private property of the petitioner i.e. CTS No.1604 referred to above, no further order is required to be passed in the instant case as the petitioner has an alternative and efficacious remedy in case there is any attempt by

respondents No.4 and 5 to interfere with the peaceful possession and enjoyment of the CTS No.1604 referred to above. In case petitioner files any suit, same shall be decided without being influenced by any of the observations made in Writ Petition No.203385/2024 for two reasons:

(a) Petitioner is not a party to the said proceeding;

(b) CTS No.1604 is not the property involved in the said case and no order is passed on CTS No.1604 in the aforementioned case.

With these observations, writ petition is disposed of.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN/List No.: 2 Sl No.: 31