

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF APRIL, 2021

BEFORE

THE HON' BLE MR.JUSTICE R. DEVDAS

WRIT PETITION NO.15298 OF 2020 (LB-BMP)

BETWEEN

SHRI. PAVANJEET SINGH SANDHU, IPS
S/O MAJ GEN SAVINDER SINGH SANDHU (RETD)
AGED ABOUT 57 YEARS,
NOW WORKING AS DIRECTOR GENERAL OF POLICE,
CID, CARTON HOUSE,
PALACE ROAD,
BENGALURU-560001

...PETITIONER

(BY SRI L M CHIDANANDAYYA, ADVOCATE)

AND

- 1 . BHRUHAT BANGALORE MAHANAGARA PALIKE
REPRESENTED BY ITS COMMISSIONER ,
N R SQUARE,
BANGALORE-560002
- 2 . JOINT DIRECTOR
(TOWN PLANNING)
BRUHAT BANGALORE MAHANAGARA PALIKE,
N R SQUARE,
BANGALORE-560012
- 3 . ASST DIRECTOR
(TOWN PLANNING) SOUTH

COMMERCIAL COMPLEX BUILDING,
8TH BLOCK, 9TH MAIN, 9TH CROSS,
JAYANAGAR,
BANGALORE-560011

....RESPONDENTS

(BY SRI V SREENIDHI, ADVOCATE FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 18.2.2020 VIDE ANNEXURE-A ISSUED BY THE R-3 AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

R. DEVDAS J., (ORAL):

The petitioner who is an I.P.S. Officer is before this Court aggrieved by the endorsement dated 18.02.2020 given by the Assistant Director of Town Planning (South) BBMP declining to sanction the plan submitted by the petitioner on the ground that towards the south of the property belonging to the petitioner there is a drain and in view of the directions given by the National Green Tribunal (NGT) and in accordance with the Zonal Regulations of RMP-2015, buffer area is required to be maintained.

2. Learned counsel Sri L.M.Chidanandayya appearing for the petitioner submits that the respondent authorities of the BBMP

have not understood the directions given by the National Green Tribunal in the proper perspective and the provisions of the Zonal Regulations of RMP-2015, orders were has also been misread and the citizens of this city have been put to great hardship at the hands of the respondent authorities.

3. Learned counsel draws the attention of this Court to order dated 04.05.2016 passed by the National Green Tribunal, Principal Bench, New Delhi in the case of ***Forward Foundation and others /vs./ State of Karnataka and others***. In the said order certain general directions were also issued by the NGT. However, as regards the requirement of distance to be maintained from the Rajakaluves as buffer zone, having regard to the Zonal Regulations contained in RMV-2015, orders were issued by the NGT. In the general conditions at paragraph No.3 it was directed that the distance in respect of buffer zone specified in the said judgment shall be made applicable to all the projects and all the authorities concerned were directed to incorporate such conditions in the project to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake,

Rajakaluves, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru. The State of Karnataka which was aggrieved by the order passed by the NGT, approached the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, vide its order dated 05.03.2019 clarified the orders passed by the NGT. It is noticeable that the learned Advocate General appearing for the State of Karnataka had submitted before the Hon'ble Supreme Court that the State of Karnataka is aggrieved by the order of the NGT to the extent of setting aside the buffer zone in respect of water bodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. The State was also aggrieved by the order of the NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It was submitted at the hands of the State that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity of vires of any statutory provision/regulation.

4. Nevertheless, the learned Senior Counsel appearing for the Forward Foundation which was the applicant before the NGT submitted that his client has no objection to set aside the order in so far as the State of Karnataka is concerned. It was also submitted that the applicant had no objection to set aside the general conditions and directions of the NGT in paragraph No.1 of the order dated 04.05.2016 except the directions issued against respondents No.9 and 10 therein. Consequently, the Hon'ble Supreme Court, by its order dated 05.03.2019 allowed the appeals filed by the State of Karnataka and the directions/condition No.1 in the order dated 04.05.2016 was set aside except the direction issued against respondents No.9 and 10 who were the project proponents.

5. Learned counsel Sri V.Sreenidhi appearing for the respondent BBMP would submit that the subsequent orders/directions passed by the Hon'ble Supreme Court of India was not brought to the notice of the officers of the BBMP and therefore out of sheer ignorance, the officers of the BBMP may have rejected the applications filed by the persons like the petitioners by

citing the decision/directions given by the NGT. Moreover, it is submitted that even according to the Zonal Regulations of RMP-2015, it is very clear that the requirement of having a buffer zone of 50 meters, 25 meters and 15 meters by the side of the drains was made applicable only to drains newly identified while finalising the RMP-2015. Attention of this Court is drawn to the technical term and definition of the zoning of the land use and regulation in Revised Master Plan-2015 where at clause 18 it is provided as follows:

"Drains: the drains have been categorized into 3 types namely primary, secondary and tertiary. These drains will have a buffer zone of 50, 25 and 15m (measured from centre of the drain) respectively on either side. These classifications have been used for the drains newly identified while finalizing the RMP- 2015".

The statement of objections filed on behalf of the respondent- BBMP is taken into consideration.

6. Having heard the learned counsels and on perusing the petition papers, this Court finds that the impugned endorsement

dated 18.02.2020 could not have been issued by the Assistant Director of Town Planning, declining to sanction the plan proposed by the petitioner. It is an admitted fact that the property in question forms part of a layout formed by the erstwhile City Improvement Trust Board, long before the RMP-2015 was finalised. It is also an admitted fact that all the neighbouring properties have been developed consequent to the plan being sanctioned by the respondent-BBMP. The predicament of the petitioner is understandable, since all the neighbouring owners were permitted to put up construction, but the petitioner is denied a sanction plan by virtue of the wrong understanding of the orders passed by the NGT which was also subsequently clarified and set aside by the Hon'ble Supreme Court of India. It is noticeable that the orders passed by the NGT on 04.05.2016 was set aside by the Hon'ble Supreme Court vide order dated 05.03.2019 and the impugned endorsement is issued on 18.02.2020 long after the orders passed by the Hon'ble Supreme Court.

7. The position of law is required to be clarified since several such complaints/petitions are being filed by the citizens of

this city who have been declined approval of plan on the ground that certain directions are given by the NGT. In view of the orders passed by the Hon'ble Supreme Court of India setting aside the directions given by the NGT, what remains is the implementation of the Zonal Regulations, RMP-2015 and subsequent revised master plan, if any has been approved and newly notified. As noticed earlier, the requirement of having a buffer zone of 50 meters, 25 meters and 15 meters should be made applicable only to Drains newly identified while finalizing the RMP-2015 and at any rate it should not be applicable to the drains that were already in existence prior to finalization of RMP-2015. If layouts are formed prior to finalization of RMP-2015, the requirement of setting apart buffer zone as contemplated in the zonal regulation of RMP-2015 is not applicable.

8. Consequently, the writ petition is **allowed**. The impugned endorsement dated 18.12.2020 is hereby quashed and set aside. The respondent-BBMP authorities are directed to process the application filed by the petitioner. However, since the plan submitted by the petitioner online being rejected, the petitioner is

required to submit a fresh proposal for sanction of plan online. As and when the petitioner files the application, the respondent authorities shall consider the same in the light of the orders passed by this Court and process the application as expeditiously as possible.

Ordered accordingly.

**Sd/-
JUDGE**

KLY/

ಎಪಿಯು : N.P. No. 15298/2020

ಪುಟದ ಸಂಖ್ಯೆ 4

ಶ್ರೀ ಹೆಚ್.ನಿ.ಶೇಖರ್ ನಾಯ್ಕ ಸೇವು ಗ್ರಾ

ಕಡತದ ಸಂಖ್ಯೆ

BBMP/LP/CR/3982/2021

ಕಂಡಿಕೆ ಸಂಖ್ಯೆ	ಟಿಪ್ಪಣಿಗಳು ಮತ್ತು ಆಜ್ಞೆಗಳು
	ಸಂಖ್ಯೆ:ಬಿಬಿಎಂಪಿ/ಎಲ್‌ಸಿ/ಆರ್‌ಆರ್/130/2021-22
11	<p>ಸ್ವತ್ತಿನ ಸಂಖ್ಯೆ:59, ಎಸ್.ಟಿ ಬೆಡ್, ಕೋರಮಂಗಲ ಲೇಔಟ್, ಬೆಂಗಳೂರು ವಾರ್ಡ್ ಸಂಖ್ಯೆ:122ರ ಸ್ವತ್ತಿಗೆ ನಕ್ಷೆ ಮಂಜೂರಾತಿ ನೀಡುವ ಬಗ್ಗೆ ಅಭಿಪ್ರಾಯ ಕೋರಿ ಕಡತವನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಕಡತವನ್ನು ಪರಿಶೀಲಿಸಲಾಯಿತು. ಶ್ರೀ ಪವನ್‌ಜೀತ್ ಸಿಂಗ್ ಸಂಧು, ಐ.ಪಿ.ಎಸ್.ರವರು ಪ್ರಸ್ತಾಪಿತ ಸ್ವತ್ತಿನಲ್ಲಿ ಕಟ್ಟಡವನ್ನು ನಿರ್ಮಿಸಲು ನಕ್ಷೆ ಮಂಜೂರಾತಿ (BBMP.Ad.Com/LP/SUT/0289/2019-20) ಕೋರಿ ಅರ್ಜಿ ಹಾಗೂ ದಾಖಲೆಗಳನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಸದರಿ ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ದಕ್ಷಿಣ ಭಾಗದಲ್ಲಿ ನಿವೇಶನಕ್ಕೆ ಅಂಟಿಕೊಂಡಿರುವ ಮಳೆ ನೀರು ಚರಂಡಿ ಇರುವುದರಿಂದ ಸಹಾಯಕ ನಿರ್ದೇಶಕರು, ನಗರ ಯೋಜನೆ (ದಕ್ಷಿಣ)ರವರು ನಕ್ಷೆ ಮಂಜೂರಾತಿಯನ್ನು ತಿರಸ್ಕರಿಸಿ ದಿನಾಂಕ:18-12-2020ರಂದು ಹಿಂಬರಹ ನೀಡಿರುತ್ತಾರೆ.</p> <p>ಶ್ರೀ ಪವನ್‌ಜೀತ್ ಸಿಂಗ್ ಸಂಧು, ಐ.ಪಿ.ಎಸ್.ರವರು ದಿನಾಂಕ:18-12-2020ರ ಆದೇಶವನ್ನು ರದ್ದುಗೊಳಿಸುವಂತೆ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ರಿಟ್ ಅರ್ಜಿ ಸಂಖ್ಯೆ: 15298/2020ರ ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸಿರುತ್ತಾರೆ. ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ಸದರಿ ಪ್ರಕರಣವನ್ನು ದಿನಾಂಕ:06-04-2021ರಂದು ಇತ್ಯರ್ಥಪಡಿಸಿ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಲಾಗಿರುತ್ತದೆ:-</p> <p>"Consequently, the writ petition is allowed. The impugned endorsement dated:18-12-2020 is hereby quashed and set aside. The respondent-BBMP authorities are directed to process the application filed by the petitioner. However, since the plan submitted by the petitioner online being rejected, the petitioner is required to submit a fresh proposal for sanction of plan online. As and when the petitioner files the application, the respondent authorities shall consider the same in the light of the orders passed by this court and process the application as expeditiously as possible".</p>
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13	<p>ಆದ ಕಾರಣ, ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ:18-12-2020ರ ಆದೇಶವನ್ನು ರದ್ದುಗೊಳಿಸಿರುವುದರಿಂದ ಅರ್ಜಿದಾರರಿಗೆ ನಕ್ಷೆ ಮಂಜೂರಾತಿ ನೀಡಲು "ನಿಯಮಾನುಸಾರ" ಕ್ರಮವಹಿಸಬಹುದಾಗಿ ಅಭಿಪ್ರಾಯಿಸಲಾಗಿದೆ.</p>
14	<p>ಕಾನೂನು ಕೋಶದ ಮುಖ್ಯಸ್ಥರು 8/6 ಸಹಾಯಕ ನಿರ್ದೇಶಕರು, ನಗರ ಯೋಜನೆ (ದಕ್ಷಿಣ)</p> <p>ಉಪ ಕಾನೂನು ಅಧಿಕಾರಿ 8/6/21</p> 