

M. Chandrakumar Vs. The Commissioner

M. Chandrakumar Vs. The Commissioner

SooperKanoon Citation : sooperkanoon.com/1234998

Court : Karnataka

Decided On : Jan-04-2024

Judge : Suraj Govindaraj

Appeal No. : WP 55716/2017

Appellant : M. Chandrakumar

Respondent : The Commissioner

Judgement :

- 1 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE4H DAY OF JANUARY, 2024 BEFORE R THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.55716 OF2017(LB-BMP) C/W WRIT PETITION No.20546 OF2017(LB-BMP) WRIT PETITION No.47122 OF2017(LB-BMP) WRIT PETITION No.47406 OF2017(LB-BMP) WRIT PETITION No.48000 OF2017(LB-BMP) WRIT PETITION No.55717 OF2017(LB-BMP) WRIT PETITION No.55718 OF2017(LB-BMP) WRIT PETITION No.55719 OF2017(LB-BMP) IN W.P. No.55716/2017 BETWEEN: M. CHANDRAKUMAR S/O E MARUTHACHALAM AGED ABOUT59YEARS BY HIS POWER OF ATTORNEY HOLDER SIDDAHANUMAPPA NO.8, 2ND A CROSS,

NAGARABHAVI VILLAGE BANGALORE56007 ...PETITIONER (BY SRI: MANIAN K B S., ADVOCATE) AND:

1. . THE COMMISSIONER THE BRUHATH BANGALORE MAHANAGARA PALIKE HUDSON CIRCLE BENGALURU56000 2 . THE ASSISTANT EXECUTIVE ENGINEER THE BRUHAT BANGALORE MAHANAGARA PALIKE(BBMP) KENGERI SUB DIVISION, BENGALURU56006 RESPONDENTS
- 2 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 (BY SRI: AMIT DESHPANDE., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO GRANT A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICES DATED0409/2017 BEARING NO.AEE/KSD/PR/322/2017-18 (ANNEXURE-A) ISSUED BY THE RESPONDENT. IN W.P. No.20546/2017 BETWEEN:

1. . T J GIRISH S/O LATE T S JAGADISH MURTHY AGED ABOUT47YEARS R/A NO.333, 2ND CROSS GIRINAGAR1T PHASE BENGALURU-560085 2 . MUKTHA SHARIFF S/O LATE MOHAMMAD SHARIFF AGED ABOUT59YEARS R/A543 BHEL II STAGE LAYOUT PATTANAGERE SOUTH RAJARAJESHWARI NAGAR BENGALURU-560098 3 . SHYLAJA JAGADEESH W/O SRI JAGADEESH AGED ABOUT50YEARS R/A NO.605, 3RD CROSS, 7TH MAIN HMT LAYOUT, GANGANAGAR BENGALURU-560032 4 . J M REKHA D/O M GOWDA AGED ABOUT44YEARS R/A NO.531, BHEL LAYOUT PATTANAGERE SOUTH RAJARAJESHWARI NAGAR BENGALURU-560098 - 3 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 5 . JAYAMMA W/O CHIKKIRAPPA AGED ABOUT69YEARS R/A332 PATTANAGERE NORTH RAJARAJESHWARI NAGAR BENGALURU-560098 ...PETITIONERS (BY SRI: SARAVANA S. ADVOCATE) AND1. THE COMMISSIONER BRUHAT BENGALURU MAHANAGARA PALIKE N R SQUARE, BANGALORE-560002 2 . THE JOINT

COMMISSIONER RAJARAJESHWARI NAGAR RANGE IDEAL HOME SOCIETY RAJARAJESHWARI NAGAR BENGALURU-560098 3 . THE ASSISTANT EXECUTIVE ENGINEER KENGERI SUB DIVISION BBMP, NO.LIG102 2ND MAIN KHB II PHASE, NEAR HYSALA CIRCLE BENGALURU-560060 RESPONDENTS (BY SMT. CHAITRAVATHI. B.S., ADVOCATE FOR R1 TO R3) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH ANN-L1 TO L5 NOTICES DTD. 18.3.2017 IN NOS1 SAKAA/KEMUUV/ PR/922/2016- 17,

2) SAKAA/KEMUUV/PR/926/2016-17,

3) SAKAA/ KEMUUV/PR/923/2016-17,

4) SAKAA/KEMUUV/PR/928/2016-17,

5) SAKAA/KEMUUV/PR/931/2016-17 AND THE FURTHER PROCEEDINGS THEREON.-. 4 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 IN W.P. No.47122/2017 BETWEEN: Y B SANTHOSH S/O LATE Y N BALACHANDER AGED ABOUT 43 YEARS, RESIDENT OF NO.138, 1ST FLOOR, 4TH MAIN ROAD, RAJAJINAGAR INDUSTRIAL TOWN BANGALORE-560044 ...PETITIONER (BY SRI: MANIAN K B S., ADVOCATE) AND:

1. . THE COMMISSIONER THE BRUHATH BANGALORE MAHANAGARA PALIKE HUDSON CIRCLE, BENGALURU-560001 2 . THE ASSISTANT EXECUTIVE ENGINEER THE BRUHATH BANGALORE MAHANAGARA PALIKE (BBMP) KENGERI SUB DIVISION, BENGALURU-560 060 RESPONDENTS (BY SMT: RAKSHITHA D.J., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO GRANT A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICES DTD.4.9.2017 BEARING No.AEE/KSD/PR/322/2017-18 VIDE ANNEX-A ISSUED BY THE R-2. IN W.P. No.47406/2017 BETWEEN: SRI SAMPATH KUMAR AGED

ABOUT56YEARS - 5 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 S/O SRI. SUBBAIAH SETTY, NO.113, 1ST CROSS, 4TH STAGE, BEML LAYOUT, RAJARAJESHWARI NAGAR, BENGALURU-560098 ...PETITIONER (BY SRI: VIVEK B.N., ADVOCATE) AND:

1. . THE BRUHAT BENGALURU MAHANAGAR PALIKE HUDSON CIRCLE, BENGALURU-560 001 REPRESENTED BY THE COMMISSIONER
2. THE ASSISTANT EXECUTIVE ENGINEER THE BRUHAT BENGALURU MAHANAGARA PALIKE, (BBMP), KENGERI SUB-DIVISION, BENGALURU-560060
3. SRI. MIRLE VARADARAJU AGED ABOUT56YEARS S/O LATE BORE GOWDA No.544, 5TH MAIN, KENGERI SATELLITE TOWN, BENGALURU-560060. RESPONDENTS (BY SRI: SHARATH S. GOWDA., ADVOCATE FOR R3; SMT.CHAITRAVATHI B.S., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE

ORDER

DTD.4.9.2017 PASSED IN SKA/KUV/P.R./322/2017-18 BY THE R-2, THE ASSISTANT EXECUTIVE ENGINEER, BBMP, VIDE ANNEX-K TO THE WRIT PETITION AND ETC.-. 6 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 IN W.P. No.48000/2017 BETWEEN: SMT K N RAJESHWARI W/O LATE B V PRABHAKARMURTHY #678, 1ST C MAIN ROAD, 3RD BLOCK3D STAGE, 3RD PHASE BANASHANKARI BANGALORE56008 ...PETITIONER (BY SRI: MANIAN K B S., ADVOCATE) AND
1. THE COMMISSIONER THE BRUHAT BANGALORE MAHANAGARA PALIKE HUDSON CIRCLE BENGALURU56000
2 . THE ASSISTANT EXECUTIVE ENGINEER THE BRUHAT BANGALORE MAHANAGARA PALIKE (BBMP) KENGERI SUB DIVISION BENGALURU56006 RESPONDENTS (BY

SRI: PAWAN KUMAR., ADVOCATE FOR SRI. H. DEVENDRAPPA., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO GRANT A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICES DATED 49.2017 BEARING No.AEE/KSD/PR/322/2017-18: AT ANNEX-A ISSUED BY R- 2. IN W.P. No.55717/2017 BETWEEN: T. N. SHANTHA RAM RAO SON OF LATE NARAYAN RAO , - 7 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 AGED ABOUT 70 YEARS RESIDENT OF NO.7, CHOWDAPPA LAYOUT 5H MAIN, 11TH CROSS BAPUJI NAGAR, MYSORE ROAD BANGALORE 56002 ...PETITIONER (BY SRI: MANIAN K B S) AND:

1. . THE COMMISSIONER THE BRUHATH BANGALORE MAHANAGARA PALIKE HUDSON CIRCLE BENGALURU 56000 2 . THE ASSISTANT EXECUTIVE ENGINEER THE BRUHATH BANGALORE MAHANAGARA PALIKE PALIKE (BBMP) KENGERI SUB DIVISION BENGALURU 56006 RESPONDENTS (BY SMT: CHAITRAVATHI B.S., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO GRANT A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICES DATED 49.2017 BEARING No.AEE/KSD/PR/322/2017-18: AT ANNEX-A ISSUED BY R- 2. IN W.P. No.55718/2017 BETWEEN: KUSUMAKAR SHETTY S/O MANJAYA SHETTY AGED ABOUT 58 YEARS NO.1764, 22ND CROSS, - 8 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 GOVINDARAJNAGAR, BANGALORE 56004 ...PETITIONER (BY SRI: MANIAN K B S., ADVOCATE) AND:

1. . THE COMMISSIONER THE BRUHATH BANGALORE MAHANAGARA PALIKE HUDSON CIRCLE BENGALURU 56000 2 . THE ASSISTANT

EXECUTIVE ENGINEER THE BRUHAT BANGALORE MAHANAGARA PALIKE PALIKE (BBMP) KENGERI SUB DIVISION BENGALURU56006 3 . SRI. MIRLE VARADARAJ SON OF LATE BORE GOWDA, AGED ABOUT59YEARS, RESIDING AT NO.544, 5TH MAIN ROAD, KENGERI SATELLITE TOWN, BANGALORE -560 060 RESPONDENTS (BY SRI: PAWAN KUMAR., ADVOCATE FOR R1 & R2; SRI. VENKATESH S. ARBATTI., ADVOCATE FOR R3) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO GRANT A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICE DATED49.2017 BEARING No.AEE/KSD/PR/322/2017-18: AT ANNEX-A ISSUED BY R- 2.-. 9 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 IN W.P. No.55719/2017 BETWEEN: SMT. SHAKILA S. SHETTY, W/O SUNIL SHETTY, AGED ABOUT62YEARS, #5/7, INNOVA RESIDENCY HARIRAM ALLADAS LAYOUT, NEAR SHOBHA HOSPITAL VIJAYANAGAR, BANGALORE-560040. ...PETITIONER (BY SRI: MANIAN K B S., ADVOCATE) AND:

1. . THE COMMISSIONER THE BRUHATH BANGALORE MAHANAGARA PALIKE HUDSON CIRCLE, BENGALURU56000 2 . THE ASSISTANT EXECUTIVE ENGINEER THE BRUHAT BANGALORE MAHANAGARA PALIKE PALIKE (BBMP) KENGERI SUB DIVISION BENGALURU56006 3 . SRI. MIRLE VARADARAJ SON OF LATE BORE GOWDA, AGED ABOUT59YEARS, RESIDING AT NO.544, 5TH MAIN ROAD, KENGERI SATELLITE TOWN, BANGALORE -560 060 RESPONDENTS (BY SRI: PAWAN KUMAR., ADVOCATE FOR R1 & R2; SRI. VENKATESH S. ARBATTI., ADVOCATE FOR R3) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO GRANT A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICE DATED49.2017 BEARING No.AEE/KSD/PR/322/2017-18: AT ANNEX-A ISSUED BY R- 2.-. 10 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP

No.55718 of 2017 WP No.55719 of 2017 THESE WRIT PETITIONS COMING ON FOR

ORDER

S AND HAVING BEEN RESERVED FOR

ORDER

S ON 23.11.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1 The petitioner in W.P.No.55716/2017 is before this Court seeking for the following reliefs: a. Grant a writ of certiorari quashing the impugned notices dated 04/09/2017 bearing No.AEE/KSD/PR/322/2017-18 (Annexure-A) issued by the Respondent. b. And pass such other orders as this Honble court deems fit and proper the interest of justice and equity.

2. The petitioner in W.P. No.20546/2017 is before this Court seeking for the following reliefs: a. Quash Annexure-L1 to L5 Notices dated 18.03.2017 in Nos.

1) SAKAA/KEMUUV/PR/922/ 2016-17,

2) SAKAA/ KEMUUV/PR/926/2016-17,

3) SAKAA/ KEMUUV/ PR/923/2016-17,

4) SAKAA/KEMUUV/PR/928/ 2016-17,

5) SAKAA/KEMUUV/PR/931/2016-17 and the further proceedings thereon and; b. Pass such other orders as may be deemed appropriate under the circumstances of the case, in the ends of justice.-. 11 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 3. The petitioner in W.P. No.47122/2017 is before this Court seeking for the following reliefs: a. Grant a writ of certiorari quashing the impugned notices dated 04/09/2017 bearing No.AEE/KSD/PR/322/2017-18 (Annexure-A) issued by the 2nd Respondent. b.

And pass such other orders as this Hon'ble Court deems fit and proper in the interest of justice and equity.

4. The petitioner in W.P. No.47406/2017 is before this Court seeking for the following reliefs: a. Issue a writ in the nature of certiorari quashing the Order dated 04.09.2017 passed in SKA/KUV/P.R./322/2017-18 by the R2, the Assistant Executive Engineer, the BBMP at Annexure-K to the writ petition. b. Grant Costs. c. Such other relief/s as this Hon'ble Court deems fit to grant in the facts and circumstances of the case and in the interest of justice and equity.

5. The petitioner in W.P. No.48000/2017 is before this Court seeking for the following reliefs: - 12 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 a. Grant a writ of certiorari quashing the impugned notices dated 04/09/2017 bearing No.AEE/KSD/PR/322/2017-18: Annexure-A issued by the R2. b. And pass such other orders as this Hon'ble Court deems fit and proper in the interest of justice and equity.

6. The petitioner in W.P. No.55717/2017 is before this Court seeking for the following reliefs: a. Grant a writ of certiorari quashing the impugned notices dated 04/09/2017 bearing No.AEE/KSD/PR/322/2017-18: Annexure-A issued by the R2. b. And pass such other orders as this Hon'ble Court deems fit and proper in the interest of justice and equity.

7. The petitioner in W.P. No.55718/2017 is before this Court seeking for the following reliefs: a. Grant a writ of certiorari quashing the impugned notice dated 04/09/2017 bearing No.AEE/KSD/PR/322/2017-18: Annexure-A issued by the R2.-
. 13 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 b. And pass such other orders as this Hon'ble Court deems fit and proper in the interest of justice and equity.

8. The petitioner in W.P. No.55719/2017 is before this Court seeking for the following reliefs: a. Grant a writ of certiorari quashing the impugned notice dated 04/09/2017 bearing No.AEE/KSD/PR/322/2017-18: Annexure-A issued by the R2. b. And pass such other orders as this Hon'ble Court deems fit and proper in the interest of justice and equity.

9. In each of the above matters, the petitioners claim to be the owners and in possession of their respective residential plots formed by REMCO (BHEL) Co-operative Housing Society in the year 1992. Each of the above petitioners have produced their respective allotment letter, possession certificate issued by the Society, copy of the sale deed registered with the Sub-Registrar, katha certificate and tax paid receipt issued by the local authority. The petitioners claim - 14 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 that they constructed a compound wall and a shed in the property to secure the same from the encroachers and trespassers.

10. The layout has been formed by the Society on the land acquired by the State of Karnataka on behalf of the Society. Certain land owners having challenged the said acquisition, this Court set aside the said acquisition on the ground that the same has not been done in accordance with law. Considering that the layout had been fully formed and allottees had constructed their respective houses, the society approached the land owners offered them additional consideration in pursuance of which relinquishment deeds were executed by such land owners in favour of the Society, which includes the lands in which the plots of the Petitioners is situate.-. 15 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 11. The contention of the petitioners is that taking advantage of the above situation, certain persons more particularly one Mirle Vardaraj and his relative Manjunath colluded with certain land owners and got executed documents purporting to transfer the lands in their favour and on that

basis, despite those lands having been relinquished, those persons sought to forcibly take possession of the sites of the petitioners. In order to preserve and protect the property, the petitioners and several others put up construction of compound wall and a shed in their respective plots to safeguard it from encroachment.

12. The said Mirle Vardaraj and Manjunath R being well connected politically had in collusion with the government officials got the katha issued in favour of the allottees cancelled which was challenged by them in the case of M/s.REMCO (BHEL) House Building - 16 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 Co-operative Society Ltd., and others vs. Bruhat Bangalore Mahanagara Palike and others¹ which order was quashed vide judgment dated 13.02.2013. Despite quashing, the ministerial act of the BBMP for restoration of katha in favour of the petitioners has not been completed. The plan sought to be submitted by the petitioners for construction of their residential houses in the sites were not accepted on the ground that there is no katha in favour of the petitioners. This was done with an intention to aid and assist the said Mirle Vardaraj and others to usurp the property of the petitioners which was vacant.

13. Since the petitioners were successful in putting up compound wall and shed which was in occupation of certain security guards, the said Mirle Vardaraj prevailed upon the office of the Corporation to issue 1 W.P.No.21920/2010 & connected matters dated 13.02.2013 - 17 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 notice under Section 308 of the Karnataka Municipal Corporation Act, 1976 (for short, KMC Act) on all the allottees calling upon them to produce their respective documents with an intention to take over the said documents leaving the allottees without any documents to make their claim. Therefore, the petitioners are stated to have furnished photocopies.

14. Thereafter respondent No.2 - Assistant Executive Engineer issued a Provisional Order under sub- Section (1) of Section 321 of KMC Act and a notice under sub-Section (2) of Section 321 of KMC Act on 15.12.2012 to all the allottees without application of mind. Most of those orders are verbatim identical contending that the allottees/petitioners had put up the compound wall and a shed with AC sheet without obtaining necessary licence from BBMP and as such they were required to be demolished.-. 18 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 15. The petitioners and other allottees approached this Court challenging the said notices by filing W.P.Nos.52406-422/2012 which was disposed by this Court vide order dated 10.06.2013 holding that there is no need for a party to seek licence from the BBMP to put up a compound wall to protect the property. This Court directed the petitioners to treat the Provisional Order as a show cause notice and to file their reply within 4 weeks.

16. The petitioners are stated to have replied to the said show cause notice, no hearing was offered to the petitioners and thereafter after four long years had issued notices on 18.03.2017 referring to the order dated 10.06.2013 passed in W.P.Nos.52406- 422/2012 calling upon the petitioners to submit sanction/approval for construction of AC sheet - 19 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 building failing which the said construction would be demolished.

17. The petitioners immediately replied to the same calling upon the respondent to withdraw the said notice and had challenged it before this Court in W.P.Nos.13133-144/2017 and this Court vide its order dated 05.07.2017 directed the petitioners to appear before the authority and lead additional evidence if they choose to do and thereafter, BBMP was required to pass appropriate speaking orders after providing an opportunity of hearing to the petitioners and the complainants.

18. The petitioners are stated to have appeared before respondent No.2 and submitted the documents. On 06.10.2017, respondent No.2 is stated to have communicated the impugned order dated 04.09.2017 - 20 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 holding that the construction which have been put up by the petitioners of a AC sheet house was unauthorized since there was no plan sanction obtained and had indicated that further action would be taken to demolish the said shed after obtaining permission from Assistant Executive Engineer, Kengeri Sub-Division under Section 462 of KMC Act. It is challenging the same, the petitioners are before this Court.

19. Sri.K.B.S.Manian, learned counsel who appears for the petitioners in W.P.Nos.55716/2017, 47122/2017, 48000/2017, 55717/2017, 55718/2017 and 55719/2017 submits that:

19. 1. The Provisional Order issued under sub-Section (1) of Section 321 of KMC Act is without any basis. There is no particular allegation or - 21 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 averment made as regards the violation alleged to have been committed by the petitioners inasmuch as even if the construction put up by the petitioners is without a plan sanction, the same could be regularized by issuing a plan sanction on the petitioners applying for it. 19.2. The regularization cannot happen, only if the construction put up is in violation of the Building Bye-laws. So long as the construction is in accordance with or in conformity with Building Bye-laws, no demolition could take place. The Corporation could at the most impose some penalty and/or call upon such persons to obtain a plan sanction. 19.3. His submission is that the respondent - Corporation officials in collusion with Mirle Vardaraj and others had sought to take - 22 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 possession of the properties belonging to the petitioners and several others. The katha issued in favour of the petitioners having been cancelled and such cancellation order having been quashed by this Court, the respondent authorities did not reinstate the katha and on that basis, denied acceptance of the plan sanction submitted by the petitioners and all these things being done by the said officers of the Corporation in collusion with Mirle Vardaraj and others, the petitioners had no option but to put up construction of compound wall and AC sheet shed so as to put up some persons in the said premises to safeguard from encroachment. 19.4. The petitioners and other allottees were forced and constrained to take such steps to safeguard their properties since the Corporation officials - 23 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 were themselves colluding with the encroachers. If at all the katha had been reinstated and application for plan submitted by the petitioners accepted and processed in accordance with applicable Bye-laws, the petitioners being law abiding citizens would have complied with the same and the petitioners would have constructed in accordance with such sanctioned plans. 19.5. It is only on account of the illegal and unlawful actions of the corporation and the persons who were seeking to encroach the properties of the petitioners that the petitioners were constrained to take the above steps. 19.6. His submission is that even today the petitioners are ready to furnish application for sanction of plans for the construction which - 24 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 have been put up and the same could be considered in accordance with the applicable Building Bye-laws. 19.7. Apart from the above, he submits that in pursuance of the order passed in W.P.Nos.52406-422/2012 dated 10.06.2013 the Provisional Order being treated as a show cause notice the respondents were required to consider the objections submitted by the

petitioners and pass a reasoned order under sub-Section (3) of Section 321 of KMC Act. Instead of doing so, the respondents after a period of nearly four years at the behest of Mirle Vardaraj and others sought to contend that the order has been passed under Section 462 of the KMC Act for demolition. Thus, he submits that there is no order in actuality - 25 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 passed under sub-Section (3) of Section 321 of KMC Act and without doing so, no demolition order could have been passed. 19.8. The said demolition order also having been challenged in W.P.Nos.13133-442/2017 wherein this Court directed the petitioners to appear before the authority in continuation of the notice dated 18.03.2017 and after hearing the petitioners, necessary orders were to be passed. This he submits would again imply that the orders under sub-Section (3) of Section 321 of KMC Act ought to be passed, since without such orders, the question of demolition order being passed could not arise. 19.9. Relying on the above, he submits that the officials of the Corporation have without passing necessary orders under sub-Section (3) - 26 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 of Section 321 of KMC Act proceeded to hold the construction to be illegal and have sought to demolish the same. There is no finding given as to in what manner the construction of the petitioners violates the Building Bye-laws. The petitioners are still in the dark about the same and as such, are unable to answer the allegation. Merely because there is no plan sanction issued by the BBMP, the construction does not become illegal so long as the construction is in accordance with and complies with the requirements of Building Bye-laws. 19.10. On the basis of the above submissions he contends that the petition is to be allowed and reliefs sought for granted.

20. Sri.S.Saravana, learned counsel for the petitioner in W.P.No.20546/2017 and Sri.Abhinav Ramanand A., - 27 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 learned counsel for the petitioner in W.P.No.47406/2017 adopt the submissions of Sri.K.B.S.Manian, learned counsel.

21. Sri. Amit Deshpande, learned counsel who appears for BBMP in W.P.No.55716/2017 submits that:

21. 1. It was required for the petitioners to obtain a plan sanction. When no plan sanction is obtained, the question of officials of the Corporation detailing out the nature of deviation in terms of setbacks or construction would not arise. Once there is no plan sanction issued, the construction put up would be illegal requiring the Corporation to take necessary action in relation thereto and it is for that reason that the action is proposed to be taken.-. 28 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 21.2. In regard to the orders passed by this Court in W.P.Nos.52406-422/2012 dated 10.06.2013, he submits that the notices were treated as show cause notices, orders under sub-Section (3) of Section 321 of KMC Act having already been passed before that date, the submissions made by the petitioners were considered and the order of demolition passed. The order passed under sub-section (3) Section 321 of KMC Act earlier would enure to the benefit of the Corporation and there was no requirement to pass another order under sub-Section (3) of Section 321 of KMC Act. 21.3. Insofar as the orders passed in W.P.Nos.13133- 144/2017 is concerned, he submits that the order under Section 462 of the KMC Act, 1976 have not been quashed. Only an opportunity - 29 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 had been provided to the petitioners to place on record such documents as they intend to support their contention that the construction put up is legal and legitimate since no such document were placed on record, the authorities went ahead with confirmation of the earlier order and

passed the impugned order indicating that illegal construction would be demolished. 21.4. There is no collusion between the officers of the BBMP and Mirle Vardaraj or anyone else. The authorities have taken such actions of their own accord though on the basis of the complaint filed by Mirle Varadaraj. The orders passed by the Corporation authorities are in accordance with law and they cannot be challenged in the manner as done by the petitioners. Even if no - 30 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 complaint had been filed by Mirle Varadaraj, there being no plan sanction in favour of the petitioners the illegality being clear and apparent, the action taken by the Corporation authorities is proper and correct.

22. Sri.Sharath S.Gowda, learned counsel for respondent No.3 in W.P.No.47406/2017 submits that the land owners have executed necessary sale deeds in favour of Mirle Vardaraj and it is on that land that the petitioners have put up the construction and it is as regards this unauthorised and illegal construction and encroachment made by the petitioners that complaints were filed by Mirle Vardaraj and others with the Corporation authorities who have acted on the said complaint in accordance with law and no fault can be found with either respondent No.3 in W.P.No.47406/2017 or the officers of the - 31 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 Corporation. On this submissions, he submits that the above petitions are required to be dismissed.

23. Sri.Chaitravathi B.S., learned counsel for respondents No.1 to 3 in W.P.No.20546/2017 and for respondents No.1 and 2 in W.P.No.47406/2017, Sri.Rakshitha D.J., learned counsel for respondents No.1 and 2 in W.P.No.47122/2017, Sri.H.Devendrappa, learned counsel for respondents No.1 and 2 in W.P.No.48000/2017 and Sri.Pavan Kumar, learned counsel for respondents No.1 and 2 in W.P.No.55718/2017 and in W.P.No.55719/2017 adopt

the submissions of Sri.Amit Deshpande, learned counsel.

24. Heard the learned counsel for the parties and perused the papers.

25. The points that would arise for consideration are: - 32 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017

1) Whether the notices under Section 308 of KMC Act could be issued by the Corporation calling upon a private citizen to furnish documents like plan sanction, katha certificate, sale deed, etc.?.

2) Whether the Provisional Order under sub- Section (1) of Section 321 of KMC Act could be passed merely stating that the construction is illegal without detailing the illegality?.

3) Whether once the Confirmatory order under sub-Section (3) of Section 321 of KMC Act had been quashed vide order dated 10.06.2013 in W.P.No.52406-422/2012 without passing another order under sub- section (3) of Section 321 of KMC Act, could the Corporation officials pass demolition order under Section 462 of the Municipal Corporation Act, 1976?.

4) Whether the impugned order at Annexure-A could have been passed without referring to the alleged violations and/or deviations of - 33 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 the Building Bye-laws holding the construction put up by the petitioners to be illegal?.

5) What order?.

26. I answer the above points as under 27. Sections 308, 321, 462 of the Municipal Corporation Act, reads as under: Section 308 of KMC Act:

308. Power of Commissioner to require alteration of work.- (1) If the Commissioner finds that the work,- (a) is otherwise than in accordance with the plans or specifications which have been approved, or (b) contravenes any of the provisions of this Act or any rule, bye-law, order or declaration made under this Act, he may by notice require the owner of the building within a period state either,- (i) to show cause why such alterations should not be made, or (ii) to make such alterations as may be specified in the said notice with the object - 34 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 of bringing the work into conformity with the said plans, specifications or provisions. (2) If the owner does not show cause as aforesaid he shall be bound to make the alterations specified in such notice. (3) If the owner shows cause as aforesaid the Commissioner shall by an order cancel the notice issued under sub-section (1) or confirm the same subject to such modifications as he may think fit Section 321 of KMC Act:

321. Demolition or alteration of buildings or well work unlawfully commenced, carried on or completed.- (1) If the Commissioner is satisfied,- (i) that the construction or re-construction of any building or hut or well,- (a) has been commenced without obtaining his permission or where an appeal or reference has been made to the standing committee, in contravention of any order passed by the standing committee; or (b) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based; or (c) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-laws; or - 35 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 (ii) that any alteration required by any notice issued under section 308, have not been duly made; or (iii) that any alteration of or addition to any building or hut or any other work made or done for

any purpose into, or upon any building or hut, has been commenced or is being carried on or has been completed in breach of section 320, he may make a provisional order requiring the owner of the building to demolish the work done, or so much of it as, in the opinion of the Commissioner, has been unlawfully executed, or make such alterations as may, in the opinion of the Commissioner, be necessary to bring the work into conformity with the Act, rules, bye-laws, directions or requisitions as aforesaid, or with the plans or particulars on which such permission or orders was based and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building or well or hut. (2) The Commissioner shall serve a copy of the provisional order made under sub-section (1) on the owner or builder of the building or hut or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed. (3) If the owner or builder fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order, with any modification he may think fit and such order shall then be binding on the owner.-. 36 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 (4) If the construction or reconstruction of any building or hut is commenced contrary to the provisions of section 300 or 314 and the Commissioner is of the opinion that immediate action should be taken, then, notwithstanding anything contained in this Act, a notice to be given under sub-section (2) shall not be of less duration than twenty-four hours and shall be deemed to be duly served if it is affixed in some conspicuous part of the building or hut to which the notice relates and published by proclamation at or near such building or hut accompanied by beat of drum, and upon such affixation and publication, all persons concerned shall be deemed, to have been duly informed of the matters stated therein. Section 462 of KMC Act:

462. Time for complying with order and power to enforce in default.- (1) Whenever by any notice, requisition or order made under this Act or under any rule, bye-law or regulation made under it, any person is required to execute any work, or to take any measures or do anything, a reasonable time shall be named in such notice,

requisition or order within which the work shall be executed, the measures taken, or the thing done. (2) If such notice, requisition or order is not complied with within the time so named, then whether or not a fine is provided for such default and whether or not the person in default, is liable to punishment or has been prosecuted or sentenced to - 37 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 any punishment for such default, the Commissioner may cause such work to be executed, or may take any measure or do anything which may, in his opinion, be necessary for giving due effect to the notice. requisition or order as aforesaid. (3) If no penalty has been specially provided in this Act for failure to comply with such notice, the said person shall, on conviction, be punished with fine not exceeding fifty rupees for such offence.

28. Answer to Point No.1: Whether the notices under Section 308 of KMC Act could be issued by the Corporation calling upon a private citizen to furnish documents like plan sanction, katha certificate, sale deed, etc.?. 28.1. This Court has dealt with the said question in the case of Smt.Puttathyamma vs. The Karnataka Appellate Tribunal and others² and has come to a conclusion that the Corporation who is to be in custody and is the custodian of the plan sanction, katha certificate, tax paid receipts, etc., issued by the Corporation itself though by a different 2 2023:KHC:10034 : W.P.No.59522/2016 - 38 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 department than that exercising powers under Section 321 of the Municipal Corporations Act cannot seek for such documents. This Court has also issued general directions as regards making available documents for the officers exercising penal powers under BBMP Act, 2020. 28.2. That decision is though prospective, the same may not be completely applicable to the present case since the action was taken way back in the year 2012 and thereafter when the digitization of BBMP was not even commenced. 28.3. Thus in respect of old matters, when the digitization had not commenced and

were plan sanction, katha certificate, katha extract, tax paid receipts were being issued in physical format, the officer exercising penal powers - 39 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 under the Karnataka Municipal Corporations Act could issue necessary notices calling upon the alleged offender to produce the documents sought for in the said notice. Be that as it may, these documents would still have to be verified from the documents available with the Corporation since records would have to be maintained by the Corporation as regards any plan sanction issued, katha certificate issued, assessment order made, special notices issued, receipts for payment of tax issued, etc. 28.4. In view of the above, I answer Point No.1 by holding that the Corporation Officers can seek for providing of documents in old matters which are not digitised. However, as regards the documents which are digitized and available with the Corporation and any other - 40 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 instrumentality of the State, suitable mechanism should be made available to such officers to secure the documents not only for the purpose of considering the same but for verification of the documents with the documents if any furnished by the noticee.

29. Answer to Point No.2: Whether the Provisional Order under sub-Section (1) of Section 321 of KMC Act could be passed merely stating that the construction is illegal without detailing the illegality?. 29.1. The Provisional Order under sub-Section (1) of Section 321 of the KMC Act and now under sub-Section (1) of Section 248 of BBMP Act, 2020 are serious matters which relate to and deal with demolition of a property on account of illegal and unauthorised construction or construction carried out in violation of the sanctioned plan, Building Bye-Laws etc.- . 41 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP

No.55718 of 2017 WP No.55719 of 2017 29.2. The fact that the action under sub-section (1) of Section 321 of KMC Act and under sub-section (1) of Section 248 of BBMP Act, 2020 is treated as a Provisional Order would indicate the value attached to such an action to be an order and not a mere a notice. Thus, whenever a Provisional Order is to be passed, the Provisional Order should contain all the relevant details and should have been so passed after following the applicable law relating to passing an order, though albeit a provisional one. 29.3. It would be required for the officer passing a Provisional Order to clearly and categorically after inspection of the building in question state the permitted construction in terms of the sanctioned plan/Building Bye-Laws and the violations thereof in terms of setback, floor area - 42 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 ratio, height of the building, use for which the property has been put to and such other factor which according to the said officer is in violation of the sanctioned plan/Building Bye-Laws. 29.4. The Provisional Order should contain the details of such violation vis--vis both the sanction plan if issued as also the Building Bye-laws even if a sanction plan has been issued or not. This would aid and assist the Court to also ascertain if the sanctioned plan was so sanctioned in accordance with the Building Bye- laws or not. 29.5. Thus I answer point no 2 by holding that it is required that all details as aforesaid be presented in a comparative tabulated manner clearly showing the comparison between the building Bye-laws, sanctioned plan and the - 43 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 actual state of affairs, understandable by the noticee and calling upon the noticee to reply to each and every allegations made against the noticee in the Provisional Order, merely stating that the construction is illegal without detailing the illegality in sufficient and particular detail would not be in compliance with the requirements of subsection (1) of 321 of the Municipal Corporations Act 1976 which was applicable to Bangalore or that under the present sub-section (1) of section 248 of the BBMP Act 2020.

30. Answer to Point No.3: Whether once the Confirmatory Order under sub-Section (3) of Section 321 of KMC Act had been quashed vide order dated 10.06.2013 in W.P.No.52406- 422/2012 without passing another order under sub-section (3) of Section 321 of KMC Act, could the Corporation officials pass demolition order under Section 462 of the Municipal Corporation Act, 1976?. 30.1. In the present matter vide order dated 10.06.2013 in W.P.Nos.52406-422/2012, this - 44 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 Court treated the Provisional Order as a show cause notice even though by that time the Confirmatory Order under sub-Section (3) of Section 321 of KMC Act had already been passed. Once the Provisional Order was treated as a show cause notice permitting the petitioners to reply to the same, it could not be contended by the respondents that the Confirmatory Order has not been quashed and/or that the Confirmatory Order still stands since in my considered opinion once a fresh order was required to be passed on the basis of a reply to the Provisional Order, the earlier Confirmatory Order under sub-Section (3) of Section 321 of KMC Act would not stand and a fresh Confirmatory Order under sub-Section (3) of Section 321 of KMC Act had to be passed.-. 45 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 30.2. Without doing so, the question of issuing a notice under Section 462 of the Act and/or demolition work being carried out would not at all arise. This is also clear from the order passed in W.P.Nos.13133-144/2017 wherein a demolition order under Section 462 of the Act was challenged, this Court directed the officer of the Corporation to pass fresh orders after hearing the petitioners which only relates back to a Confirmatory Order under sub-Section (3) of Section 321 of KMC Act and not orders under Section 462 of KMC Act. 30.3. Thus, I answer Point No.3 by holding that in the present case a Confirmatory Order under sub- Section (3) of Section 321 of KMC Act is deemed to have been quashed by order dated 10.06.2013 passed by this

Court in - 46 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 W.P.Nos.52406-422/2012 and that a fresh Confirmatory Order under sub-Section (3) of Section 321 of KMC Act was required to be passed after providing an opportunity of hearing to the petitioners. The corporation authorities cannot negate the directions issued by this court and make the opportunity provided to the petitioners into an empty formality by confirming the order already passed, in other words a fresh order was to be passed after considering all the grounds urged by the petitioners.

31. Answer to Point No.4: Whether the impugned order at Annexure-A could have been passed without referring to the alleged violations and/or deviations of the Building bye-laws holding the construction put up by the petitioners to be illegal?. - 47 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 31.1. In the present case, the allegation made against the petitioners is that without applying for and obtaining a plan sanction, construction have been put up. Therefore, the same is illegal requiring its demolition. 31.2. The contention of the petitioners is that the officers of the Corporation had colluded with Mirle Vardaraj and Manjunath.R and it is on account of such collusion that the application which was proposed to be submitted by the petitioners for sanction of plan was not accepted by the office of the Corporation. Infact, the Corporation Officers were acted at the behest of Mirle Vardaraj and Manjunath R to see to it that the land continues to be vacant to enable easy encroachment by Mirle Vardaraj, Manjunath and others. It is in order to protect - 48 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 the interest of the petitioners, the petitioners put up construction of a compound wall and a shed containing with a

roof of asbestos sheets. 31.3. This Court having held in W.P.No.52406- 422/2012 that construction of a compound wall does not require any building licence, the only issue which remained was of the small house/shed which was constructed. This house according to Sri.K.B.S.Manian, learned counsel appearing for few of the petitioners does not violate the Building Bye-laws, complies with all the requirements thereof and was required to be constructed only to protect the interest of the petitioners. 31.4. At first blush, if the submission of Sri.K.B.S.Manian, learned counsel is accepted, it would mean that anyone could contend that - 49 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 the construction was put up in an emergency to protect the property and as such, any construction without permission or sanction plan would have to be treated as a legal construction, which will be antithesis to the Building Bye-laws. However, on the deeper consideration of the matter, it can be seen that the purpose of the Building Bye-laws and plan being sanctioned in pursuance thereof is to see to it that the plan is sanctioned as per the Building Bye-laws, the construction is carried out in terms of the Sanctioned plan, thus, in terms of the Building Bye-laws and on completion thereof, occupancy certificate is issued. 31.5. Thus, the whole effort made is to see to it that the Building Bye-laws are complied with and - 50 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 there is no violation of the Building Bye-laws. The sanctioned plan being issued in furtherance of the Building Bye-laws. 31.6. Essentially when one were to contend that the construction is illegal, unauthorised or violative of the sanctioned plan, what essentially one means is that the construction is in violation of the Building Bye-laws since the sanction plan is required to be issued in conformity with the Building Bye-laws. To put it differently if the construction were to comply with the Building Bye-laws but the construction were to be carried out without obtaining a sanctioned plan, it cannot be said that the construction is in violation of the Building Bye-laws. However, it

could be said that the construction is illegal since no sanction plan has been obtained.-. 51 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 31.7. It is a balance which is required to be drawn in this regard requiring an owner of the property to approach appropriate authority for issuance of a sanction plan, building licence, construction in accordance thereto and thereafter make payment of taxes for the built-up area as per the applicable rules. There being several connotations and actions relating to such construction, I am of the considered opinion that submission of Sri.K.B.S.Manian, learned counsel appearing for few of the petitioners cannot be accepted that so long as the building which has been constructed is in conformity with the Building Bye-laws, no notice could be issued and if any notice has to be issued, the same would have to indicate the violation of the Building Bye-laws.-. 52 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 31.8. One of the requirements of the Building Bye- laws is that the building sanction plan or a licence is required to be obtained. If this were not to be obtained that itself is in violation of the Building Bye-laws. The other aspects of setback, FAR violation coverage violation etc., being required to be considered later. 31.8.1. In terms of Section 321 (1)(i)(a) of KMC Act if a construction or reconstruction of any building has been commenced without obtaining Commissioners permission or where an appeal or reference has been made to the Standing Committee in contravention of any order passed by the Standing Committee; or 31.8.2. in terms of Section 321 (1)(i)(b) of KMC Act, such construction or reconstruction of - 53 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 building has been carried on or has been completed otherwise than in accordance with plans or particulars on which such

permission or order was based; or 31.8.3. in terms of Section 321 (1)(i)(c) of KMC Act, construction or reconstruction of any building is being carried on or has been completed in breach of any provision of the Act or any rule or bye-law made under the Act or of any direction or requisition lawfully given or made under the Act or such rules and bye-laws, 31.9. then, a Provisional Order could be made under sub-section (1) of Section 321 of KMC Act. Thus, it is not only where a construction or reconstruction has been made without a plan sanction in violation of the Act or Building Bye- - 54 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 laws. But it is commenced without obtaining the permission of the Commissioner or contrary to the permission granted by the Commissioner that a Provisional Order under sub-Section (1) of Section 321 of KMC Act can be passed. 31.10. Thus, it would not be open for Sri.K.B.S.Manian, learned counsel for few of the petitioners to contend that it is only if there is a violation of the Building Bye-laws that a notice could be issued. 31.11. Thus in my considered opinion in terms of Section 321 (1)(i)(a) of KMC Act, a notice could also be issued where a construction or reconstruction has been commenced without obtaining the commissioners permission. Having said so, as already observed, the net effect of the implementation of the provision of - 55 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 Section 321 of KMC Act is to ensure that the Building Bye-laws are complied with by the person putting up construction. Thus, I am of the further considered opinion that even though a notice under Section 321 (1)(i)(a) of KMC Act could be issued while issuing such notice in terms of Section 321 (1)(i)(c) of KMC Act, a notice would have to detail out apart from the construction being carried out without any sanction, the violation if any of the Act, rule or bye-laws made under the Act which would include the Building Bye-laws and as such, the said notice would have to indicate the violation made by the construction under progress or already completed of the setbacks FAR/FSI, floor

coverage, use of the building, etc. This being in order to ascertain if the construction - 56 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 can be saved if it is in accordance with the Building Bye-laws by directing the violator to apply for such building sanction in accordance with the building bye-laws applicable to the property. 31.12. In the event the construction being in accordance with the building bye-laws, a sanction of plan in accordance with the Building bye-laws would safeguard the property. However, if the construction is not in accordance with the Building Bye-laws then on a plan being sanctioned necessary directions could be issued to demolish the portion of the building which is in violation of the building bye-laws so as to bring it in conformity with such building bye-laws.-. 57 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 31.13. More often than not these violations occurring over a small plots which have been purchased by individual citizens by making payment of huge amount of money from their own personal funds and sometimes by borrowing funds. Since there is no particular violation of the building bye-laws as such, I am of the considered opinion that whenever authorities were to pass orders under sub-section (3) of Section 321 of KMC Act and now sub-section (3) of section 248 of BBMP Act, 2020 erstwhile Section 462 of KMC Act and now Section 356 of BBMP Act 2020, it would be required for such authorities to look into and pass necessary orders after taking into consideration if there is any violation of the Building bye-laws and not direct - 58 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 demolition only on account of building sanction not having obtained. 31.14. Hence, I answer point No.4 by holding that the impugned order at Annexure-A could not have been passed merely on account of there being no plan sanction without referring to and considering if there is any

violation or deviation from Building bye-laws. In the event of there being no violation or deviation from the Building Bye-laws, the respondent authorities could after collecting necessary fees issue necessary building plans/sanction plan to enable the regularization of the said building directing to make payment of property tax along with due penalty from the date on which the construction was made without obtaining the plan sanction.-. 59 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 32. Answer to Point No.5: What order:

32. 1. In view of my answers to the above questions, in the present matter, the only allegation against the petitioners being that the construction having been carried out without a plan sanction and a confirmatory order passed thereon without considering the submission of the petitioners that the construction is in accordance with the Building Bye-laws, I am of the considered opinion that the orders passed under sub-section (3) of Section 321 of KMC Act in all the above matters would be required to be quashed, remitting the matter back to the concerned authority to inspect the property in question to ascertain if the construction is in accordance with the Building Bye-laws or not. If it is, to consider the application made by the - 60 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 petitioners for issuance of plan sanction and grant it in accordance with the law. 32.2. There being serious allegations of collusion between the officers of the Corporation and Mirle Vardaraj and Manjunath and others, the Chief Commissioner would also have to institute necessary enquiry into the same to ascertain the veracity thereof. Since even though Mirle Vardaraj and Manjunath and others may or may not have a valid claim over the property, the officers of the Corporation cannot act contrary to the applicable law at the behest of the private party. 32.3. The Corporation and its officers would have to strictly comply with the principles enshrined in Article 14 of the Constitution of India and treat - 61 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 everyone equally and not to discriminate against the other on the basis of the complaint. 32.4. The Officers of the corporation or the corporation itself cannot be treated as a pawn or a stooge of private parties and act on their behalf. A statutory organization like the BBMP has been established to serve the interests of the citizens in general and not a few powerful persons. The corporation officials are required to and are advised to act in accordance with law, failing which the law will have to take necessary steps to bring such officers in conformity with law. 32.5. In view of above discussions, I pass the following:

ORDER

i) The Writ petitions are allowed.-. 62 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 ii) In W.P.No.55716/2017, the order dated 04.09.2017 passed by respondent No.2 vide Annexure-A is quashed. iii) In W.P.No.20546/2017, the order dated 18.03.2017 passed by respondent No.3 vide Annexures-L1 to L5 is hereby quashed. iv) In W.P.No.47122/2017, the order/notice dated 04.09.2017 passed by respondent No.2 vide Annexure-A is hereby quashed. v) In W.P.No.47406/2017, the order/notice dated 04.09.2017 passed by respondent No.2 vide Annexure-K is hereby quashed. vi) In W.P.No.48000/2017, the order/notice dated 04.09.2017 passed by respondent No.2 vide Annexure-A is hereby quashed. vii) In W.P.No.55717/2017, the order/notice dated 04.09.2017 passed by respondent No.2 vide Annexure-A is hereby quashed.-. 63 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 viii) In W.P.No.55718/2017, the order/notice dated 04.09.2017 passed by respondent No.2 vide Annexure-A is hereby quashed. ix) In W.P.No.55719/2017, the order/notice dated 04.09.2017

passed by respondent No.2 vide Annexure-A is hereby quashed. x) The matters are remitted to respondent No.1 for fresh consideration from the stage of provisional order issued under subsection (1) of Section 321 and show cause notice under subsection (2) of section 321. xi) The petitioners are also permitted to apply for plan sanction in terms of the applicable Building Bye-laws and the construction put up thereon, which shall be considered by the officers of the Corporation strictly in accordance with building Bye-laws and if the application for plan sanction complies with the building Bye-laws and all other requirements to - 64 - NC:

2024. KHC:404 WP No.55716 of 2017 C/W WP No.20546 of 2017 WP No.47122 of 2017 WP No.47406 of 2017 WP No.48000 of 2017 WP No.55717 of 2017 WP No.55718 of 2017 WP No.55719 of 2017 sanction the same within a period of 30 days thereafter. xii) It is only thereafter that concerned respondent shall consider the submission made by the petitioners in terms of the observations made hereinabove including the aspect of whether a plan sanction can be granted or not and pass necessary orders under sub-section (3) of Section 321. xiii) Enquiry report in terms of para 32.2 to be filed by Chief Commissioner respondent No.1 within a period of 90 days from today. xiv) Though the above matter is disposed for reporting compliance relist on 12.04.2024. Sd/- JUDGE PRS List No.:

19. Sl No.: 1

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