



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 29TH DAY OF APRIL 2026

BEFORE



THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR SECOND APPEAL NO. 5575 OF 2010 (DEC/INJ)

BETWEEN:

THE COMMISSIONER,
REPRESENTING THE CORPORATION
OF CITY OF HUBLI-DHARWAD,
A BODY CORPORATE HAVING PERPETUAL
SUCCESSION AND COMMON SEAL,
THEREOF, LAMINGTON ROAD,
HUBLI.

...APPELLANT

(BY SRI. B.M. BANDI, ADVOCATE FOR
SRI. G.I. GACHCHINMATH, ADVOCATE)

AND:

1. PRADEEP
S/O. SHYAMRAO HUBLIKAR,
AGED ABOUT 47 YEARS,
OCC: BUSINESS,
R/O. NO.302A,
MADHUBAN APARTMENT,
JAYACHAMRAJA NAGAR, HUBLI,
TAL: HUBLI,
DIST: DHARWAD-580025.

R2 AND R3 ARE ONLY LRS OF DECEASED R1

2. UDAY
S/O. MOHANRAO HUBLIKAR,
AGED ABOUT 50 YEARS,
OCC: HOTEL BUSINESS,
R/O. OLD HUBLI, TAL: HUBLI,
DIST: DHARWAD-580025.





3. JAIDEEP
S/O. SHAYMRAO HUBLIKAR,
AGED ABOUT 39 YEARS,
OCC: BUSINESS,
R/O. PRASHANT COLONY,
VIDYANAGAR, HUBLI,
TQ: HUBLI,
DIST: DHARWAD-580025.

DIED ON 27/02/2017
(RESPONDENT NO.1 IS THE LEGAL HEIR OF R3,
HE IS ALREADY ON RECORD)

...RESPONDENTS

(BY SRI. A.A. KALEBUDDE, ADVOCATE FOR R1;
NOTICE TO R2 IS SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 24-02-2010 MADE IN R.A.NO.161/2001 PASSED BY THE I ADDITIONAL CIVIL JUDGE (SR.DN) HUBLI AND ALSO THE IMPUGNED JUDGMENT AND DECREE DATED 21-08-2001 MADE IN O.S.NO.235/2000 PASSED BY THE I ADDITIONAL CIVIL JUDGE (JR.DN) HUBLI IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.04.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, JUDGMENT IS DELIVERED AS UNDER:

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.



CAV JUDGMENT

1. This is an appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 24.02.2010 passed in R.A.No.161/2001 on the file of the I Additional Civil Judge (Sr.Dn.), Hubballi (hereinafter referred to as 'the First Appellate Court', for short) as well as the judgment and decree dated 21.08.2001 passed in O.S.No.235/2000 on the file of the I Additional Civil Judge (Jr.Dn.), Hubballi (hereinafter referred to as 'the Trial Court', for short).
2. The parties would be referred with the ranks as they were before the Trial Court for the sake of convenience and clarity.
3. Plaintiff has filed the suit praying for declaration that the resolution dated 28.05.1999 bearing Resolution No.716, passed by defendant No.1, is illegal, null and *void ab initio*, and not binding on the plaintiff and



defendants Nos.2 and 3; consequently prayed for the relief of permanent injunction restraining defendant No.1 and its officials from putting up any construction on the suit schedule property pursuant to the alleged illegal resolution bearing No.716 dated 28.05.1999 and for such other reliefs.

4. The case of the plaintiff before the Trial Court, in nutshell is that:

4.1. Plaintiff and defendant No.3 are co-owners of properties bearing CTS Nos.3026/2B, 3023/3, 3024 and 3026/1, situated in CTS Ward No.1 of Hubballi City, popularly known as Gouliwada. Defendant No.2 is also a co-owner along with plaintiff and defendant No.3 in some of the suit schedule properties. As defendants Nos.2 and 3 were not available to sign the plaint, they were arrayed as defendants. Defendant No.1 is the Commissioner of the Corporation of the City of



Hubballi-Dharwad. The suit schedule property is an open space.

4.2. By Resolution No.716 dated 28.05.1999, defendant No.1 resolved to construct a Community Hall on the suit schedule property at an estimated cost of ₹2,40,500/-.

4.3. Plaintiff contends that defendant No.1 has no right, title, or interest in or over the suit schedule property and has not acquired it in accordance with the provisions of the Land Acquisition Act, 1894. Thus, without any right, title or interest, defendant No.1 passed the resolution to put up construction in the suit property, which is illegal. Defendant No.1 is squandering away public funds in furtherance of the said illegal resolution and it is *void ab initio*.

4.4. The suit schedule property was declared as a 'Slum Clearance Area' under Section 11(1) of the



Karnataka Slum Areas (Improvement and Clearance) Act of 1973 (hereinafter referred to as 'the Act of 1973', for short), by notification dated 01.10.1977. Despite such notification, Karnataka Slum Clearance Board ('the Board', for short) did not take any steps for its implementation. The plaintiff, along with defendants Nos.2 and 3, as owners of suit schedule property, have put up claim with the Board for redevelopment of the property.

- 4.5. The plaintiff for himself and also on behalf of defendant Nos.2 & 3 have made repeated representations to defendant No.1 to stop the alleged illegal construction; however, defendant No.1 continued the construction and permitted others to put up illegal constructions in the suit schedule property. Hence plaintiff has filed the suit for appropriate reliefs.



4.6. During pendency of the suit, plaintiff amended the plaint by adding paragraph 6(A) and additional prayer (B-1), stating that defendant No.1 had put up construction of Community Hall in the suit property during pendency of the suit by taking undue advantage of the summer vacation and non-functioning of courts due to advocates' agitation. Defendant No.1 has completed the construction of Community Hall and hence prayed for additional relief of mandatory injunction directing defendant No.1 and its officials to demolish the illegal construction of Community Hall put up in the suit schedule property.

4.7. After service of summons, defendant No.1, represented by its counsel, filed written statement denying the averments of the plaint. It is contended that the suit is false and not maintainable. It is stated that the suit schedule



property had already been declared as 'slum area' by the Government and on such declaration, the suit schedule property is under the control of the Slum Clearance Board. In order to improve the slum area and to provide better facilities to the residents of Hubballi and Dharwad, defendant No.1 has passed the Resolution No.716 dated 28.05.1999 to put up construction of Community Hall in the suit schedule property with the estimate cost of Rs.2,40,500/-. In pursuance of the said resolution, defendant started putting up construction of the Community Hall in the suit schedule property. It is further contended that, although the plaintiff had applied to the Slum Clearance Board, no permission had been granted for redevelopment of the suit schedule property. Defendant No.1 asserts that the



plaintiff has no right to obstruct construction in the suit schedule property.

4.8. It is further contended that, under Section 28 of the Act of 1973, plaintiff has no right to stop or evict defendant No.1 from the suit schedule property. It is the responsibility of defendant No.1 to provide more facilities to the residents of Hubballi-Dharwad area and improve slum areas. The prayer of plaintiff is illegal and cannot be considered. Hence prayed for dismissal of the suit with costs.

4.9. From the above facts, the Trial Court has framed following issues and additional issues:

ISSUES

1. Whether plaintiff proves that, he along with defendant No.2 and 3 are owners in possession of suit property on the date of filing this suit?
2. Whether plaintiff proves that, the resolution dated 28-05-1999 bearing



No.716 passed by defendant No.1 is illegal?

3. Whether defendant No.1 proves that, he has got right and power to construct Community Hall in suit property and to permit the others to put construction thereon?

4. Whether plaintiff is entitled for the reliefs sought for?

5. What order or decree?

ADDITIONAL ISSUES:

1. Whether plaintiff proves that, during pendency of this suit, the defendants have completed the construction of Community Hall illegally?

2. Whether plaintiff is entitled for mandatory injunction as sought for?

4.10. After recording the evidence of both parties and hearing their arguments, Trial Court came to the conclusion that the construction of Community Hall on the suit schedule property by defendant No.1, without acquiring the property and without



notice to plaintiff, was not in accordance with law and was violative of the fundamental right guaranteed under the Constitution of India and thereby decreed the suit, declaring that Resolution No.716 dated 28.05.1999 is illegal, null and void, and not binding on the plaintiff and defendants Nos.2 and 3; directed defendant No.1 to demolish the construction within two months from the date of the order.

4.11. Aggrieved by the said judgment and decree, defendant No.1 preferred an appeal before the First Appellate Court.

4.12. After hearing both sides, First Appellate Court dismissed the appeal and confirmed the judgment and decree of the Trial Court.

4.13. Being aggrieved from the same, appellant/defendant No.1 has preferred the present appeal before this Court.



5. At the time of admitting the appeal, this Court has framed the following substantial questions of law of consideration:

1. Admittedly the plaintiff has sought for declaration to declare the resolution passed by the Standing Committee of Hubli-Dharwad Municipal Corporation and admittedly when the plaintiff has not impleaded the Standing Committee as party to the proceedings, whether both the Courts below instead of dismissing the suit on the ground of non-joinder of the necessary parties, are right in decreeing the suit?

2. Admittedly when the suit schedule property is declared as a Slum Clearance Area by virtue of notification and admittedly when the said notification is not challenged, whether both the Courts below are right in entertaining the suit and decreeing the same?

3. When the father of the plaintiff has given a statement at the time of declaring the lands owned by him under the Urban Land Ceiling Act that the suit schedule property is taken away by virtue of notification declaring the suit property as slum clearance area, and under



such circumstances when the plaintiff is estopped from filing the suit whether both the courts below are right in decreeing the suit?

4. When the plaintiff has suppressed the material facts and has filed a false and frivolous suit, whether both the Courts below are right in entertaining the same?

5. When the cause of the defendant no. 1 is for public purpose and for the welfare of the Public at large, whether both the Courts are right in decreeing the suit?

6. Whether the suit for recovery of possession of the suit schedule land is one hit by the provisions of Sec. 66 as the area in which the property had been located as slum area under Section 3 and 11 of the Karnataka Slum Areas (Improvement and Clearance) Act of 1973?

6. Heard arguments of both sides and perused the records.
7. Learned counsel for the appellant Sri.B.M.Bandi would submit that;



- 7.1. Plaintiff has filed the suit before Trial Court praying for the relief of declaration that resolution dated 28.05.1999 passed by first defendant is illegal, *void ab initio* and not binding on the plaintiff and defendant Nos.2 and 3; for the relief of permanent injunction restraining defendant No.1 from putting up any construction in suit schedule property and subsequently amended the plaint and included the prayer for mandatory injunction directing defendant No.1 to demolish the construction of Community Hall in the suit schedule property and for such other reliefs.
- 7.2. It is the contention of plaintiff that, plaintiff, defendant Nos.2 and 3 are owners of the suit schedule property bearing CTS No.3026/2B, 3023/3, 3024 and 3026/1 situated in CTS Ward No.1 of Hubballi known as Gouliwada. It was declared as 'Slum Area' by the Government by



Gazette Notification dated 01.10.1977. But, no improvement was made. Subsequently, plaintiff has given application for redevelopment. At belated stage, this Notification was passed by defendant No.1.

7.3. Learned counsel for the appellant further submits that, in this appeal, he has produced four documents along with I.A.No.3/2010 filed under Order XLI Rule 27 CPC, they are;

- (i) Gazette Notification dated 30.09.1977,
- (ii) Gazette Notification dated 20.03.1984,
- (iii) Resolution dated 28.05.1999,
- (iv) Statement given by the father of the plaintiff.

7.4. He would further submit that, under those documents, Commissioner of Hubballi-Dharwad Municipal Corporation, Hubballi, was designated as the Prescribed Authority for improvement of the area known as Gavalagalli/Gouliwada. It is



further submitted that defendant No.1 passed the resolution to put up construction of Community Hall in the area, which was already declared as slum area.

7.5. The father of plaintiff No.1 and defendant Nos.2 and 3 Sri.Shamsundhar Gurunathappa Hublikar has given declaration before the Deputy Commissioner, wherein he has declared that item No.5 of the said declaration was in possession of Gavali Jananga who have constructed houses, tethering their cattle, using it as cattle pit and no vacant space is available; he is not in possession of this property, and for consideration of land ceiling limit, the said property cannot be taken into consideration.

7.6. Learned counsel would further submit that, suppressing these documents, plaintiff has filed the suit and thus, the suit is not maintainable in law. He contended that neither the plaintiff nor



his predecessors-in-title were in possession of the suit property at the time of passing notification.

7.7. Hence, prayed for allowing the appeal and I.A.No.3/2010 filed under Order XLI Rule 27 CPC.

8. *Per contra*, learned counsel for the respondent No.1 Sri A. A. Kalebudde, has filed objection to I.A.No.3/2010 filed under Order XLI Rule 27 CPC, and would submit that:

8.1. The first three documents were already produced before the Trial Court and the First Appellate Court and they were duly considered while decreeing the suit and dismissing the appeal. Under those circumstances, fourth document is not relevant and has been produced at belated stage, and therefore is not admissible.



- 8.2. It is further submitted that document No.1 produced along with I.A.No.3/2010 filed under Order XLI Rule 27 CPC had already been quashed by the Coordinate bench of this Court in W.P.Nos.20985 to 20989 of 1986 and W.P.Nos.19461 to 19469 of 1986 dated 25.01.1994. After quashing said notification, no enquiry is done by the Appellate Authority.
- 8.3. Document No.4 produced along with the said I.A.No.3/2010 is given by the father of plaintiff. The Gavalis who are residing and tethering their cattle on the said property are doing so as licensees under the plaintiff and his forefathers. The plaintiff has not lost his right over the suit schedule property in his possession by virtue of the fourth document annexed to I.A.No.3/2010, because they have only stated in the said document that the property was not in their possession, and they have not denied their



- ownership while determining the ceiling limit under the Urban Land (Ceiling and Regulation) Act, 1976.
- 8.4. When notification under Section 11 of the Act of 1973 had already been quashed, Defendant No.1 had no authority to put up any construction in the suit schedule properties. However, Defendant No.1 has put up construction and completed the same during the pendency of the suit. Hence, the said construction is liable to be demolished and vacant possession is to be handed over to the plaintiff and Defendants No.2 and 3.
- 8.5. Considering these aspects, suit was rightly decreed, and the First Appellate Court has confirmed the same. Hence, prayed for dismissal of plaintiff's case.
9. Having heard arguments of both sides and verifying the appeal papers along with Trial Court records, the



finding of this Court on I.A.No.3/2010 and substantial questions of law is as follows for the following:

REASONS

10. **Regarding I.A.No.3/2010**

10.1. The documents produced along with I.A.No.3/2010 are;

- (i) Gazette Notification dated 30.09.1977,
- (ii) Gazette Notification dated 20.03.1984,
- (iii) Resolution dated 28.05.1999,
- (iv) Statement given by the father of the plaintiff.

10.2. The first two documents are Gazette Notifications and there is presumption under Section 80 of the Bharatiya Sakshya Adhinyam, 2023 (Section 81 of the Indian Evidence Act, 1872) that they are genuine.

10.3. The third document is resolution passed by defendant No.1, which is under challenge in the



present suit. Hence, it is relevant and admitted document.

10.4. The fourth one is the declaration given by the father of plaintiff before Special Deputy Commissioner, Dharwad. This document is not disputed by respondents, at the time of submitting the arguments. On the other hand, contended that such declaration was given under different circumstance.

10.5. These documents are relevant documents to decide this appeal. Hence, by allowing I.A.No.3/2010, those documents are taken on record and considered at the time of passing this judgment.

10.6. Further, learned counsel for respondents has produced the orders passed in W.P.Nos.20985 to 20989 of 1986 and W.P.Nos.19461 to 19469 of 1986 and admissible in law. It is also taken on



record and considered at the time of passing this judgment.

11. **Regarding Substantial Questions of law No.2 and 3**

11.1. As per the gazette notification dated 30.09.1977 published on 01.10.1977, Gavalagalli which includes the suit schedule property bearing CTS Nos.3023/2B, 3023/3, 3024, 3026/1, was declared as slum area under Section 3 of the Act of 1973. Defendant No.1 contended that, pursuant to the said Notification, Commissioner of Hubballi-Dharwad Municipal Corporation was designated as the Prescribed Authority. This fact is also not in dispute.

11.2. Further, according to the notification dated 18.10.2004, under Section 11 of the Act of 1973, defendant No.1 proceeded to pass Resolution No.716 dated 28.05.1999 for putting up construction of Community Hall in the suit



schedule property along with other properties. However, it is relevant to note that, in earlier proceedings in W.P.Nos.20985 to 20989 of 1986 and W.P.Nos.19461 to 19469 of 1986, the Coordinate Bench of this Court had observed that the affected landowners of the alleged Slum Clearance Areas were not heard before issuance of such Notifications under Section 11(1) of the Act of 1973. and passed the following order:

“Hence, these petitions are allowed and the notifications under Section 11 of the Act are quashed reserving liberty to the authorities concerned to proceed with from the stage of the notification under Section 3 after notifying the petitioners and hearing them in the matter.”

11.3. According to the said order, notification issued under Section 11 of the Act of 1973, which includes the notification in respect of the present suit schedule property situated at Gouliwada, has been quashed. It is held that no notice had been



issued to the interested persons prior to declaring the area as 'Slum Clearance Area' and proceeds with development of the property in question. However, liberty was reserved to the Prescribed Authority to proceed afresh from the stage of notification issued under Section 3 of the Act of 1973.

11.4. As discussed above, suit schedule property was declared as 'slum area' under Section 3 of the Act of 1973, in the year 1977 itself. Therefore, before issuing any notification under Section 11 of the Act of 1973, it was incumbent upon the Prescribed Authority to issue notice to the interested persons.

11.5. It is also relevant to note that, the father of plaintiff and defendants Nos.2 and 3 had given declaration before the Deputy Commissioner, Dharwad, while determining the ceiling limit under the Urban Land (Ceiling and Regulation)



Act, 1976. In the said declaration, with reference to Item No.5, he stated that the property bearing CTS Nos.3023/1A to 3026/1 (present suit schedule property) in which he claimed half share, was already occupied by members of the Gavali community, who had constructed houses, were tethering cattle, and using the land for manure pits. He has given further declaration that no vacant land was available in that property. It is noted by the surveyor at the time of surveying the said property that the property was not in his possession. He also acknowledged that the Government had already declared the said area as a 'slum area'. Hence while deciding the property in possession of the father of plaintiff and defendant Nos.2 and 3, he requested not to consider present suit schedule property as his property.



11.6. Learned counsel for respondents Sri. A. A. Kalebudde, has not disputed the declaration given by the father of plaintiff and defendant Nos.2 and 3. He has only submitted that, the Gavali people are residing and tethering their cattle on the said property under the license of forefathers of plaintiff and defendant Nos.2 and 3. However, if that being so, then suit schedule property could have been considered as the property of the father of plaintiff and defendant Nos.2 and 3 for determining the urban ceiling limit. But the father of plaintiff and defendant Nos.2 and 3 has categorically given a declaration to the authority that this property does not belong to him, as it is not in his possession, and he had absolutely no objection to the declaration of this property as slum area. He has categorically stated in his declaration that this property was already declared as slum area.



11.7. When the property in question was declared as slum area and admitted by the father of plaintiff and defendant Nos.2 and 3, now the plaintiff and defendant Nos.2 and 3 cannot claim to be the owners of the same property. If at all the construction of the Community Hall in the suit schedule property is not proper, then it could have been objected to only by those Gavali people who were already in possession of this property as per the declaration given by the father of plaintiff and defendant Nos.2 and 3. However, they have not come forward to file any suit.

11.8. On the other hand, as per the plaint pleadings, suit schedule property was vacant land, and because it was vacant land, resolution was passed to put up construction of Community Hall on the suit schedule property, which is for the benefit of the public and for the residents of



Hubballi-Dharwad area. Hence, the plaintiff cannot find fault with such construction.

11.9. As discussed above, father of the plaintiff has given statement at the time of declaring the lands owned by him under the Urban Land (Ceiling and Regulation) Act, 1976, that the suit schedule property was taken away by virtue of the notification declaring the same as slum area and not slum clearance area, and under such circumstances, plaintiff is estopped from filing the suit. Even then, the Trial Court and the First Appellate Court have decreed the suit, which is not justifiable. Accordingly, substantial question of law No.3 is answered in the **Negative**.

11.10. As discussed above, in the earlier proceedings in W.P.Nos.20985 to 20989 of 1986 and W.P.Nos.19461 to 19469 of 1986, notification declaring the suit schedule property as slum clearance area was challenged. But it was not



brought to the notice in these proceedings.
Hence, substantial question of law No.2 does not arise for consideration.

12. **Regarding Substantial Question of law No.4**

12.1. By suppressing the material fact of the declaration given by his father, plaintiff has filed the suit, and even then the suit was decreed by the Trial Court and confirmed by the First Appellate Court, which is not proper. Accordingly, substantial question of law No.4 is answered in the **Negative**.

13. **Regarding Substantial Questions of law No.1 & 5**

13.1. In view of the findings on substantial questions of law Nos.2 to 4, this Court is of the opinion that substantial questions of law No.1 and 5 do not arise for consideration.



14. **Regarding Substantial Question of law No.6**

14.1. Section 66 of the Act of 1973 bars the jurisdiction of the Civil Court. The said provision is extracted below:

66. Bar of jurisdiction of Civil Courts.-

Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Government or the prescribed authority is, empowered by or under this Act, to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

According to this provision of law, Civil Court shall not have jurisdiction in respect of any matter which the Government or the Prescribed Authority is empowered under this Act to determine. Under this Act, the prescribed authority is empowered to determine and decide the 'Slum Area' and 'Slum Clearance Area', and it



has to issue notices to the interested persons before passing notification under Section 11 of the Act, 1973.

14.2. Under those circumstances, suit filed by the plaintiff praying for declaration, permanent injunction, and mandatory injunction, in the present nature, is not at all maintainable in law. Plaintiff has not filed the suit praying for declaration that plaintiff & defendant No.2 & 3 are owners of the suit schedule properties. On the other hand, prayed for declaration that resolution passed by defendant No.1 as null and void and for permanent injunction restraining defendant No.1 from putting up construction in suit schedule properties. Such prayers are hit by Section 66 & 29 of the Act of 1973. Accordingly, substantial question of law No.6 is answered in the **Affirmative**.



15. In view of the findings on the aforesaid substantial questions of law, this Court proceeds to pass the following:

ORDER

- i. The appeal filed under Section 100 of the Code of Civil Procedure is allowed.
- ii. I.A.No.3/2010 filed under Order XLI Rule 27 CPC for production of additional documents is allowed and the documents produced along with this I.A. are taken on record.
- iii. The judgment and decree dated 24.02.2010 passed in R.A.No.161/2001 on the file of the I Additional Senior Civil Judge (Sr.Dn.), Hubballi, and the judgment and decree dated 21.08.2001 passed in O.S.No.235/2000 on the file of the I Additional Civil Judge (Jr.Dn.), Hubballi, are hereby set aside.



- iv. Consequently, the suit filed by the plaintiff stands dismissed.
- v. Draw decree accordingly.
- vi. No order as to costs.

**Sd/-
(GEETHA K.B.)
JUDGE**

gab
CT-GTB
List No.: 1 Sl No.: 18