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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of June, 1998

BEFORE

THE HON'BLE MR JUSTICE R V RAVEENDRAN

Writ Petition No 3596 of 1987

Between:

Oliver D'Souza,
S/o Salvadore D'Souza,
aged about 64 years,
Residing behind Urva Church
Compound, Mangalore .. Petitioner

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(By Sri B.V.Acharya, Senior Counsel
for Sri I.K.Mohan Rai, Adv.)

And:

The Planning Authority,
Mangalore City Planning
Area, Mangalore,
represented by its Member
Secretary .. Respondents

(By Shetty & Hegde Associates,
Advocates)

Writ Petition is filed praying to quash
Annexure-A dated 3-3-1987 bearing
No.PA.MNG.CDP.2930.86-87.

This writ petition coming on for hearing
this day, the Court made the following:-

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O R D E R

The petitioner is the owner of property bearing Sy.Nos.57/13A, 57/7A and 57/8A of First Ward of Mangalore City falling within the jurisdiction of the Planning Authority, Mangalore City Planning Area and Mangalore City Corporation. The petitioner claims that the said plot of land consists of a building site with a residential building. The petitioner wanted to put up a compound wall with a gate and in that context, he applied to the Planning Authority (respondent) for grant of a Commencement Certificate. The respondent accordingly granted a Commencement Certificate dated 22-2-1984. After considering the same, the Mangalore City Corporation granted permission dated 2-5-1984 [Annexure-B] under Section 301 of the Karnataka Municipal Corporations Act, 1976 ['the Act' for short] for construction of a compound wall with gate pillars. The sanctioned plan is produced as Annexures B1 and B2. The petitioner accordingly put up a compound wall and gate. Nearly three years thereafter, the respondent issued a notice dated 12-2-1987

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[Annexure-C] alleging that the erection of gate pillars and gate blocked the common passage and, therefore, called upon the petitioner to show cause why the commencement certificate should not be cancelled. The petitioner filed detailed objections dated 17-2-1987 [Annexure-D]. Petitioner contended that there was no common passage (described as Mamul Rasthe) or public road in his property; that the notice was obviously issued at the instance of one Ronald D'Souza; that if ^{said Ronald D'Souza} ~~he~~ really had any right of way through the petitioner's property, he had to file a civil suit and could not instigate the respondent to issue the notice. He also contended that the respondent may hold a spot inspection to correctly judge the position. Petitioner received a final notice dated 3-3-1987 [Annexure-A] from the respondent stating that at the meeting of the Planning Authority on 17-2-1987 it had been decided to cancel the commencement certificate and accordingly the Commencement Certificate issued to him on 13-2-1984 had been cancelled. Feeling aggrieved, the petitioner has filed this petition and sought quashing of Annexure-A dated 3-3-1987.

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2. The respondent has not filed any objections. The learned Counsel appearing for the respondent, however, stated that the petitioner had obtained the commencement certificate without disclosing the existence of a common passage and the Comprehensive Development Plan of Mangalore contemplated providing a road in the said area and, therefore, the notice was issued. He also stated that in spite of the show cause notice dated 12-2-1987, petitioner had not appeared *before the Authority.*

3. The C.D.P. has not been produced. Further, a mere intention to have a road in that area is not sufficient to cancel the commencement certificate to the petitioner. The respondent has not made ~~out~~ any misrepresentation by the petitioner. In so far as the show cause notice dated 12-2-1987 is concerned, petitioner has sent a detailed reply as per Annexure-D dated 17-2-1987. In the circumstances, no valid reasons are forthcoming for cancelling the commencement certificate three years after the issue of the commencement certificate and nearly three years after the completion of the compound wall with gate. The petitioner has specifically alleged that

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the notice has been issued at the instance of one Ronald D'Souza and the said Ronald D'Souza has not filed any suit claiming any such passage.

4. The petition is, therefore, allowed and Annexure-A is quashed. This will not come in the way of any affected person filing a civil suit regarding the alleged passage.

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Sd/-
JUDGE

Bnr/-

