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M/S Elegant Builders and Developers vs the State of Karnataka

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Court : Karnataka

Decided On : Jul-01-2025

Judge : Sachin Shankar Magadum

Appeal No. : WP/15894/2024

Appellant : M/S Elegant Builders and Developers

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2025 BEFORE THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM WRIT PETITION NO.15894 OF 2024 (LB-BMP) BETWEEN:

1. M/S. ELEGANT BUILDERS AND DEVELOPERS

A PARTNERSHIP FIRM REGISTERED UNDER THE PARTNERSHIP ACT, HAVING ITS OFFICE AT NO.1/116, NEW KEMPEGOWDA LAYOUT, BSK III STAGE, 4TH CROSS, BANGALORE-560 085. REPRESENTED BY ITS PARTNER SRI. M. SUBRAMANI, AGED

ABOUT 62 YEARS, SON OF LATE MOTHULU NAIDU.

2. MR. TAMEEM NAYEEM KHAN

SON OF MR. NAYEEMULLA KHAN, AGED ABOUT 62 YEARS, RESIDING AT NO.38, 60 FEET ROAD, Digitally signed by AL BHAGYA NEAR HOYSALA APARTMENTS, Location: HIGH R.M.V. 2ND STAGE, COURT OF KARNATAKA BHOOPASANDRA NEW EXTENSION, BANGALORE-560 094. REPRESENTED BY HIS GPA HOLDER, M/S. ELEGANT BUILDERS AND DEVELOPERS, BY ITS PARTNER SRI M. SUBRAMANI. PETITIONERS (BY SRI. SUDHAKAR G.V., ADVOCATE) AND:

1. THE STATE OF KARNATAKA THE URBAN DEVELOPMENT DEPARTMENT, -2- VIKASA SOUDHA, DR. B.R. AMBEDKAR VEEDHI, BANGALORE-560 001. REPRESENTED BY ITS SECRETARY.

2. THE STATE OF KARNATAKA DEPARTMENT OF PARLIAMENTARY AFFAIRS AND LEGISLATION, VIKASA SOUDHA, DR. B.R. AMBEDKAR VEEDHI, BENGALURU-560 001. REPRESENTED BY ITS SECRETARY.

3. BRUHAT BANGALORE MAHANAGARA PALIKE N.R. SQUARE, BANGALORE-560 002. REPRESENTED BY ITS COMMISSIONER.

4. THE JOINT DIRECTOR (TOWN PLANNING- NORTH) BRUHAT BANGALORE MAHANAGARA PALIKE, ANNEX BUILDING, HEAD OFFICE BUILDING, N.R. SQUARE, BANGALORE 560 048.

RESPONDENTS (BY SMT. SPOORTHY V., HCGP FOR R1 & R2; SRI. K.B. MONESH KUMAR, ADVOCATE FOR R3 & R4) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO1) GRANT AN ORDER DECLARING THAT THE ENTIRE KARNATAKA MUNICIPAL CORPORATIONS AND CERTAIN OTHER LAW (AMENDMENT) ACT, 2021 (KARNATAKA ACT NO. NO.DPAL/50/SHASANA/2021 01 OF NOTIFIED 2022) (ANNEXURE-R) AS BEING ULTRA VIRES THE CONSTITUTION IN -3- SO FAR, THE PETITIONER IS CONCERNED IN SO FAR, THE PETITIONER IS CONCERNED AND ETC. THIS PETITION, COMING

ON FOR PRELIMINARY HEARING IN B-GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

This petition is filed seeking the following reliefs:- i) Grant an order declaring that the entire Karnataka Municipal Corporations and Certain Other Law (Amendment) Act, 2021 (Karnataka Act No. 01 of 2022) bearing No.DPAL/50/SHASANA/2021 notified on vires the Constitution in so far, the Petitioner is concerned. ii) To declare that Karnataka Municipal Corporations and Certain Other Law (Amendment) Act, 2021 (Karnataka Act No. 01 of 2022) bearing No.DPAL/50/ SHASANA/ 2021 notified on 13/01/2022 issued By Respondent No.2, Bengaluru (ANNEXURE-R) is -4- in violation/contrary to the decision of this Honble Court in W.P.No.4601/2020 (LB-BMP) which is at Annexure-P. iii) Grant an order, direction or writ in the nature of certiorari quashing the Office Order No. HaNiNaYo/PR/461/2021-22 dated 09/03/2022 issued by Respondent No.3 as contained in (ANNEXURE-S) in so far, the Petitioner is concerned. iv) Grant an order, direction or writ in the nature of Certiorari quashing Section 18-A of the Karnataka Town & Country Planning Act, 1961 brought into effect by Karnataka Act No. 23 of 2004 (Karnataka Town & Country Planning (Amendment) Act, 1998) as contained in (ANNEXURE-J) insofar as Section 18-A(i) and

(iv) of the Karnataka Act No. 23 of 2004 is concerned;

v) Grant an order, direction or writ in the nature of Certiorari quashing the Notification issued by the 1st Respondent bearing No. UDD 3 TTP 2015 dated 25/02/2020 as contained in (ANNEXURE-H) insofar as the inserted Rule 37-A and 37-C is concerned; -5- vi) issue a writ or order by way of certiorari quashing the circular dated 14/08/2020, bearing No. He.Ni.Ka.Pa.Ko/P.R/320/2020-21 issued by the Respondent No.3 (Annexure-K) in so far the Petitioner is concerned. vii) Grant an order, direction or writ in the nature of Certiorari quashing the Notification issued by the 1st Respondent bearing No. UDD 23 TTP 2020 (E) dated 21/06/2021 as contained in (ANNEXURE-L) insofar as the inserted Rule 37-A and 37-C is concerned; viii) issue a writ or order by way of certiorari quashing the

circular dated 24/06/2021, bearing No. He.Ni.Na.Yo/P.R/320/2020-21 issued by the Respondent No.3 (Annexure-M) in so far the Petitioner is concerned.

ix) issue a writ or order by way of certiorari quashing the demand notice dated JDNORTH/0119/23-24, issued by the Respondent No.4 (Annexure-D) for demanding in so far it is concerned to Ground rent, GST on Ground rent, License fee, scrutiny fee, Betterment charges for building, security deposit, Lake Rejuvenation fee, Cess for water supply scheme, Surcharge for formation outer -6-

ring road, Cess for improvement of slum, Surcharge for Mass Rapid Transport System, Labour cess and etc., as illegal, without jurisdiction and arbitrary.

x) issue a writ or order or direction by way of mandamus directing the Respondent No.3 and 4 BBMP to issue the sanction plan for construction of the residential apartment building in the Schedule Property without insisting the Ground rent, GST on Ground rent, License fee, scrutiny fee, Betterment charges for building, security deposit, Lake Rejuvenation fee, Cess for water supply scheme, Surcharge for formation outer ring road, Cess for improvement of slum and Surcharge for Mass Rapid Transport System, Labour cess and

xi) pass any such other order(s) as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity.

2. It is brought to the notice of this Court that

across the Bar, the issue is dealt by the Co-ordinate Bench in the reported judgment in W.P.No.23086/2022 and connected matters. The Co-ordinate Bench, while -7- deciding the issue, has set-aside the Karnataka Municipal Corporations and Certain Other Law (Amendment) Act, 2021 (Karnataka Act No.01 of 2022) and the Karnataka Municipal Corporations and Certain Other Law (Amendment) Act, 2023, (Karnataka Act No.37 of 2024). Therefore, this Court deems it fit to cull out the operative portion of the order, which reads as under;

"ORDER

(i) The writ petitions are partly allowed.

(ii) The Karnataka Municipal Corporations and Certain Other Law (Amendment) Act, 2021 (Karnataka Act No.01 of 2022), is hereby quashed and set aside.

(iii) The Karnataka Municipal Corporations and Certain Other Law (Amendment) Act, 2023, (Karnataka Act No.37 of 2024), is hereby quashed and set aside.

(iv) It is hereby declared that the provisions

> contained in Section 18-A of the Karnataka Town and Country Planning Act, 1961, read with Rules 37-A and 37-C of the Karnataka Planning Authority Rules, 1965, are applicable only in respect of Development Plan containing the proposal for construction on plots measuring more than 20,000 square meters in extent and not in respect of plots measuring less than 20,000 square meters. -8-

(v) It is hereby declared that if fee has been

earlier collected for change of land use or while approving a layout plan, fee shall not be collected for subsequent Development Plan in terms of the Note found below TABLE I of Rule 37-A of the Karnataka Planning Authority Rules, 1965.

(vi) It is hereby declared that the linking of the

> fee leviable under Rule 37-A of the Karnataka Planning Authority Rules, 1965, to the market value or guidance value as determined under Section 45-B of the Karnataka Stamp Act, 1957, is illegal. However, liberty is reserved to the respondent-State Government and the BBMP to re-fix a standard after collecting empherical data.

(vii) Consequently, all the impugned Circulars which seek to give effect to the Rules 37-A and 37-C of the Karnataka Planning Authority Rules, 1965, are hereby

quashed and set aside.

(viii) It is hereby declared that Clause 3.8 of the Bengaluru Mahanagara Palike Building Bye- laws, 2003, providing for Ground Rent, is illegal and are accordingly quashed and set aside.

(ix) Consequently, all the impugned Demand

Notices raised by the respondent-BBMP, in respect of the writ petitioners herein are also quashed and set aside. It would be advisable that the BBMP may come out with a scheme for One Time Settlement and settle the levy and collect the fee generally acceptable to the -9- citizens of Bengaluru. This would also augment the present situation."

3. In the present writ petition, the core issue raised

stands substantially covered and decided by the authoritative pronouncement of the coordinate bench, wherein the writ petitions were partly allowed and several consequential reliefs were granted. The Honble Court, in unequivocal terms, quashed and set aside the Karnataka Municipal Corporations and Certain Other Law (Amendment) Acts of 2021 and 2023 (Karnataka Act Nos.01 of 2022 and 37 of 2024 respectively).

4. The Court further declared that the provisions

under Section 18-A of the Karnataka Town and Country Planning Act, 1961, read with Rules 37-A and 37-C of the Karnataka Planning Authority Rules, 1965, are applicable only to development proposals concerning plots exceeding 20,000 square meters, and not to smaller plots. Importantly, it was also held that if a fee has been previously collected for change of land use or approval of - 10 - layout plan, no further fee shall be levied for subsequent development plans, in view of the explanatory 'Note' to Table I of Rule 37-A.

5. The Court declared illegal the linkage of such

levies to market or guidance value under Section 45-B of the Karnataka Stamp Act, and consequently, quashed all Circulars and demand notices issued to give

effect to such unlawful interpretations. Clause 3.8 of the BBMP Building Bye-laws, 2003, imposing 'Ground Rent', was also struck down.

6. In view of these comprehensive declarations and

findings, it is submitted that the controversy raised in the present writ petition no longer survives for adjudication independently, as it is squarely covered by the binding

judgment of the coordinate bench. In the light of the law

laid down in the reported judgment substantially covering the issue, which is raised in the captioned writ petition, the - 11 - writ petition is liable to be allowed strictly aligning to the operative portion of the said writ petition.

7. In view of the above, this Court proceeds to pass the following;

ORDER

(i) The writ petition is allowed.

(ii) The impugned demand notice dated 05.06.2024 issued by respondent No.4 as per Annexure-D is hereby set-aside.

(iii) Respondent Nos.3 and 4 - BBMP are hereby directed to issue fresh/modified sanction plan as the case may be.

(iv) Respondent Nos.3 and 4 - BBMP are hereby directed to forthwith process the petitioners' application seeking building license and sanction of the building plan, strictly in accordance with law.

(v) It is made clear that the issuance of

the building license and approval plan shall not be withheld merely on the ground that the - 12 - BBMP is contemplating to file an appeal against the reported judgment.

(vi) If the building license and sanction plan are issued, the same shall be subjected to the outcome of any appeal that may be filed by the BBMP against the judgment. Pending applications, if any, are also disposed off. Sd/- (SACHIN SHANKAR MAGADUM) JUDGE NBM List No.: 2 Sl No.: 10

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