

Kum. Kusuma Vs. The Commissioner

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Court : Karnataka

Decided On : Dec-11-2023

Judge : Suraj Govindaraj

Appeal No. : WP 11852/2021

Appellant : Kum. Kusuma

Respondent : The Commissioner

Judgement :

- 1 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE11H DAY OF DECEMBER, 2023 R BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.7204 OF2021(LB-BMP) C/W WRIT PETITION No.26829 OF2017(LB-BMP) WRIT PETITION No.11852 OF2021(LB-BMP) WRIT PETITION No.22426 OF2022(LB-BMP) WRIT PETITION No.16580 OF2023(LB-BMP) WRIT PETITION No.16912 OF2023(LB-BMP) WRIT PETITION No.19268 OF2023(LB-BMP) WRIT PETITION No.22463 OF2023(LB-BMP) IN W.P.No.7204/2021 BETWEEN: SRI NAGARAJ S/O LATE HANUMAIAH AGED ABOUT45YEARS R/AT No.183, KATTAPPA LANE7H CROSS ROAD, KODIHALLI BENGALURU56000 PETITIONER (BY SRI. MANJUNATHA S V.,ADVOCATE) AND:

1. THE COMMISSIONER BRUHATH BENGALURU MAHANAGARA PALIKE N.R. SQUARE BENGALURU56000.

2. THE JOINT COMMISSIONER BRUHATH BENGALURU MAHANAGARA PALIKE EAST DIVISION - 2 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters MAYOHALL, BENGALURU56000 3. THE ASSISTANT EXECUTIVE ENGINEER BRUHATH BENGALURU MAHANAGARA PALIKE INDIRANAGAR SUB DIVISION BENGALURU56000 4. THE CHIEF ENGINEER BRUHATH BENGALURU MAHANAGARA PALIKE MAYOHALL BUILDING BENGALURU56000 5. SMT. PARVATHAMMA D/O LATE KATAPPA AGED ABOUT42YEARS RA/T No.181, KODIHALLI VILLAGE WARD No.74, BENGALURU56000 6. SMT. LAKSHMI W/O GURUVAIH D/O HANUMAIAH, AGED ABOUT62YEARS, R/AT No.181, 7TH CROSS, YELAMMA TEMPLE STREET, KODIHALLI VILLAGE, WARD NO.88, BENGALURU-560008. (AMENDMENT CARRIED OUT AS PER COURT

ORDER

DATED218.2023) RESPONDENTS (BY SRI. KARTHIKEYAN B S.,ADVOCATE FOR R1 TO R4; SRI. C.V. ANNAIAH., ADVOCATE FOR R5; SRI. AMARESH A. ANAGADI., ADVOCATE FOR R6) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO GRANT A WRIT OF MANDAMUS OR ANY OTHER WRIT,

ORDER

OR DIRECTION TO THE RESPONDENTS1TO4TO CONSIDER THE REPRESENTATIONS GIVEN BY THE PETITIONER DATED1908.2020, 16.09.2020, 12.10.2020 AND211.2020 OF FOUR REPRESENTATIONS PRODUCED AS ANNEXURE A TO D AND ETC.-. 3 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters IN W.P.No.26829/2017 BETWEEN: SRI H RAJANNA S/O ANKANNA AGED ABOUT52YEARS R/O41A, 1ST MAIN ROAD4H CROSS, JAKKASANDRA WARD NO.173 BEGNALURU-560038 PETITIONER (BY SRI. VASANTH MADHAVA S .,ADVOCATE) AND:

1. THE COMMISSIONER BRUHATH BENGALURU MAHANAGARA PALIKE N.R. SQUARE BENGALURU56000.

2. THE ASSISTANT EXECUTIVE ENGINEER BRUHATH BENGALURU MAHANAGARA PALIKE KORAMANGALA SUB DIVISION KORAMANGALA, BENGALURU56003 RESPONDENTS (BY SMT. RAKSHITHA D.J., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT,

ORDER
OR DIRECTIONS QUASHING THE

ORDER
PASSED BY THE RESPONDENT NO.2, THE ASSISTANT EXECUTIVE ENGINEER, BRUHAT BENGALURU MAHANAGARA PALIKE, IN HIS CONFIRMATION

ORDER
No.AEE(KML)/CO/07/2014-15 DATED1012.2014 (ANNEXURE-E) BY QUASHING THE

ORDER
OF THE KARNATAKA APPELLATE TRIBUNAL, BENGALURU IN APPEAL No.24/2015 DATED1212.2016 (ANNEXURE-F) AND PASS SUCH OTHER

ORDER
S AS THIS HONBLE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE.-. 4 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters IN W.P.No.11852/2021 BETWEEN: KUM. KUSUMA D/O NAGARAJU AGED ABOUT28YEARS RESIDING AT NO.318, SRI LAKSHMINARASHIMHA SWAMY NILAYA, OLD BANK COLONY, KONANAKUNTE, BANGALORE-560062. PETITIONER (BY SRI. CHAITANYA S.G. .,ADVOCATE) AND:

1. THE COMMISSIONER BRUHAT BANGALORE MAHANGARA PALIKE BANGALORE CITY CORPORATION OFFICE, NR SQUARE, BANGALORE-560002.

2. THE EXECUTIVE ENGINEER ANJANAPURA LAYOUT, KONANAKUNTE, BENGALURU-560062 3. THE ASSISTANT EXECUTIVE ENGINEER ANJANAPURA SUB DIVISION, BBMP, 2ND MAIN ROAD, 6TH CROSS, RBI EAST LAYOUT, JP NAGAR, 7TH PHASE, BENGALURU-560078.

4. THE ASSISTANT ENGINEER OFFICE OF BBMP ANJANADHRI LAYOUT, KONANAKUNTE, BENGALURU-560062.

5. SRI. ASHWATHAPPA AGED48YEARS6 SMT. PUSHPA W/O SRI ASHWATHAPPA AGED47YEARS - 5 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters BOTH ARE R/O316 OLD BANK COLONY, KONANAKUNTE, BENGALURU-560062.

7. SMT. JAYAMMA AGED73YEARS R/O316 OLD BANK COLONY, KONANAKUNTE, BENGALURU-560062. RESPONDENTS (BY SMT. B.P. RADHA., ADVOCATE FOR R1 TO R4; SRI. T.H. AVIN., ADVOCATE FOR R5 TO R7) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS DIRECTING RESPONDENTS No.1 TO4BY CONSIDERING THE REPRESENTATION OF THE PETITIONER DATED2312.2019 VIDE ANNEXURE-K1 AND K2 TO TAKE ACTION UNDER SECTION462OF KARNATAKA MUNICIPAL CORPORATION ACT TO DEMOLISH THE ILLEGAL CONSTRUCTIONS BUILT IN DOOR No.317, BEARING No.3/A, WARD No.195, OLD BANK COLONY, KONANAKUNTE, BANGALORE-560062 AND ETC. IN W.P.NO.22426/2022 BETWEEN: MR K VIJAYA AGED63YEARS W/O MR. M RAJENDRAN R./AT942ND CROSS BHYASAMNAGAR DAYANANDA NAGAR BENGALURU - 560021 OCCUPATION. HOUSE WIFE PETITIONER (BY SRI. RAGHAVENDRA A. KULKARNI .,ADVOCATE) - 6 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters AND:

1. THE CHIEF COMMISSIONER BRUHAT BANGALORE MAHANAGARA PALIKE N R SQUARE BANGALORE - 560002 2. ASSISTANT EXECUTIVE ENGINEER SRIRAM MANDIRA SUB DIVISION BRUHAT BANGALORE MAHANAGARA PALIKE 1ST FLOOR, SRI M VISHWESWARAIAH COMMERCIAL COMPLEX RAJAJINAGAR BANGALORE - 560010 RESPONDENTS (BY SRI. KARTHIKEYAN B.S., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT IN THE FORM OF A DIRECTION/

ORDER

SETTING ASIDE THE UNDATED IMPUGNED

ORDER

PASSED BY THE R1 VIDE ANNEXURE-A AND CONSEQUENTLY TO ALLOW THE APPEAL IN APPEAL 98/2022 FILED BEFORE THE R1 AND ETC. IN W.P.NO.16580/2023 BETWEEN: SRI. RAVI S S/O SHANMUGAM AGED ABOUT 55 YEARS, No.17/23, 1ST MAIN 5H CROSS, VENKATESHWARA LAYOUT, S G PALYA, DRC POST, BANGALORE 56002 PETITIONER (BY SRI. MAYANNA GOWDA N.R. ., ADVOCATE) AND:

1. THE CHIEF COMMISSIONER BRUHAT BANGALORE MAHANAGARA PALIKE - 7 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters N R SQUARE BANGALORE - 560002 2. THE ASSISTANT EXECUTIVE ENGINEER BTM LAYOUT SUB DIVISION, 16TH MAIN ROAD, BTM 1ST STAGE, BBMP, WARD NO.152, MADIWALA MAHANAGARA PALIKE BUILDING, BANGALORE-560029. RESPONDENTS (BY SMT. M.C. NAGASHREE, ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN RESPECT OF CASE NO.20/2023 BEFORE THE CHIEF COMMISSIONER OF BBMP AT BANGALORE AND ETC. IN W.P.NO.16912/2023 BETWEEN: SRI.K.C. JAGANNATHA REDDY S/O LATE CHIKKAMUNIYAPPA REDDY, AGED ABOUT 66 YEARS, RESIDING AT NO.2, 13TH CROSS, HENNUR MAIN ROAD,

KACHARAKANAHALLI ST THOMAS POST, BENGALURU56008. PETITIONER (BY SRI. C. SHANKAR REDDY.,ADVOCATE) AND:

1. THE COMMISSIONER BRUHAT BENGALURU MAHANAGARA PALIKE, HUDSON CIRCLE, BENGALURU - 09.

2. THE ASSISTANT EXECUTIVE ENGINEER, MARUTHISEVA NAGAR SUB DIVISION, WARD No.29, - 8 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters BRUTHAT BENGALURU MAHANAGARA PALIKE, KACHARAKANAHALLI BENGALURU56008.

3. SMT. P. SUDHA, WIFE OF SHIVA KUMAR, DAUGHTER OF B. POOJAPPA AGED ABOUT33YEARS, 4. P AMARAVATHI, AGED ABOUT26YEARS, DAUGHTER OF B. POOJAPPA, 5. P.PUSHPALATHA AGED ABOUT23YEARS, DAUGHTER OF B. POOJAPPA RESPONDENTS3TO5ARE RESIDING AT No.1250, JYOTHI NAGAR, KACHARAKANAHALLI, KASABA HOBLI, BENGALURU - 560084. RESPONDENTS (BY SRI. BATHE GOWDA. K.V., ADVOCATE FOR R1 & R2; SRI. MADHUKAR DESHPANDE., ADVOCATE FOR R3 & R4; R5-SERVED AND UNREPRESENTED) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS OR DIRECTIONS OF LIKE NATURE DIRECTING THE RESPONDENT NO.2 TO CONSIDER AND DISPOSE OF THE REPRESENTATION DATED1507.2023 MADE BY THE PETITIONER ADDRESSED TO THE ASSISTANT EXECUTIVE ENGINEER, MARUTHISEVA NAGAR SUB DIVISION, SECOND RESPONDENT HEREIN, VIDE ANNEXURE-G TO THE WRIT PETITION, WITHIN A LIMITED TIME FRAME AS THE MATTER IS EXTREMELY URGENT IN NATURE.AND ETC.-. 9 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters IN W.P.NO.19268/2023 BETWEEN: MR. AYUB AHMED S/O RIYAZ SHERRIF, AGED ABOUT35YEARS RESIDING AT SY NO35 EJEETPURA MAIN ROAD, AMBEDKAR COLONY, WARD NO15 BANGALORE - 560047 PETITIONER (BY SRI. SRINANDAN K.,ADVOCATE) AND:

1. STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY VIKAS SOUDHA, DEPT OF HEALTH AND FAMILY WELFARE AMBEDKAR VEEDHI BANGALORE - 560001 2. ASSISTANT EXECUTIVE ENGINEER DOMLUR SUB DIVISION, BRUHAT BENGALURU MAHANAGARA PALIKE, BANGALORE - 560071 3. THE COMMISSIONER BBMP, HUDSON CIRCLE, BANGALORE - 560002 RESPONDENTS (BY SRI. VIKRAM.H., AAG A/W SMT. B.P. RADHA., AGA FOR R1; SRI. B.S. KARTHIKEYAN., ADVOCATE FOR R2 & R3) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE NOTICE DATED 17.08.2023 PASSED BY RESPONDENT NO.2 BEARING No.SA.KA.A/DHO/P.O/05/2023-24 AT ANNEXURE-A AND ETC - 10 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters IN W.P.NO.22463/2023 BETWEEN: SRI SHUHAIB AHMED S/O MUKTHIYAR AHMED AGED 30 YEARS R/ATNO FALT NO 208 RIZWAN TOWERS NO 23 F STREET CLEVELAND TOWN FRAZER TOWN BENGALURU 560000 PETITIONER (BY SRI. RAVINDRANATH K., ADVOCATE) AND:

1. BRUHAT BENGALURU MAHANAGARA PALIKE HUDSON CIRCLE BENGALURU 560000 REP BY CHIEF COMMISSIONER 2 BRUHAT BENGALURU MAHANAGARA PALIKE REP BY ASSISTANT EXECUTIVE ENGINEER HBR LAYOUT SUB DIVISION 5 H MAIN ROAD, 3RD BLOCK HBR LAYOUT, BBMP BENGALURU 560004 3. SECRETARY TO GOVERNMENT URBAN DEVELOPMENT, VIKASA SOUDHA, BENGALURU-560001. (AMENDED AS PER COURT

ORDER

DATED 9.10.2023) RESPONDENTS (BY SMT. CHAITRAVATHI. B.S., ADVOCATE FOR R1 & R2; SRI. VIKRAM.H., AAG A/W S,T/ B.P. RADHA., AGA FOR R3) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORD FROM THE OFFICE OF THE RESPONDENTS AND AFTER VERIFYING THE SAME, - 11 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters QUASH THE IMPUGNED

ORDER

DATED 30.09.2023 IN APPEAL No.15/2023 VIDE ANNEXURE-A AND ETC. THESE WRIT PETITIONS, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 The petitioner in W.P.No.7204/2021 is before this Court seeking for the following reliefs:

1. Grant a writ of mandamus or any other writ, order or direction to the Respondents 1 to 4 to consider the representations given by the Petitioner dated 19.08.2020, 16.09.2020, 12.10.2020 and 2.11.2020 of four representations produced as Annexure A to D.

2. Pass any other appropriate order which this Honble Court deems fit in the facts and circumstances of the case, in the interest of justice.

2. The petitioner in W.P.No.26829/2017 is before this Court seeking for the following reliefs:

1. Issue a writ of Certiorari or any other appropriate writ, order or directions quashing the order passed by the Respondent No.2, the Assistant Executive Engineer, Bruhat Bengaluru Mahanagara Palike, in his confirmation Order No.AEE(KML)/CO/07/2014- 15 dated 10.12.2014 (Annexure-E) by quashing the Order of the Karnataka Appellate Tribunal, Bengaluru in Appeal No.24/2015 dated 12.12.2016 (Annexure- F) and pass such other orders as this Honble Court deems fit in the facts and circumstances of the case, in the interest of justice.-. 12 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters 3. The petitioner in W.P.No.11852/2021 is before this Court seeking for the following reliefs:

1. Issue a writ of Mandamus directing the respondents No.1 to 4 by considering the representation of the petitioner dated 23.12.2019 vide Annexure-K1 and K2 to take action under section 462 of Karnataka Municipal Corporation Act to demolish the illegal constructions build in Door No.317, bearing No.3/A, Ward No.195, Old

Bank Colony, Konanakunte, Bangalore-560062.

2. Grant such other reliefs as this Hon'ble Court deems fit to grant in the circumstances of the case in the interest of justice and equity.

4. The petitioner in W.P. No.22426/2022 is before this Court seeking for the following reliefs:

1. Issue a Writ of Certiorari or any other writ in the form of a direction/order setting aside the undated Impugned Order passed by the R1 vide Annexure-A and consequently to allow the Appeal in Appeal 98/2022 filed before the R1.

2. To grant such other relief/s as this Hon'ble Court may deem fit in the circumstances of the above case in the interest of justice and equity..

3. To award costs of the above petition..

5. The petitioner in W.P.No.16580/2023 is before this Court seeking for the following reliefs:

1. Call for records in respect of Case No.20/2023 before the Chief Commissioner of BBMP at Bangalore.-. 13 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters 2. Writ of Certiorari, by quashing the order passed by the respondent No.2 ref. No.S.Ka.N.A/B.T.M./C.O./67/2022-23 dated 16.08.2022 as per Annexure-A.

3. Together with such other order, or directions this Hon'ble Court deems fit in the circumstances of the case, in the interest of justice and equity.

6. The petitioner in W.P. No.16912/2023 is before this Court seeking for the following reliefs:

1. Issue a writ of mandamus or directions of like nature directing the respondent no.2 to consider and dispose of the representation dated 15.07.2023 made by the petitioner addressed to the Assistant Executive Engineer, Maruthiseva Nagar Sub Division, second respondent herein, vide Annexure-G to the writ petition, within a

limited time frame as the matter is extremely urgent in nature.

2. Issue a writ of mandamus or directions of like nature directing the respondent No.1 to consider and dispose of the representation dated 17.07.2023 made by the petitioner addressed to the Commissioner, BBMP, first respondent herein, vide Annexure-H to the writ petition, within a limited time frame as the frame as the matter is extremely urgent in nature.

3. Grant such other orders or reliefs as this Honble Court may deems fit to grant in the facts and circumstances involved in the case.

7. The petitioner in W.P.No.19628/2013 is before this Court seeking for the following reliefs:

1. Issue a writ of Certiorari quashing the notice dated 17.08.2023 passed by Respondent No.2 bearing No.SA.KA.A/DHO/P.O/05/2023-24 at Annexure-A - 14 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters 2. Issue a writ of mandamus directing the Respondents not to harass the petitioner in any manner by exercise of colourable authority 3. Grant such other and further orders as this Hon'ble Court deems fit and proper under the facts and circumstances of the case in the interest of justice and equity.

8. The petitioner in W.P. No.22463/2023 is before this Court seeking for the following reliefs:

1. Call for the record from the office of the Respondents and after verifying the same, quash the impugned order dated 30.09.2023 in Appeal No.15/2023 vide Annexure-A;.

2. Alternatively the Petitioner may be permitted to regularize the building as per Section 240(8) of BBMP Act, 2020 paying the fine amount and;.

3. Passt such any other order as This Hon'ble Court deems fit, in the interest of justice and equity. .

9. The above cases deal with two sets of circumstances. The first set where the petitioners had complained of the private respondent having put up construction illegally and unauthorizedly without obtaining plan sanction and in violation of the Bangalore Mahanagara Palike Building Bye-laws, 2003 (for short, Building Bye-Laws, 2003).- 15 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters 10. The second set is where the Corporation has taken action against the petitioners for having put up construction illegally and unauthorizedly without obtaining plan sanction.

11. What is common in both sets is that the property measures less than 50 sq.mtrs. and on that basis by referring to Bye-laws 7.2 of the Building Bye-laws 2003 contending that no plans could be sanctioned for a residential detached building on a plot measuring less than 50 sq. mtrs, the plan submitted by the land-owners has been rejected or being aware of the said fact, no application has also been made by the land-owners but construction has proceeded with without obtaining such plan sanction and without complying with the building byelaws.

12. The points that would arise for consideration are: i) Whether if the plot size is less than 50 sq. mtrs., is there any prohibition for putting up of any construction thereon?. - 16 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters ii) If there is no such prohibition in what manner those construction can be put up?.

13. Bye-Laws 7.2 of the Building Bye-Laws 2003 reads as under:- No Plan shall be sanctioned for a residential detached building on a plot measuring less than 50 sqm. or having width less than 6 metres. In specific cases of sites for housing schemes for EWS, LIG, Slum Clearance and Improvement Schemes as well as reconstruction in case of densely populated areas, and plot sub-divided due to family partitions, the Authority may relax the above conditions.

14. Answer to Point No.1: Whether if the plot size is less than 50 sq. mtrs., is there any prohibition for putting up of any construction thereon?. 14.1. A perusal of the above Bye-Laws would indicate that no plan shall be sanctioned for plots

measuring less than 50 sq. mtrs., for residential detached building or having width less than 6 metres. Thus at first glance it would appear that no plan can be sanctioned and no construction can be put up. However, an exception, is carved out in the very same Bye- - 17 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters law inasmuch as in a specific case of sites for housing schemes for EWS, LIG, Slum Clearance and Improvement Schemes as well as reconstruction in case of densely populated areas, and plot sub-divided due to family partitions, the concerned authority could relax the conditions. The housing schemes for EWS, LIG, Slum Clearance and Improvement Schemes are all governmental schemes and/or schemes which are propounded by agencies of the government and they taking into consideration larger developments for larger number of people, there may not be much of issues which arises in terms of relaxation and mode and methodology of such relaxation. However, in the present case, what we are concerned is sub-division of family properties which are vested with one of the family members and/or such family member having sold it to a third party. Considering the value of - 18 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters land in a city like Bangalore even purchase of a plot less than 50 sq. mtrs. is a dream for many of the persons and they would have bought such a property by investing their hard-earned money probably their life savings and even in some cases by obtaining financial accommodation from not only banks but from private lenders. 14.2. Thus, I am of the considered opinion that unless there is some malafides or unless the use of such a plot is likely to cause serious harm and injury to the town planning and/or services being provided by any governmental agency, the authorities in question ought to consider a request made by such plot owners favourably and in a beneficial manner for such person. If sites for housing schemes for EWS, LIG, Slum Clearance and Improvement Schemes as well as reconstruction in case of densely populated areas can be less than 50 - 19 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters Square meters I see no reason why the same would not be applicable to sites of private individuals. Ofcourse in this regard this Court cannot lay down the parameters as to how the

discretion has to be exercised. It is left to the State to provide and make known necessary guidelines for the concerned officers to apply to in such cases. 14.3. Hence, I answer Point No.1 by holding that it is not a blanket prohibition which is imposed as regards sanction of plan for a plot measuring less than 50 sq. mtrs. but such sanction would have to be considered and acceded to by following due principles of law in an equitable manner in the interest of citizens.

15. Answer to Point No.2: If there is no such prohibition in what manner those construction be put up?. 15.1. Sri.Vikram Huilgol, learned Additional Advocate General has filed a detailed statement and on - 20 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters instructions submits that Whenever such sanction is to be granted, it would also be required that the applicable Building Bye-Laws are required to be followed in terms of the setbacks which would be in terms of Table 8 under Regulation 3.1 of Zonal Regulations of the Revised Master Plan 2015 and depending on the width and depth of the site the setbacks as prescribed would have to be adhered to. Insofar as Floor Area Ratio or Floor Space Index, the same would have to be taken into consideration in terms of Table 10 of the Zonal Regulations RMP2015 insofar as residential properties are concerned. 15.2. The height of the building and other aspects relating to the said building would also have to be in terms of the Zonal Regulations applicable to the lowest plot size prescribed under each of those headings. Though it appears to be that there is no particular restrictions under Bye-law - 21 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters 7.2 insofar as commercial properties are concerned, the State would be required to consider and make it clear by issuance of appropriate guidelines to enable the concerned authorities to act in terms thereof even in respect of commercial premises. 15.3. Insofar as the petitioners and/or the respondents in the present matters who have already put up construction without obtaining plan sanction are concerned, I am of the considered opinion that it would not be in the interest of justice to right away demolish those construction and/or take any penal action against such construction on such owners since it has been pointed out that the criteria and

requirements for the lowest size of the site would be applicable even to a site measuring 50 sq. mtrs or lesser and since the State has been directed to issue necessary guidelines to the concerned authorities to consider the - 22 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters application filed and not reject such application by referring to Bye-law 7.2, I am of the considered opinion that an opportunity would also have to be given to the land owner who has put up construction without having obtained a plan sanction to now submit a fresh application for sanction in terms of the above observations, such application for plan sanction to be accompanied by such documents as necessary which shall be considered by the jurisdictional authority and to be made within a period of 60 days from the date of issuance of guidelines by the Urban Development Department. 15.4. The said application is required to be considered by the respective authorities within a period of 6 months from the date that such application has been submitted. In the event of construction already put up being in excess of that which is permitted then the concerned - 23 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters planning authority to bring it to the notice of the applicant directing him to carry out such and necessary alterations in the existing building to bring it in conformity with the Building Bye-laws and the plan sanction within a further period of 6 months. 15.5. In the event of the said building being brought in compliance of the Building Byelaws/plan sanction then necessary certificate could be issued by the planning authority detailing out the area, height, setback etc. In the event of the land owner not bringing the said construction in conformity with the Building Byelaws or plan sanction within a period of 6 months then the jurisdictional authority would be entitled to take such action as permissible in terms of Section 248 of BBMP Act, 2020 by detailing out the violations of the Building Bye- laws enclosing a sketch of such violations. Needless to say, until the aforesaid plan - 24 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters submitted are considered, a demand for alterations being made and the period of 6 months thereafter having elapsed, the respondent - corporation officers are restrained from taking any coercive steps of demolition or otherwise as regards such land

owners. 15.6. The Urban Development Department as also the corporation officials to make known the above order as also the guidelines issued by the State to all the concerned by giving wide publicity so as to enable such effected persons to bring their property in compliance with the Building Bye-laws.

16. With the aforesaid observations, the Writ Petitions stands disposed.

17. This Court places its appreciation of Sri.Vikram Huilgol, learned Additional Advocate General for having taken the pains to coordinate with all the - 25 - NC:

2023. KHC:45006 WP No.7204 of 2021 And Connected matters concerned officers to arrive at a workable solution to solve the problems of the owners of small properties.

18. Though the above matter is disposed, re-list on 29.01.2024 to enable the Principal Secretary to place the guidelines so formulated in respect of plots measuring 50 Square meters or lesser. Sd/- JUDGE PRS List No.:

1. SI No.:

10.

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