

(2013) 03 KAR CK 0088

In the Karnataka High Court

Case No : Writ Petition No. 17567 of 2012 (LB-BMP)

Mr. Arul Nambi Sivasankaran

APPELLANT

Vs

The Commissioner Bruhat Bangalore Mahanagara Palike
Office of the B.B.M.P Huston Circle and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 132(3)

Citation : (2013) 03 KAR CK 0088

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Swamini Ganesh Mohanambal, for Sri. Sandeep Patil for R1-4, Sri. Arun Govindraj and Ajay Govindraj for Sri. L. Govindaraj for R5 and 6, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 03.12.2011 impugned at Annexure-K to the petition. The petitioner has also sought for direction to consider the plan proposed by the petitioner as per Annexure-L for completion of construction in accordance with the prevailing Bye-law of the respondents and the Revised Master Plan -2015 and Zonal Regulations. The petitioner is the absolute owner of the property bearing No. 615, 1st Stage, II Main, Indiranagar, Bangalore-560 038. The petitioner has stated with regard to his ownership rights. The present litigation pertains only to the construction that is being put up by the petitioner in the said property. Though reference is made to the earlier proceedings before this Court and the Karnataka Appellate Tribunal relating to the action initiated u/s 321(3) of the Karnataka Municipal Corporations Act, 1976, keeping in view the nature of the litigation at this stage, the said aspects of the matter need not be gone into.

2. The petitioner who was putting up construction in accordance with the sanction plan is stated to have deviated from the said construction and it is in that regard, certain actions were initiated, more particularly on the compliant

made by respondent Nos. 5 and 6 who are owners of the neighbouring property. The impugned order at Annexure-K came to be passed in that circumstance. However, since there are certain amendments made to the Building Bye-Laws and since the petitioner is seeking to bring the building in conformity with the said Bye-laws has submitted a fresh plan for consideration. Only that aspect requires consideration.

3. In that regard, I am of the opinion that the correctness or otherwise of the order impugned at Annexure-K need not be gone into at this juncture, since the aspect for consideration is as to whether the petitioner is entitled to consideration of the plan at Annexure-L which has been submitted to the statutory respondents for approval.

4. In a normal circumstance, when such request is made, the appropriate direction to be issued to the statutory respondents would be to consider the plan in accordance with the prevailing guidelines. However, keeping in view the nature of the objections which have been put forth by respondent Nos. 5 and 6 and also keeping in view certain developments which had taken place during the pendency of the writ petition, the consideration to be made by the statutory respondents would have to be qualified accordingly.

5. Insofar as the petitioner having brought the building in conformity with the prevailing guidelines so as to seek for approval of the plan as per Annexure-"L", a spot inspection had been carried out during the pendency of the instant petition and as per the report which was filed by the statutory respondents on 07.09.2012, it would disclose that the petitioner in fact has brought the building in conformity with the plan for which he now seeks approval. In the said report, it was also indicated that in the ground floor, he has made arrangement for parking four vehicles and the proposed basement parking had been sealed. Since the said report on the face of it would indicate the demolitions which have been made and the constructions which have been put up in the first and second floor, the respondents cannot have any objection in that regard at this juncture. The only question for consideration is with regard to the appropriateness of the provision made in the ground floor for the parking area.

6. Though the report indicates that the ground floor has been provided for parking, learned counsel for respondent Nos. 5 and 6 had objected to the construction being made in the ground floor to enclose the parking area which is not permissible. It is in that context, the matter had proceeded further herein to find out as to whether an appropriate grill work alone could be permitted. However having noticed the provisions and also the contentions put forth by respondent Nos. 5 and 6, it would disclose that the parking area in the ground floor would have to be an open parking area. Therefore, if the plan at Annexure-L is to be approved by the statutory respondents, such compliance also would have to be kept in view.

7. In such circumstance, though the statutory respondents are required to

consider the plan which has now been submitted as per Annexure-L in accordance with the Bye-laws and the sanction is to be made, more particularly keeping in view the report which has already been filed before this Court stating that the building has been brought in conformity with the present Bye-laws, the only aspect which requires to be ascertained by the statutory respondents before granting approval is to make a spot inspection of the premises and find out as to whether the parking area provided in the ground floor is retained as required under the Bye-laws or has it been enclosed by objectionable grill work as complained by respondent Nos. 5 and 6. Needless to mention that if it is enclosed in a manner as not permissible under the Bye-laws, the objectionable enclosures would have to be removed and an open parking area would have to be ensured and in that regard, the statutory respondents would be duty bound to see that the said requirement is satisfied before grant of approval. Hence, a direction is issued to respondent Nos. 2 to 4 to consider the plan submitted by the petitioner at Annexure-"L" for the purpose of approval. In this regard, respondent Nos. 2 to 4 shall secure a spot inspection to be done within two weeks from the date on which a certified copy of this order is made available to them. On such spot inspection, respondent Nos. 2 to 4 shall ensure that the ground floor parking area is in conformity with the Bye-laws and as indicated in the plan at Annexure-"L". On such satisfaction being recorded by respondent Nos. 2 to 4, the consideration and approval of the plan at Annexure-"L" shall thereafter be made as expeditiously as possible but not later than three weeks after the date of spot inspection and satisfaction recorded thereof.

In terms of the above, the petition stands disposed of. No costs.