

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF OCTOBER, 2012

BEFORE

THE HON'BLE MR.JUSTICE RAM MOHAN REDDY

WRIT PETITION NO.32454 OF 2011 (LB-BMP)

BETWEEN:

1. SRI DR D HEMACHANDRA SAGAR
S/O LATE R DAYANANDA SAGAR
AGED 56 YEARS
NO.44/54, 30TH CROSS
TILAK NAGAR
JAYANAGAR EXTENSION
BANGALORE - 560 041.
2. SRI DR D PREMACHANDRA SAGAR
S/O LATE R.DAYANAND SAGAR
AGED 51 YEARS
NO.44/54, 30TH CROS,
TILAK NAGAR
JAYANAGAR EXTENSION
BANGALORE - 560 041. ...PETITIONERS

(BY SRI: T P VIVEKANANDA, ADVOCATE)

AND:

1. BRUHAT BANGALORE
MAHANAGARA PALIKE
N.R.SQUARE
BANGALORE - 560 002
REP BY ITS COMMISSIONER.

2. THE JOINT DIRECTOR
(TOWN PLANNING-SOUTH)
OFFICE OF THE JOINT DIRECTOR
OF PLANNING
BRUHAT BANGALORE MAHANAGARA PALIKE
N.R.SQUARE
BANGALORE - 560 002.

3. STATE OF KARNATAKA
HOUSING & URBAN DEVELOPMENT
5TH FLOOR, VIKAS SOUDHA
BANGALORE - 560 001
REP BY ITS SECRETARY. ...RESPONDENTS

(BY SRI: SUBRAMANYA R, ADVOCATE FOR
M/S: ASHOK HARANAHALLI ASSTS, ADVOCATES
FOR RESPONDENT NOS.1 AND 2,
SRI: B V MURALIDHAR, ADVOCATE FOR
RESPONDENT NOS.1 AND 2,
SRI: R B SATYANARAYANA SINGH, HCGP
FOR RESPONDENT NO.3)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING
TO QUASH THE COMMUNICATION DATED 16.9.2010 AT
ANNEXURE-C ISSUED BY RESPONDENT NO.2 ONLY
INsofar AS THE DEMAND OF RS.2,50,48,000/- IS
CONCERNED AND TO ISSUE SANCTIONED BUILDING PLAN
AND BUILDING LICENSE WITHOUT INSISTING THE
PETITIONER TO PAY THE AMOUNT OF RS.2,50,48,000/-
TOWARDS THE MARKET VALUE OF 10% OF THE PROJECT
AREA.

THIS WRIT PETITION COMING ON FOR FURTHER
ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The challenge in this petition is over the
demand notice dated 16.9.2010, Annexure-C, of

the Bruhat Bangalore Mahanagara Palike insofar as it relates to the demand of Rs.2,50,48,000/- being value of 10% of the property in lieu of setting apart 10% of the area of the property for parks and open spaces belonging to the petitioners.

2. A single Judge of this Court in W.P.No.25221/2010 and other connected writ petitions by order dated 25.1.2011 having considered an identical demand by the respondent-BBMP, recording a finding that the demand was arbitrary and illegal as it was not supported by the statutory provision and has further observed thus:

"It is made clear that the allowing of these petitions would not automatically entitle the petitioners to get the sanctioned plan, modified plan, commencement certificate and occupancy

certificate, as the case may be. It is open to the BBMP to examine the entitlement of the petitioners to the said certificates and approvals in accordance with law, but without insisting for the payment of the amounts towards the value of 10% of plot area".

3. In the circumstances, demand notice, Annexure-C, insofar as it relates to directing the petitioners to pay Rs.2,50,48,000/- towards 10% of the value of the property in lieu of not providing 10% of the area of the property for parks and open spaces, calls for interference.

4. Sri.Subramanya, learned counsel for the respondents-BBMP submits that the BBMP has filed W.A.No.3478/2011 and by an interim order, a direction is issued to the Corporation not to refund the amounts already collected towards such demand.

5. In the result, the petition is allowed to the extent that the demand for Rs.2,50,48,000/- in Annexure-C is quashed. It is made clear that if the respondents-BBMP considers the petitioners' application for sanction of building plan and issues a license, the same shall be subject to the result of W.A.No.3478/2011. The BBMP is directed to impose this condition both in the sanction of the building plan as well as in the license that will be issued as well as in commencement certificate or completion certificate that may have to be issued under the Karnataka Municipal Corporations Act, 1976.

Sd/-
JUDGE

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