



R

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 30TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 202681 OF 2024 (GM-CPC)

BETWEEN:

VISHWANATH S/O BASAPPA BAATI
AGE 30 YEARS OCC AGRICULTURE
R/O KOLHAR, TQ KOLHAR
DIST VIJAYAPURA-586210.

...PETITIONER

(BY SRI. YATNAL P.G., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE
R/BY PRINCIPAL SECRETARY
VIDHANA SOUDHA
BANGALORE-560001.
2. THE DEPUTY COMMISSIONER OF
VIJAYAPURA
AT VIJAYAPURA
DIST-586101.
3. THE ASSISTANT COMMISSIONER
OF THE VIJAYAPURA SUB-DIVSION AT
VIJAYAPURA-586101.
4. THE TAHSILDAR KOLHAR
AT KOLHAR VIJAYAPURA
DIST-586101.





5. THE REHABILITATION OFFICER
UPPAR KRISHAN PROJECT
ALAMATTI NIDAGUNDI
TQ: DIST: VIJAYAPURA-586113.
6. THE CHIEF OFFICER
TOWN PANCHAYAT KOLHAR
TQ KOLHAR
DIST VIJAYAPURA-586113.
7. THE ADDITIONAL SPECIAL LAND ACQUISITION
OFFICER
UPPAR KRISHNA PROJECT
ALAMATTI, NIDAGUNDI
TQ: DIST: VIJAYAPURA-586113.

...RESPONDENTS

(BY SMT. MAYA T.R., HCGP FOR R1 TO R5 & R7;
SMT. RATNA N. SHIVAYHOGIMATH, ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, BY THE ADVOCATE FOR PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO A) ISSUE WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 19.09.2024 PASSED IA NO.02 UNDER ORDER 39 RULE 1 AND 2 OF CPC BY THE HONOURABLE ADDL. CIVIL JUDGE (JR.DN) AND JMFC BASAVANA BAGEWADI IN OS NO. 106/2022 IS HEREBY PRODUCED AS ANNEXURE-C. ETC.,

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

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ



ORAL ORDER

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

1. Learned HCGP accepts notice for respondent Nos.1 to 5 and 7. Smt. Ratna N. Shivayogimath, learned counsel accepts notice for respondent No.6.
2. The petitioner is before this Court seeking for the following reliefs :
 - a) *Issue writ of certiorari quashing the impugned order dated 19.09.2024 passed in I.A.No.2 under Order 39 Rule 1 and 2 of CPC, by the Addl. Civil Judge (Jr. Dn.) and JMFC Court, Basavanabagewadi in O.S.No.106/2022 is hereby produced as Annexure-C.*
 - b) *Allow the I.A.No.2 filed under Order 39 Rule 1 and 2 of CPC in O.S.No.106/2022 pending on file of the Addl. Civil Judge (Jr.dn.) and JMFC Court, Basavanabagewadi in the interest of justice and equity.*
 - c) *Pass any other order/s that this honourable court deems fit and proper in the circumstances of the case in the interest of justice and equity.*
3. The petitioner is aggrieved by the order dated 19.09.2024, passed on I.A.No.2 filed under Order 39 Rule 1 & 2 of CPC in O.S.No.106/2022 by the Addl. Civil Judge (Jr. Dn.) and JMFC Court, Basavanabagewadi.



4. The registry has raised an objection that the above petition is not maintainable firstly, on the ground that the writ petition has been filed under Article 226 challenging an order passed by a Judicial Officer, secondly, on the ground that the relief of certiorari is sought for and thirdly, on the ground that the impugned order dated 19.09.2024 having been passed after hearing both the parties, the remedy available is a miscellaneous first appeal and not a writ petition.
5. Learned counsel for the petitioner, by relying upon the decision of the Hon'ble Apex Court in the ***State of Jharkhand Vs. Surendra Kumar Srivastava and others***, in ***S.L.P. (C) No.26645/2015*** would submit that, insofar as an order of the civil Court refusing the grant of interim injunction under Order 39 Rules 1 and 2 of CPC is concerned, a writ petition under Article 227 would be maintainable. On that ground he submits that the present writ petition is also maintainable.
6. Having considered the said submission as also after having perused the petition, it is seen that the petition is



filed under Articles 226 and 227 of the Constitution of India. Thus, the above petition could not have been filed under Article 226 of the Constitution of India, even as held by the Hon'ble Apex Court in ***Surendra Kumar Srivastava's*** case.

7. Insofar as second aspect of relief is concerned, no certiorari can be sought for against a Judicial order of a Court. Hence, the office objection with regard to this prayer is also required to be upheld and is so upheld.

8. Insofar as the third contention of learned counsel for the petitioner is concerned that refusal of an order of injunction can be subject matter of a proceedings under Article 227 of the Constitution of India, the same would have been so if at a ex-parte stage, the relief of injunction is refused by a Trial court. In the present case, as can be seen from the impugned order, the said order has been passed after service of notice on the defendant and after hearing the plaintiff and defendant as such, after an adjudicatory order had been passed, after hearing all the parties to the proceedings under Article



227 of the Constitution of India, exercising supervisory jurisdiction is not maintainable.

9. The only remedy which is available to the petitioner is to file an appeal challenging the said order.
10. Reserving such liberty, the above petition stands ***dismissed.***

Sd/-
(SURAJ GOVINDARAJ)
JUDGE