

(2012) 07 KAR CK 0076

In the Karnataka High Court

Case No : Writ Petition No. 7855 of 2012 (LB-BMP)

Mrs. Yashodha Rao

APPELLANT

Vs

Bruhat Bangalore Mahanagara Palike and Others

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Citation : (2013) 2 AKR 321

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

Bench : Single Bench

Advocate : Anant V. Albal, for the Appellant; M.N. Ramanjaneya Gowda, for R1-3 and Sri H.R. Ananthakrishna Murthy, for R4-7 R8 and 9 are deleted V/o dated 14.06.2012, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna

1. The petitioner is before this Court seeking for issue of writ to quash the sanctioned plan LP No. J.C. West 282/10-11 granted in favour of respondent Nos. 6 and 7 as at Annexure-A. Consequently, a direction is sought for demolition of the structure built on site No. 24 i.e., 1662/6, 2nd cross, Ramamohanapuram, Bangalore 21. In the alternative, it is prayed that the private respondents be directed to pull down the structure on the eastern side of their property which is to the western side of the petitioner's property and thereafter leave a margin of 4.5 meters i.e., 15 feet from the boundary of petitioner's property. The prayer No. 2 made in the petition is however not pressed as the learned counsel for the petitioner has submitted to that effect. The brief facts are that the petitioner is the owner of the property bearing Nos. 1662/7 and 1662/7A, II Main, Ramamohanapuram, Bangalore-21. To the western side of that property is the property bearing No. 1662/6 which was earlier owned by Raman family. The said property has now been purchased by the respondent Nos. 6 and 7. Though the petitioner refers to them as "Sharma Group", it is disputed by the respondents. That in my opinion is besides the point inasmuch as the sale deed dated

23.10.2009 indicates that it is purchased by respondent Nos. 6 and 7 and that would hold good. The respondent Nos. 6 and 7 have thereafter obtained sanction of the impugned building plan from respondent No. 1 and is proceeding with the construction. The grievance of the petitioner is that earlier the property had grand setback, but the plan which has been approved contains setback of one meter on the sides. It is therefore contended that the approval of such plan for construction is contrary to the Building Bye-laws-2003 of the first respondent. Hence, the building constructed based on such plan is unauthorised and therefore the petitioner seeks for demolition of the building or bring it in conformity with the Bye-laws on its western side by providing set back of 4.5 meters.

2. Though what is noted above is the present grievance, the petitioner also refers to the allegation that the respondent Nos. 6 and 7 have violated even the plan sanctioned contrary to law and there are deviations in the construction from the sanctioned plan as well. In that regard, the petitioner had approached this Court in W.P. No. 33248/2011 wherein the official respondents had inspected the building as directed by this Court and violation of 30.67% on front side and 20% on right was reported. Thereafter action as contemplated u/s 321(1) of Karnataka Municipal Corporation Act, 1976 ("KMC Act" for short) was initiated which culminated in an appeal and is presently pending in Appeal No. 1031/2011 before the Karnataka Appellate Tribunal ("KAT" for short). The dispute therein is about the violation of the sanctioned plan as there is deviation, while in the instant petition, the very sanction of the plan is alleged to be contrary to the requirement under the Building Bye-laws-2003.

3. The official respondents as well as the contesting respondents have filed their separate objection statement denying the allegations made by the petitioner. Insofar as the allegation regarding the violation of the sanctioned plan while constructing pursuant to the same, the respondents contend that the issue is pending before the competent Tribunal and on decision being rendered therein, the appropriate course would follow and as such in the present petition, the very same allegation is not maintainable. With regard to the contention regarding the legality of the sanctioned plan, the respondents contend that petitioner has wrongly relied on the Bye-laws-2003, though the Revised Master Plan 2015 and Zonal Regulation 2007 has come into force on 25.06.2007 and the plans are being sanctioned keeping in view the guidelines therein. Hence, when the very basis of the petition is erroneous, the prayer made therein is liable to be rejected is the contention of the respondents.

4. The petitioner filed her rejoinder to the objection and the respondents have filed their reply to the same. The interlocutory application filed by the petitioner also refers to the earlier proceedings etc. The cumulative effect of all the rival pleading is to the same effect i.e., relating to the appropriate regulation, which would be applicable in the instant case.

5. Heard Sri A.V. Albal, learned counsel for the petitioner, Sri H.R.

Ananthakrishna Murthy and Sri Ramanjaneya Gowda, respective learned counsel for the respondents and perused the petition papers.

6. In the background of the rival contentions urged, the primary question that would arise for consideration is as to whether the specification relating to the construction should be as provided in the different tables contained in the Bruhat Bangalore Mahanagara Palike Building Bye-laws, 2003 ("Bye-laws-2003" for short) or as provided in the Revised Master Plan-2015, Zoning Regulation-2007 ("Zoning Regulation-2007" for short). In order to consider this aspect of the matter, it would be necessary to refer to the relevant provisions, which were referred to by the learned counsel for the petitioner as well as the respondents.

7. In that regard, Section 9 of the Karnataka Town and Country Planning Act, 1961 ("KTCP Act" for short) provides for preparation of the Master Plan and to be submitted to the State Government for approval. The Master Plan is to be prepared by the Planning Authority. Section 2(7)(a)(i) provides that the Planning Authority for the local planning area comprising the city of Bangalore is the Bangalore Development Authority ("BDA" for short). Section 12 mandates for the contents to be included in the Master Plan. The contents would also provide for building line, floor area ratio etc. Section 13-D provides that the Master Plan is to be revised at least once in every ten years from the date on which it has come into force and Section 14 relates to the enforcement of the Master Plan and the Regulations. Since the BDA is designated to be the Planning Authority for the city of Bangalore, a reference to Section 2(c) of the Bangalore Development Authority Act, 1976 (for short the "BDA Act") defines that the Bangalore Metropolitan Area is the area comprising the city of Bangalore and such other areas adjacent thereto.

8. The cumulative effect of the provisions noticed above would indicate that in respect of the Bangalore Metropolitan Area, the BDA is the Planning Authority and the Master Plan as required under the KTCP Act is to be prepared by the BDA and the same is to be approved by the State Government. It is in that context, keeping in view the fact that the Master Plan which had been prepared and approved earlier was more than ten years, the Revised Master Plan-2015 has been prepared by the BDA regarding Zoning of Land Use and Regulations-2007 and the same is approved by the State Government on 25.06.2007. The respondents therefore contend that the said Regulation is in force from 25.06.2007 and the sanction of plans would be granted by the Official respondents, keeping in view the requirements of the Regulations thereunder. In that regard, it is contended that the impugned plan (Annexure-A) approved in favour of the contesting respondents herein was approved on 25.05.2010. As such it is approved under the Zoning Regulations-2007. Hence, it is contended that the approved plan in all respects including the setbacks which has been provided therein is in conformity with the said Regulations.

9. The learned counsel for the petitioner however sought to dispute the same by contending that the Bangalore Mahanagara Palike Building Bye-laws-2003 is the

one which is applicable and if the same is kept in view, the plan sanctioned is contrary to the requirement therein. It is the case of the petitioner that the height of the building being constructed by the contesting respondents is admittedly 10 mtrs. and if that be so, Table-5 Bye-laws-2003 is applicable to buildings of which the height is more than 9.5 mtrs. In such case, the open space/setbacks to be left on all sides is 4.5 mtrs., while in the impugned approved plan, the setback indicated on the sides is only 1 mtr. and as such, the plan itself is contrary to the Bye-laws and is therefore liable to be quashed.

10. At the outset, to determine which of the Regulations is applicable it is to be noticed that the Bye-laws 2003 relied on by the learned counsel for the petitioner would indicate that the same was framed on 24.04.2004, keeping in view the earlier Zoning Regulations which was published with the approval of the State Government on 05.01.1995 under the provisions of the KTCP Act. The said Bye-law came into force in supersession of the Bye-laws 1983. These aspects would indicate that the Bye-law to be framed by the Mahanagara Palike is dependent on the Master Plan which would be prepared by the BDA which is the Planning Authority in the instant case. On approval of the Revised Master Plan, the Bye-laws would have to be framed in conformity with the Revised Master Plan. Presently, though the Revised Master Plan-2015 and the Zoning Regulations 2007 has come into force with the approval of the State Government on 25.06.2007, the Mahanagara Palike has not yet framed the Bye-laws in conformity with the same. Though that is the position, the Mahanagara Palike cannot continue to approve the construction plan under the Bye-laws 2003 itself insofar as the specifications as it would be contrary to the Master Plan and Regulations prepared by the Planning Authority which has the jurisdiction to plan and specify regarding the development and constructions in the area. That has to be regulated and implemented by the Local Authority i.e., the BBMP in the instant case.

11. In fact, immediately on coming into force of the Master Plan-2015 and Zoning Regulations-2007, the BBMP has issued a circular dated 31.08.2007 referring to the Government Order dated 29.06.2007 indicating that the Regulations under the Master Plan-2015 be followed till the Bye-laws-2003 is brought in conformity with the Master Plan-2015 and Regulations 2007. Further, the learned Judge of this Court in the case of Ms. Malathi Rau Vs. The Chief Engineer (West), The Commissioner, The Assistant Director (West), Planning Cell and Mrs. Kamini Srinivasan Kurpad cited by the learned counsel on both sides has considered the effect of Revised Master Plan- 2015 and Zoning Regulations and on noticing its applicability from 25.06.2007 has held the Zoning Regulations has statutory force and the plan cannot be sanctioned contrary to the same which is a pointer to the position that Zoning Regulations-2007 is in force. Hence, in the instant case, the plan which is sanctioned in favour of the contesting respondent on 25.05.2010 should necessarily be in conformity with the Zonal Regulations-2007 which has come into force on 25.06.2007 and not the unamended Building Bye-law.

12. The learned counsel for the petitioner has also referred to the provisions contained in the Bangalore Metropolitan Region Development Authority Act, 1985 ("BMRD Act" for short). It is contended that under the said Act also, the Local Authority has been defined in Section 2(f) which includes the Bangalore Municipal Corporation, Bangalore and the BDA. The powers contained therein u/s 9(v) is referred. Reference is also made to Section 30 and 31 to indicate the regulations framed therein and that the ODP and CDP of Bangalore Metropolitan Region would have to pass through the BMRDA for approval by the State Government. Hence, it is contended that when the regulation under the said Act in Table-2 provides the open space at 4.5 meters, the same should have been adopted. The said Act has been enacted to provide for planning, co-ordinating and supervising so that all the local bodies under the Bangalore Metropolitan Region perform their respective function in coordination. Though the said provisions have been referred by the learned counsel, Section 81-C of the KTCP Act also has reference to the BMRDA regarding approval. However, the consideration on that aspect is not called for in this petition inasmuch as the petitioner has not called in question the validity of the Master Plan 2015 or the Zonal Regulations 2007 and in that regard neither the Planning Authority nor the State Government have been impleaded as parties to the petition.

13. The learned counsel for the petitioner in order to contend that in the instant case the building plan should be considered as having been approved under the Bye-Laws-2003, would refer to the affidavit which is said to have been filed by Sri S.R.K. Sharma on behalf of the contesting respondent in Appeal No. 1031/2011 pending before the Karnataka Appellate Tribunal. It is pointed out that the understanding of the contesting respondent themselves is that the application for seeking approval of the building plan has to be made under Bye-Laws 2003 and official respondents have also received the application in that regard. Further reference is also made to the documents obtained under the RTI Act and filed along with the rejoinder statement. In that regard, the declaration filed by the Architect on 30.03.2010 and the affidavit of the owners of the property is also referred to point out that it contains that all particulars furnished are as per the Bye Laws-2003 and as such the plan should be deemed to have been approved under the said Bye-laws.

14. A perusal of the same no doubt indicates that the format refers to the Bye-laws 2003 as also to the Zonal Regulations. Admittedly, the BBMP has not modified the Bye-laws but are adopting the Zonal Regulations-2007 so far as the specifications but the procedural aspects are indicated in the Bye-laws. If that is kept in view and the said set of documents is perused further, Annexure-VII is also found as a part of the said declaration and affidavits. The floor area statement and the other details provided therein in column 19 and 20 would refer to the actual measurements of the proposed constructions for which the approval of the plan is sought. If the same is closely perused, it would indicate that the details as contained in the Zonal Regulations-2007 is indicated therein. Further, when it is held that the Zonal Regulations-2007 has come into force and

the same is applicable to plans approved after 25.06.2007, irrespective of what has been applied for, the approval can only be in conformity with the Regulations prevailing as on the date of the approval.

15. Therefore, in the instant facts, Table-5 of the Bye laws 2003 relied upon by the learned counsel for the petitioner will not apply. Since the Zonal Regulations-2007 is applicable, the plan approved in favour of the contesting respondents herein as at Annexure-A will have to be examined to find out whether the same is in accordance with the said Regulations. Insofar as the set back for buildings up to the height of 11.5 meters and the plot size up to 4000 sq.mts, it is as contained in Table -8, as provided under Chapter 3.0 of the Regulations. In the instant case, the height of the building being 10 mts is not in dispute. The sale deed dated 23.10.2009 (Annexure-R.5) whereunder the contesting respondents have purchased the property would disclose the measurement of the property. The sital area measures 2880 sq. ft. i.e., 267.44 sq mts.

16. Keeping in view the said measurement of the property, the permissible construction and the set backs to be left would be in terms of Table-8 and Table-10 contained in Chapter 3.0 and 4.1 of the Regulations. The details worked out on percentage basis and the set back in that regard to be left on both sides and the front and back of the building is worked out in detail in para 6 and 7 of the reply filed by the official respondents on 05.07.2012. For better understanding, it would be appropriate to extract the same which reads as hereunder:

6. The details of the sanctioned plan is as follows: The plan is sanctioned taking into consideration the site situated in residential main as per Chapter 4.1 of Table 10.

The total area of the site - 267.44 sq mtrs. Width of the site 12.19 mtrs. Depth of the site left side 20.72 mtrs. Right side 23.16 mtrs.

For 12.19 mtrs. width setback to be left as per table 8 for both right and left side is 8% that comes to $12.19 \times 8\% = 0.975$ but the minimum set back is 1 mtr., the same is left as per the sanctioned plan.

7. Depth of site, higher depth is considered i.e. 23.16 mtrs. is taken as depth, for 23.16 mtrs. set back at front and rear side is to be considered.

For front side, set back 12% of the depth is to be considered accordingly front side set back left to be is $23.16 \times 12\% = 2.78$ mtrs. Set back as per the sanctioned plan left is 3.75. Which is more than permitted limit.

For rear side setback 8% of the depth is to be considered accordingly rear side setback left to be is $23.16 \times 8\% = 1.85$ mtrs. Set back as per the sanctioned plan left is 2.41. which is more than permitted limit.

The total site area is 267.44 mtrs. Floor area permitted is $267.44 \times 1.75 = 468.02$

plan sanctioned floor area is 296.73 which is 1.10 ratio which is less than 1.75.

(Emphasis supplied)

17. Since the main concern in the instant petition being the set back on the sides more particularly towards the western side of the property of the petitioner, it is seen from the above statement that the set back to be left on both sides at 8% would be 0.975 meters which is less than the set back of 1 meter which has been indicated in the plan which has been approved in favour of the contesting respondent. Hence, the plan approved is in conformity with the Regulations. In that view, though the learned counsel for the petitioner referred to the decision of this Court in *Godrej K. Divecha and Others Vs. Corporation of City of Bangalore and Others*, the same would not be of assistance in present facts of the case inasmuch as in the said case after noticing the Zonal Regulations prevailing at that point, this Court had arrived at such conclusion by noticing the requirement of the Regulation and the sanction of the plan which was contrary to the same. But, in the instant case, as noticed, the approval is as per the Regulations prevailing. For the same reason, the decision of the Division Bench in the case of *K.K. Govindaraju and Vinayaka Investments Vs. Commissioner, Corporation of City of Bangalore*, cited by the learned counsel for the petitioner would also not be of assistance.

18. That apart, the above discussion would indicate that taking note of the details of the relevant Regulations, the correctness or otherwise of the plan approved has also been discussed. In that view, the decision relied on by the learned counsel for the petitioner in the case of *Bhaurao Dagdu Paralkar vs. State of Maharashtra and ors* (2005 AIR SCW 4094) would not be relevant to be applied to the facts involved in the instant case though there can be no two opinions with regard to the position of law enunciated therein. Further, the question of considering the consequential action would not arise in the instant case when the approval of the plan itself is not found to be illegal. Therefore, the decision relied upon in the case of *Priya Gupta vs. State of Chattisgarh and others* (2012 AIR SCW 3354) is also without relevance. Learned counsel for the petitioner further referring to the order dated 09.09.2011 passed in W.P. No. 33248/2011(Annexure-C) contended that even from the sanctioned plan, there is deviation while constructing. The Junior Engineer has filed a report in that direction. With regard to the same, it is not in dispute that the official respondents herein have already initiated action u/s 321(1) and (2) of the Karnataka Municipal Corporations Act, 1976 and the provisional order and thereafter the final order dated 03.12.2011 has been passed u/s 321(3) of the said Act. Against such order, the contesting respondents herein have availed their statutory remedy and the matter is now pending before the KAT in Appeal No. 1031/2011. Certainly the approved plan would have to be adhered to and the law will take its course if the contesting respondents have not conformed to the same. Since the appeal is pending, it would not be appropriate to express any opinion in that regard. It is also the grievance of the petitioner that the

construction is being put up in violation of the interim order passed by the KAT. If that be so, it would be open to the petitioner to bring it to the notice of the KAT and at the same time, the official respondents cannot shirk their responsibility as they also have a duty to implement the orders of the Court. Hence, the question as to whether there is deviation from the sanctioned plan and the action to be initiated thereon would be done in the appropriate proceedings as this Court cannot exercise jurisdiction parallel to the statutory remedy which has already been availed. The Karnataka Appellate Tribunal will however consider disposing of the Appeal No. 1031/2011 as expeditiously as possible if such request is made by the learned counsel for the parties.

In the result, the writ petition is dismissed. Parties to bear their own costs.