



CNR: KAHC010086372023

NC: 2026:KHC:42922
WP No. 3869 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 3869 OF 2023 (GM-CPC)

BETWEEN:

SMT. UMME SALMA
W/O MR MOHAMMAD HUSSAIN,
AGED ABOUT 37 YEARS,
RESIDING AT NO 18/5, 6TH CROSS,
REHMAD NAGAR, R T NAGAR POST,
BENGALURU - 560 032

...PETITIONER

(BY SMT. MANJULA K.S., ADVOCATE)

AND:

PARACHUTE REGIMENT TRAINING CENTRE
(INDIAN ARMY, MINISTRY OF DEFENCE,
UNION OF INDIA), J C NAGARA,
BENGALURU - 560 006
REPRESENTED BY COMMANDANT.

...RESPONDENT

(BY SRI. CHANDRACHUD A., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO-ALLOW I.A.NO.2 FILED
BY THE PETITIONER UNDER ORDER XXVI RULE 9 R/W SECTION
151 OF CPC, IN M.A.NO.82/2022 ON THE FILE OF THE XVI

Digitally signed
by
ANNAPURNA G
Location: High
Court of
Karnataka



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ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-12) AT
BENGALURU, BY SETTING ASIDE THE IMPUGNED ORDER DTD
21.01.2023 VIDE ANNEXURE-H AND ETC.

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

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated
21.01.2023 passed in M.A.No.82/2022 by the XVI
Additional City Civil and Sessions Judge (CCH-12),
Bengaluru (hereinafter referred to as the 'Appellate Court'
for short).

2. Smt. Manjula K.S., learned counsel appearing
for the petitioner submits that the petitioner had
challenged the order dated 10.11.2022 passed by the
Estate Officer, wherein it was held that the petitioner had
encroached upon the property of the respondent to an
extent of 110 square feet. It is submitted that the entire



order of the Estate Officer is based on Ex.P15, the alleged survey conducted by the Assistant Director of Land Records (for short, 'ADLR'), Bengaluru and admittedly, the said survey was conducted without issuing notice to the petitioner. Hence, the petitioner filed I.A.No.2 under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') before the Appellate Court seeking the appointment of a Court Commissioner to make local investigation to inspect, measure, identify/mark the alleged encroachment as claimed by the respondent as per Ex.P15 and submit a detailed report. However, the Appellate Court, without assigning any reasons as to whether such an application was necessary or not, rejected the same. Hence, she seeks to allow the writ petition by directing to appoint a Surveyor/ADLR as a Court Commissioner to measure the property in the presence of the petitioner.

3. *Per contra*, Sri Chandrachud. A., learned counsel appearing for the respondent submits that the



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survey conducted by the ADLR, which is produced as Ex.P15, pertains to the year 2016. He further submits that the said survey was conducted not only with respect to the petitioner's property, but also with respect to various other properties at the request of the respondent/Estate Officer. It is submitted that from 2016, no steps have been taken by the petitioner to ascertain the markings placed on her residence, which can be noticed from the photographs placed in the original file.

4. It is further submitted that a similarly placed person had knocked the doors of this Court in W.P.No.18009/2022 disposed of on 28.10.2022 seeking the appointment of a Court Commissioner, and the said prayer was rejected by this Court. Hence, the petitioner, being on the same footing, the writ petition is liable to be rejected.

5. It is also submitted that the notice at Annexure-C indicates that the notice of the survey was served on the *bajudars* i.e., the persons who are neighbours to the



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petitioner. Hence, the petitioner cannot contend that she did not have notice of the survey. Therefore, he seeks to dismiss the writ petition.

6. I have heard the arguments of the learned counsel for the petitioner, learned counsel for the respondent and meticulously perused the material available on record.

7. The material available on record indicates that the respondent initiated proceedings under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The original authority, vide order dated 10.11.2022, directed the petitioner to vacate the premises within 15 days from the date of publication of the order. The schedule to the order indicates that the petitioner had encroached upon 110 square feet of land in City Survey No.631 of Matadahalli Village, Bengaluru.

8. The petitioner herein assailed the said order before the Appellate Court in M.A.No.82/2022. In the said appeal, the petitioner/appellant filed an application under



Order XXVI Rule 9 read with Section 151 of the CPC, seeking the appointment of a Court Commissioner to conduct a local investigation to inspect, measure, identify/mark the alleged encroachments as claimed by the respondent as per Ex.P15 and to submit a report. The said application was opposed by the respondent. The Appellate Court, under the impugned order dated 21.01.2023, rejected the said application on the ground that no such application had been filed before the original authority and that there was no provision to entertain such an application.

9. It is required to be noticed that the original authority, while directing the eviction of the petitioner from the premises, solely relied upon Ex.P15, the alleged survey sketch prepared by the ADLR, Bengaluru. The copies of the notice alleged to have been served at the time of conducting the survey by the ADLR is produced as Annexure-C to the writ petition. The perusal of the said notice clearly indicates that the notice was never served



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on the petitioner. Be that as it may, the petitioner is assailing the order of eviction solely on the ground that Ex.P15-Survey Sketch was prepared without any notice to the petitioner. When things stood thus, the appellate Court ought to have allowed the application for the appointment of Court Commissioner to find out as to whether there is an encroachment by the petitioner or not as claimed by the respondent. The entire order of the original authority, which is challenged before the Appellate Court is based on Ex.P15, the survey sketch prepared by the ADLR, and based on the said survey sketch, the authority has come to the conclusion that the petitioner had encroached upon 110 square feet of land belonging to the respondent. In my considered view, the contention of the petitioner before the appellate Court is required to be considered by the Appellate Court by allowing the application for appointment of Court Commissioner to measure the property in the presence of the petitioner.



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10. The contention of the learned counsel for the respondent is that, in the case of a similarly placed encroacher, this Court had negated the prayer seeking the appointment of a Court Commissioner. It is required to be noticed that, in the said proceedings, the alleged encroacher had been served with a notice by the authority before conducting the survey. Hence, the said decision has no application to the facts and circumstances of the present case.

11. In the case on hand, admittedly, no notice was served to the petitioner before conducting the survey. Therefore, in the absence of service of notice with regard to the survey, placing sole reliance on Ex.P15 and arriving at the conclusion that the petitioner had encroached upon the land may not be proper. Hence, the appointment of a Court Commissioner is necessary in the peculiar facts and circumstances of the case.

12. It is to be noticed that the Appellate Court has not recorded any finding as to whether the appointment of



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a Court Commissioner is necessary or not. However, it has recorded reasons with regard to the maintainability of the appeal before it. The appellate Court has also taken note of the order passed by this Court in W.P.No.18009/2022, wherein this Court affirmed the order of rejection of appointment of Court Commissioner. As already stated supra, the said decision has no application to the case on hand.

13. The appointment of Court Commissioner would aid the Appellate Court in deciding the dispute between the parties. It is needless to observe that the Court Commissioner now appointed would issue notice to the petitioner as well as the respondent and in their presence, the survey would be conducted, and the said report would aid the Appellate Court in deciding the appeal on merits.

14. For the aforementioned reasons, I proceed to pass the following:



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ORDER

- a) The writ petition is ***allowed***.
- b) The impugned order dated 21.01.2023 passed in M.A.No.82/2022 by the XVI Additional City Civil and Sessions Judge, Bengaluru (CCH-12) is hereby set aside.
- c) Consequently, the application filed by the petitioner under Order XXVI Rule 9 of the CPC seeking the appointment of a Court Commissioner is allowed.
- d) The Appellate Court shall appoint the ADLR or any other competent officer as a Court Commissioner to conduct a survey as sought in the application filed by the petitioner.
- e) The Appellate Court shall direct the Court Commissioner to submit the report within a time-bound manner.



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f) The parties are at liberty to file a memo of instructions.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

SHS
List No.: 1 Sl No.: 15