

(2015) 12 KAR CK 0068
In the Karnataka High Court
Case No : W.P. No. 19787/2013 (LB-BMP)

Dhammanagi Developers Private Limited	APPELLANT
Vs	
The Commissioner, Bruhat Bangalore Mahanagara Palike and Others	RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Karnataka Fire Force Act, 1964 — Section 13
Karnataka Municipal Corporations Act, 1976 — Section 301, 302, 505
Karnataka Town and Country Planning Act, 1961 — Section 76(M)

Citation : (2015) 12 KAR CK 0068

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : M.G. Kumar, Advocate, for the Appellant; R. Ramachandran, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—In this writ petition, petitioner is aggrieved by the endorsement dated 05.03.2013 - Annexure-M issued by the Commissioner, Bruhat Bengaluru Mahanagara Palike, Bengaluru.

2. As per the said endorsement, petitioner is informed that as per the Government Notification issued in the year 2011 bearing No. HD 33 SFB 2011 dated 07.07.2011, any building having height above 15 mtrs. was required to be treated as a high rise building, in respect whereof, BBMP and its authorities are required to obtain No Objection Certificate from fire and emergency force and that without such No Objection sanction shall not be given to the plan submitted. It is also stated in the said endorsement that in the inspection conducted by the officers of the BBMP, it was found that petitioner was putting up fourth floor without obtaining necessary sanction plan. Petitioner was thus informed that in the light of the above, he was not entitled for grant of sanction for the modified plan to construct fourth floor.

3. It is relevant to notice at this stage that petitioner had approached this Court earlier by filing W.P. No. 30596/2011, wherein a similar endorsement issued calling upon the petitioner to obtain No Objection from the fire force was challenged, as the construction proposed to be undertaken in the fourth floor was a high rise building. This Court after considering the matter at length and by examining the notification issued by the State Government and also the zoning regulations and the revised Master Plan 2015, has held that the proposed construction by the petitioner could not be called as high rise building. It is useful to extract the observations made in paragraph 10 of the order passed in the previous writ petition.

"10. It is not in dispute that the Zoning Regulations framed under the Revised Master Plan, 2015, which have come into effect from 22.06.2007 having been published vide Government Order bearing No. UDD 540 DEM AA SE 2004, defines the term "High rise building or Multi-storeyed building", to mean a building of a height of 24 mtrs. or more above the average surrounding ground level. For such high rise building, as per Regulation 3.12, No Objection Certificate from Fire Force in addition to NOC from Pollution Control Board shall be furnished. Therefore, as per the Revised Master Plan, 2015, and the Zoning of Land use and Regulations framed and duly approved by the Government, copy whereof is produced at Annexure-D, petitioner's building cannot be called as high rise building. Therefore, as per this Revised Master Plan, 2015 and the Regulations, there is no requirement to take No Objection from the Fire Department."

4. Dealing with the effect of the subsequent regulations framed by the State Government on 07.07.2011 in exercise of the powers under Section 13 of the Karnataka Fire Services Act, 1964 placing an embargo on the BBMP or the local municipal authority to grant building plan/license without obtaining No Objection Certificate from the Fire and Emergency Services in respect of petitioner's request for grant of permission, this Court has observed in paragraphs 12 to 16 as under:

"12. A perusal of the notification dated 07.07.2011 issued under Section 13 of the Karnataka Fire Services Act, 1964, discloses that the State has framed these Rules to put in place preventive measures in respect of buildings of 15 mtrs. and above in height and other important public buildings to save life and property of general public. A perusal of the said notification further discloses that several safeguards are sought to be put in place keeping in mind the fire accidents and to ensure that the buildings are inspected by agencies empanelled by the Fire and Emergency services to ensure that the equipment installed are in good and workable condition. There cannot be any dispute that whatever fire safety measures that are required to be put in place in the existing building constructed by the petitioner and in the proposed construction which the petitioner intends to put up can be insisted and the petitioner cannot plead immunity for that. But, what is important is, petitioner cannot be asked to undo what has been done by

him in putting up construction strictly in accordance with the building bye-laws and the sanctioned plan given to him for the purpose of enforcing the fire safety measures as notified in the notification issued on 07.07.2011. Any condition to be put after the construction which is otherwise made in accordance with the existing rules and bye-laws can only be regulatory in nature and it cannot be said that for putting up additional construction, petitioner has to demolish the construction already put up by him so that fire safety measures as provided under the notification published in the year 2011 shall be adopted, otherwise no building license would be granted.

13. As rightly contended by the petitioner, he has provided the required space around the building as set back as per the existing regulations and if he has to provide additional space to put up additional construction, it is impracticable as the same can be achieved only by demolishing the existing building. Therefore, for the purpose of fire safety, the definition of high rise building has to be regarded as a building which has height of more than 15 mtrs. requiring No Objection from Fire Department. In the light of the Zoning of Land use and Regulations framed under the Revised Master Plan, 2015, wherein high rise building is defined as building having height of 24 mtrs. or more above the average surrounding ground level in respect of which only No Objection from the Fire Department was made obligatory, it has to be construed that the effect of Notification dated 07.07.2011 can only be that the fire safety measures as provided in the said regulations have to be complied with without insisting for undoing the construction already put up so as to affect the structure of the building. This result is required to be achieved in order to harmonise the effect of both these rules and also to ensure that fire safety measures introduced in the notification dated 07.07.2011 with a laudable object to prevent fire accidents and mishaps that are occurring too frequently are substantially given effect to even in respect of permission is already granted before the notification dated 7.7.2011 was issued but without calling upon the owner to demolish the existing structure. This will also save the 2011 Rules running the risk of coming in conflict with the Rules framed by the State Government in exercise of the powers under the Karnataka Town & Country Planning Act, 1961 viz., the Revised Master Plan and the Zoning of Land use and Regulations.

14. As rightly contended by the Counsel for the petitioner, as per Section 76(M) of the Karnataka Town & Country Planning Act, 1961, the provisions of the Act and the rules, regulations and bye-laws made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. The Revised Master Plan, 2015, and the Zoning of Land use and Regulations are the result of the power exercised by the State Government under the provisions of the Karnataka Town and Country Planning Act, 1961. Therefore, Section 76(M) gives precedence to these regulations. Even if there are other regulations framed by the State Government or even if there are building bye-laws of the BBMP defining high rise building as height of 15 mtrs. and above requiring clearance of Director of Fire Services, without impinging on the rules and regulations framed

in exercise of the powers conferred under the Karnataka Town and Country Planning Act, 1961, the same can be enforced. It is also necessary to notice here that as per Section 505 of the Karnataka Municipal Corporations Act, 1976, the Corporation or its authorities are precluded from doing anything against the provisions contained in the Karnataka Town & Country Planning Act, 1961, and the Regulations framed therein.

15. In the light of the above, the inescapable conclusion is, that while the petitioner is required to abide by all the fire safety measures that can be incorporated in the building constructed by him and the portion to be constructed by seeking necessary permission by the BBMP, he cannot be asked to follow such measures which may render impossible any additional construction by the petitioner. This is because at the time he obtained permission, there was no such rigor and the permission was granted after following the rules and regulations applicable at that time.

16. Hence, this writ petition is allowed in part. The impugned endorsement is quashed. The BBMP is directed to re-consider the application filed by the petitioner for permission to put up additional construction. If the petitioner has to install fire safety measures, he is required to do so as per the relevant regulations framed including the regulations framed in the year 2011. But, the authorities cannot insist for compliance of conditions which will result in demolition of the construction already put up or make it impossible for the petitioner to adopt such measures. Apart from the above impossible measures, any other measure required to be incorporated has to be adhered to by the petitioner."

5. A perusal of the decision rendered by this Court referred to above makes it very clear that the regulations made by the State Government or the regulations or building bye-laws of the BBMP define high rise buildings as those buildings which have the height of 15 Mtrs. and more, and thereby require clearance of the Director of Fire Force. The same, no doubt, could be enforced, but the Corporation and its authorities were precluded from doing anything against the provisions contained in the Karnataka Town and Country Planning Act, 1961, and hence, petitioner could not be asked to follow such measures which would render it impossible for it to take up any additional construction. In other words, this Court has made it categorically clear that No Objection Certificate in terms required by 2011 Regulations from the fire force could not be insisted in case it were to result in depriving the petitioner from proceeding with the construction of the fourth floor. However, the other fire safety measures could be insisted.

6. Though this order was passed as back as on 20.04.2012, not only that the BBMP did not consider and sanction modified building plan submitted by the petitioner for construction of fourth floor, but it also did not inform the petitioner to take any steps. This made the petitioner to file an application on 25.04.2012 vide Annexure-E requesting the Additional Director (Town Planning), BBMP, to grant building license for the construction of fourth floor. However, on

10.05.2012, the Commissioner, BBMP again chose to write a letter to the Director General of Police, Karnataka Fire & Emergency Services, seeking clarification as to whether No Objection Certificate was necessary from the Fire & Emergency Services Department in the light of the order passed by this Court. This communication was wholly unnecessary in the light of the order already passed by this Court which had made clear that such No Objection Certificate which would result in depriving the petitioner from putting up additional floor could not be insisted and that other safety measures could only be insisted. To this letter, the Fire & Emergency Services replied on 08.06.2012 stating that decision had to be taken by the BBMP itself. Again, the Commissioner seems to have reiterated the same position by corresponding with the fire and emergency services vide letter dated 19.06.2012. This time, the Fire & Emergency Services replied as per letter dated 11.07.2012 informing the Commissioner to take action in accordance with the direction issued by this Court in the writ petition. Even then, the Commissioner did not take any action. As a result, petitioner resorted to the provisions under Section 301 of the Karnataka Municipal Corporations Act, 1976, and addressed a letter dated 28.12.2012 as per Annexure-H to the Commissioner personally. This was followed by another letter dated 13.02.2013 as per Annexure-H1. Thereafter, he has moved the Standing Committee as per Section 302 of the Act vide letter dated 22.02.2013 at Annexure-K.

7. It is relevant to notice that Section 301 provides that if the Commissioner has not, within 30 days after the receipt of any application filed seeking permission to execute any work, either grant such permission or refuse, then the applicant may address a letter to the Commissioner requesting him to pass necessary orders on his application and thereafter, the Commissioner shall within a period of 30 days from the date of receipt of such letter, by written order grant such permission or refuse the same. If he fails to do so, in terms of Section 302, on the written request of the applicant to determine, the Standing Committee is required to determine by an order in writing as to whether such approval or permission to execute any work should be given or not. If the Standing Committee does not within one month from the receipt of such written request determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given and the applicant may proceed to execute the work, but not as to contravene any of the provisions of the Act or any rules or bye-laws made under the Act.

8. In the instant case, though the petitioner moved the Standing Committee, it also did not pass any order either granting or refusing permission. In such circumstances, petitioner, as rightly contended by the learned Counsel for the petitioner has to be deemed to have been granted permission. It is not the case of the respondent that such permission was either refused by the Commissioner or by the Standing Committee within the time stipulated. As this fact is not in dispute, in the instant case, petitioner is entitled for deemed permission. It is true that deemed permission will be only in so far as construction put up in accordance with law. Here again except stating that the construction is in

violation of the fire safety measures, not other contention is advanced.

9. In so far as fire and safety measures are concerned, this Court has already held that the proposed building put up by the petitioner in the fourth floor is not high rise building so as to attract no objection or clearance from the Fire & Emergency Services. But that does not dispense with the requirement of complying with the other fire safety measures. The other fire safety measures, petitioner is bound to and indeed as submitted by the learned Counsel, petitioner is willing to incorporate/install, which could be examined by the BBMP before issuance of occupancy certificate. If the petitioner does not incorporate or install the fire safety measures, then the BBMP would be entitled to withhold the issuance of occupancy certificate. Therefore, it is held that the impugned endorsement issued by the Commissioner at Annexure-M dated 05.03.2015 but signed on 30.03.2015 cannot be sustained.

10. A perusal of the impugned endorsement also discloses that the Commissioner seems to have gone back on its sanction plan regarding permissible floor area. In the sanction plan as per Annexure-A for the three floors, the road width has been mentioned as 4.20 Mtrs. and permissible FAR is shown as 2.25. However, while issuing the impugned endorsement, the Commissioner has erroneously held that the road width was only 30 feet and that the permissible FAR was 1.75. In fact, there was no such grievance made in this regard when the earlier writ petition was pending and when the previous endorsement was issued as per Annexure-C on 26.07.2011. It is thus clear that the petitioner is denied the benefit of modified sanction plan on erroneous and irrelevant considerations. Therefore, the impugned endorsement ignores the direction issued by this Court and proceeds on considerations which were irrelevant and were an after thought. If the impugned endorsement is given effect to, it would result in holding that the permission granted to the petitioner to construct three floors itself was illegal. Such a consequence cannot be permitted, particularly when the petitioner has been agitating his grievance by knocking at the doors of this Court for the past several years.

11. In the result, this writ petition is allowed. The impugned endorsement at Annexure-M is quashed. A direction is issued to the BBMP to issue the modified sanction plan in accordance with law within 15 days from the date of receipt of a copy of this order. It is however made clear that the issuance of occupancy certificate by the BBMP would be only subject to the petitioner satisfying the fire safety measures to be installed in the fourth floor.