



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 28th day of November, 2016

Before

THE HON'BLE DR JUSTICE VINEET KOTHARI

Writ Petition Nos.3881-3883/2014 (LB-BMP)

Between

1. Sri. V. Dhamodaran
Aged about 32 years
S/o Sri. N. Venugopal
No.224/8, B.R.S. Residential Building
Kaikondarahalli, Bangalore - 560035.
2. Sri. K. Srinivasa Reddy
Aged about 31 years
S/o Sri. Krishna Reddy
R/at. No.405, Rudrappacharya Vatara
Kaikondarahalli, Bangalore - 560035.
3. Sri. S.M. Shivakumar
Aged about 26 years
S/o Sri. Maheshwaraiiah
No.224/8, B.R.S. Residential Building
Kaikondarahalli, Bangalore-560035.

... Petitioners

(By Mr. S.R. Krishna Kumar, for
Mr. Shrikara P.K. Advocate)

And

1. Bruhat Bangalore Mahanagara Palike
Corporation Buildings, N.R. Square
Bangalore - 560 002.
Represented by its Commissioner.
2. The Assistant Director of Town Planning

- Mahadevapura Zone
Bruhat Bangalore Mahanagara Palike
Mahadevapura, RHB Colony
Whitefield Main Road, Bangalore-560048.
3. The Assistant Engineer of Town Planning
Mahadevapura Zone
Bruhat Bangalore Mahanagara Palike
Mahadevapura, RHB Colony
Whitefield Main Road, Bangalore-560048.
4. The Deputy Commissioner
Mahadevapura Zone
Bruhat Bangalore Mahanagara Palike
Mahadevapura, RHB Colony
Whitefield Main Road, Bangalore-560048.
5. The Joint Commissioner
Mahadevapura Zone
Bruhat Bangalore Mahanagara Palike
Mahadevapura, RHB Colony
Whitefield Main Road, Bangalore-560048.
6. The Assistant Executive Engineer
Marathalli Sub-Division
Bruhat Bangalore Mahanagara Palike
2nd Floor, Krishna Vaibhav Building
Marathalli, Bangalore - 560 037.
7. The Assistant Revenue Officer
Marathalli Range
Bruhat Bangalore Mahanagara Palike
2nd Floor, Krishna Vaibhav Building
Marathalli, Bangalore - 560 037.
8. Smt. P. Anitha
Aged about 39 years
W/o Sri. K.S. Jagadeesh Reddy
R/at. No.45, Kasavanahalli
Bellandru Post, Bangalore East Taluk.

9. Sri. K.S. Jagadeesh Reddy
Aged about 49 years
S/o late K. Srinivasa Reddy
R/at. No.45, Kasavnahalli
Bellandru Post, Bangalore East Taluk.
10. M/s. Viceroy Ventures
A Proprietor Firm
Represented by its Proprietor
Sri. C.H. Ravindra Kumar Reddy
Aged about 51 years
Having its office at No.420/2A
2nd Floor, BTS Road, 3rd Cross
Wilson Garden, Bangalore - 560 027.
11. M/s. Sharanya Fair Field
A Partnership Firm
#545, 2nd Floor, 26th Main
BTM Layout, 2nd Stage
Bangalore - 560 076
Represented by its Partner
Sri V. Dayananda Reddy.
12. M/s. SRS Builders and Developers
Represented by its Partners
#4007, Vama Ibbani Apartments
Kasavanahalli, Off Sarjapura Road
Bangalore - 560 035
Represented by its Partner
Sri. S. Rajashekhara Reddy.
13. Bangalore Development Authority (BDA)
T. Chowdaiah Road, Kumara Park West
Bangalore - 560 020
Represented by its Commissioner.
14. Karnataka State Pollution Control Board (KSPCB)
"Parisara Bhavan", #49, 4th & 5th Floor
Church Street, Bangalore - 560001

Through its Chairman &
Member Secretary.

15. Karnataka State Fire & Emergency Services
No.1, Annaswamy Mudhaliar Road
Bangalore - 560042
Through the Director of Fire Services.
 16. Bangalore Electricity Supply Company (BESCOM)
Corporate Office, K.R. Circle
Bangalore - 560001
Represented by its Managing Director.
 17. Bangalore Water Supply and Sewerage Board (BWSSB)
Cauvery Bhavan, K.G. Road, Bangalore-560009
Represented by its Chairman.
 18. Airport Authority of India. CHQ
Rajiv Gandhi Bhavan, Safdarjung Airport
New Delhi - 110003
Represented by its Executive Director (ATM)
- ... Respondents

(By Mr. S.J. Puranik, Advocate for R1 to R7
Mr. Nishanth A.V. Advocate for R8 & R9
Mr. S.G. Hegde, Advocate for R10
M/s. Sreevatsa Associates, Advocate for R11
Mr. S. Venkateshwara Babu, Advocate for R12
Mr. K. Krishna, Advocate for R13
Mrs. Vanitha, Advocate for R14
Mr. K.B. Monesh Kumar, Advocate for R17
Mr. Joshua Samuel, Advocate for R18
R15 & R16 are served)

These Writ Petitions are filed under Articles 226 & 227 of the
Constitution of India, Praying to quash the impugned
relinquishment deed dated 04-05-2012 at Annex-M executed by R8

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and R9 in favour of R1 as illegal, non-est, invalid, null and void-ab-initio.

These Writ Petitions coming on for Preliminary Hearing in 'B' Group this day, the Court made the following:

ORDER

Mr. S.R. Krishna Kumar,
For Mr. Shrikara P.K., Advocate for Petitioner.
Mr. S.J. Puranik, Advocate for Respondent Nos.1 to 7;
Mr. Nishanth A.V., Advocate for Respondent Nos.8 and 9;
Mr. S.G. Hegde, Advocate for Respondent No.10;
M/s. Sreevatsa Associates, for Respondent No.11;
Mr.S. Venkateshwaru Babu, Advocate for Respondent No.12;
Mr.K. Krishna, Advocate for Respondent No.13;
Ms. Vanitha, Advocate for Respondent No.14;
Mr.K.B. Monesh Kumar, Advocate for Respondent No.17;
Mr. Joshua Samuel, Advocate for Respondent No.18.

1. These three writ petitions have been filed by three individuals, Mr.V. Dhamodaran, Mr. K. Srinivasa Reddy and Mr.S.M. Shivakumar appear to be out on a demolition and annihilation drive, claiming to be the champions of public cause for a clean-up drive against 18 Respondents, some of them being public bodies like Bruhat Bengaluru Mahanagara Palike(BBMP), Assistant Director of Town Planning, Deputy

Commissioner of BBMP, Joint Commissioner of BBMP, etc., while the remaining are the private parties, viz., the Builders against whose constructions, several violations have been alleged by the petitioners and the following reliefs are claimed in the aforesaid writ petitions:-

*"a) Quash the impugned **Relinquishment Deed** dated 04-05-2012 at Annexure M executed by Respondents 8 and 9 in favour of Respondent No.1 as illegal, non-est, invalid, null and void-ab-initio by issue of a writ of Certiorari or any other appropriate Writ or Direction as the case may be;*

*b) Quash the impugned **Official Memorandum** dated **04-05-2012** at Annexure P issued by the Respondent No.4 as illegal, non-est, invalid, null and void-ab-initio by issue of a writ of Certiorari or any other appropriate Writ or Direction as the case may be;*

*c) Quash the **impugned Sanctioned Building Plan** at Annexure Q-1 bearing L.P.No. NAYO/MAVA/COMMITTEE/123/2012-13 dated 20-07-2012 and corresponding License at Annexure*

R-1 dated 20-07-2012 **issued by Respondents 1 to 3** by issue of a writ of Certiorari or any other appropriate Writ or Direction as the case may be;

d) Quash the **impugned Sanctioned Building Plan** at Annexure Q-2 bearing L.P.No.NAYO/MAVA /COMMITTEE/230/2012-13 dated 08-11-2012 issued by Respondents 1 to 3 by issue of a writ of Certiorari or any other appropriate Writ or Direction as the case may be;

e) Quash the **impugned Sanctioned Building Plan** at Annexure Q-3 bearing L.P.No.NAYO/ MAVA/COMMITTEE/21/2012-13 dated 30-04-2013 corresponding Licence at Annexure R-3 dated 30-04-2013 issued by Respondents 1 to 3 by issue of a writ of Certiorari or any other appropriate Writ or Direction as the case may be;

f) Direct the Respondents 1 to 7 **to take steps to demolish/remove** the illegal and unauthorized structures/construction put up in land bearing Sy.No.8/2 of Kasavanahalli village, Varthur Hobli, Bangalore East Taluk as requested

*in the Petitioner's Representation dated 10-12-2013
by issue of a Writ or Mandamus or any other
appropriate writ or direction as case may be;*

*g) Direct the Respondents 1 to 7 to restrain
the Respondents 8 to 12 from putting up any
further construction in land bearing **Sy.NO.8/2 of
Kasavanahalli village, Varthur Hobli,
Bangalore East Taluk** by issue of a Writ of
Mandamus or any other appropriate writ or
direction as case may be*

;

*h) Grant such other reliefs that this Hon'ble
Court deems fit to grant in the circumstances of the
case."*

Thus they not only want all sanctioned plans in favour
of Respondent - Builders to be quashed and cancelled but
even the Relinquishment Deed executed by the Builders in
favour of BBMP, for public utility to be quashed and that too
in exercise of Writ jurisdiction under Article 226 of the
Constitution of India.

2. The learned counsel for the Respondents have brought to the notice of the Court that against the action initiated against these private Respondents - Builders at the instance of such complainants under Section 321 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the 'Act' for short), an appeal has been filed by the Respondent No.9, Mr.K.S.Jagadeesh Reddy and two such appeals in **Nos.893/2013** and **894/2013** are pending before the Karnataka Appellate Tribunal (hereinafter referred to as the 'Tribunal' for short) which were filed under Section 443-A of the Act.

3. The present petitioners-complainants are not the parties before the said Tribunal in the aforesaid pending appeals.

4. On the question of maintainability of these writ petitions, the learned counsel for the petitioners has brought to the notice of the Court, an interim order passed by the coordinate bench of this Court dated **18/08/2015** and it is quoted below for ready reference:

“ A memo has been filed for dismissal of the writ petitions.

The learned counsel for the respondents submits that the petitioners have challenged the illegal construction allegedly being made by respondents No.8 to 12. However, subsequently the B.B.M.P. has issued provisional notice under Section 321(1) of the Karnataka Municipal Corporations Act, 1976, and the final notice under Section 321(3) of the said Act. The respondents have already challenged the legality of these notices before the Karnataka Appellate Tribunal. Since the matter is sub-judice before the Tribunal, no further cause of action remains in the present petitions. Therefore, these petitions should be dismissed as having become infructuous.

*On the other hand, Mr. D.R. Ravishankar, the learned counsel for the petitioners, pleads that **besides raising the issue of illegal construction, he has also raised the issue of relinquishment deed which were made in favour of the B.B.M.P.** Therefore, merely by challenging the notice, noted*

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above, passed by the B.B.M.P., the prayer made by the petitioners is neither diluted, nor disappears. Hence, the cause of action survives. Thus, the petitions have not become infructuous.

Mr. Lakshminarayan, the learned senior counsel for respondent No.12, has raised a preliminary issue regarding maintainability of the writ petitions itself.

Heard the learned counsel for the parties.

Since large numbers of issues have been raised by the petitioners, since the **issue regarding maintainability of the writ petitions still needs to be debated, and adjudicated**, merely by challenging the notice issued by the B.B.M.P. before the learned Tribunal would not make the present petitions as infructuous one. For, **still large number of issues need to be adjudicated by this Court**. Therefore, this Court does not find any merit in the memo filed for dismissal. Accordingly, the memo is **dismissed**.

List these cases on 15-9-2015.”

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5. Upon a preliminary hearing of the matter by this Court, this Court is of the considered opinion that the present writ petitions are not maintainable and deserve to be dismissed at this stage itself and there is no reason to decide the aforesaid large number of issues raised herein.

6. The case in hand is obviously a case requiring an inquiry into the facts and rather a complex cob-web of facts where the Respondent - Builders are alleged to have raised constructions in violation of the various statutory provisions of different enactments and certain registered documents like Relinquishment Deed in favour of BBMP is also sought to be quashed, which is plain and simple a cause which can be tried only by a Competent Civil Court in a properly instituted Civil Suit and not in Writ Jurisdiction.

7. Firstly, the petitioner - complainants who are before this Court ought to have brought such violations to the notice of the concerned public bodies themselves and if they have done so, it could be only expected of the public bodies to take action according to law and pass appropriate reasoned

orders on such representations/complaints. If such action or orders caused any grievance to any person, there are remedies provided in the relevant laws themselves where such grievances can be ventilated. The very fact that two of such appeals against the action initiated by the Respondent - BBMP are pending before the competent Tribunal which can go into such facts, the present petitioners instead of seeking their impleadment before the Tribunal in the matter to place their complaint and evidence before the said Tribunal, have approached this Court by way of present three writ petitions, scattering the litigation to more than one Forum, which is not permissible and desirable. This is not only likely to result in conflicting orders to be passed by two Forums, but the case in hand obviously as indicated above, requires a deep scrutiny in the whole lot of facts of the case which are required to be proved as per the provisions of Evidence Act read with relevant provisions of the Civil Procedure Code and which cannot and do not deserve to be undertaken in exercise of the

extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8. The petitioners- complainants, therefore, cannot call upon this Court in writ jurisdiction to hold such fishing and roving enquiry and undertake the scrutiny in all these facts and supervise the working of the public bodies like BBMP and BDA and compel them to take action, which otherwise also they are expected and can in law undertake and instead of approaching the concerned authorities and pursuing their matters before them to its logical end and the petitioners in such cases directly and prematurely invoking the writ jurisdiction of this Court in such matters deserve to be relegated to the Forums below.

9. This Court is experiencing a flood of this kind of litigation and the very fact that such private disputes which may be initiated for *bona fide* reasons or even for ulterior motives, are allowed to be entertained in writ jurisdiction, the same consume a lot of precious public time of the Court

which is absolutely unnecessary. The averments made in Writ Petitions which are supported only by Affidavits cannot be taken as proved facts or Gospel truths to initiate such an enquiry. No such mixed and joined causes against so many Builders whose projects, sanctions and constructions may be going on at different places cannot be assailed by way of an all-sweeping kind of Petition under Article 226 of the Constitution of India.

Whether the sanctioned plans have been obtained or not, whether the due approvals have been given in accordance with the Rules or not, whether the constructions have deviated from the sanctioned plans or not, what is the *locus standi* and *bona fides*, of the petitioners and prejudice caused to them, (why should three individuals rise against a host of Builders except at the instance of hidden Rival Builders, embroiling public bodies in such *lis*, is a serious question to ponder) whether the public bodies have dealt with their grievances raised before them or not, whether the appellate mechanism provided under the relevant Statutes

has been fully exhausted or not, are all the relevant questions in such cases.

10. It is unfortunate that the writ jurisdiction is treated as panacea for all alleged ills and with the kind of blanket and bald averments and objections and lot of hulky documents which are put forth on the dockets of this Court in these type of cases are called upon to be examined by writ Court, whereas such issues and matters ought to have been raised at the lower Forums viz., Departmental authorities and Tribunals constituted under these laws, who are expected to give finding of facts based on relevant evidence and this is indeed a sorry state of affairs.

11. The insistence of the learned counsel for the petitioners that this Court should not dismiss these writ petitions at this stage in view of the aforesaid interim order passed by the co-ordinate bench is misconceived, to say the least.

12. With all due respects to the learned counsel for the Petitioners in the said interim order passed by the co-ordinate

bench of this Court, the self-same order itself notices that “large number of issues have been raised by the petitioners and the issue regarding maintainability of the writ petitions still needs to be debated”. Therefore at that stage, even if the writ petitions were not dismissed and this debate was kept open, the petitioners cannot insist upon this Court to continue these writ petitions and dilate upon the details on merits.

13. This Court is of the clear opinion that merits or otherwise of the present case deserves to be decided by the lower forums or the authorities of the public bodies like BBMP and BDA itself or the Town Planning Authority concerned and if they have so decided or so decide in future and the petitioners feel aggrieved of their decisions, then the relevant Statutes have already provided for appellate mechanism and forums for redressal of their grievances before them and finally before the Tribunal.

14. The petitioners, therefore, would be well advised to approach the said Tribunal itself and seek their impleadment in aforesaid pending appeal. If the learned Tribunal is satisfied about their *bona fide* and the *locus standi* that they need to be heard in the matter, the Tribunal is at liberty to implead them as party in the said appeals and as complainants, the present petitioners can lead their evidence and grievance before the said Tribunal.

15. In the alternative, they can also be directed by the Tribunal to approach the concerned public authorities like BBMP & BDA or Town Planning Authority itself first.

16. In case such an exercise is undertaken by the fact finding body like the Departmental authorities or the Tribunal and the petitioners are not satisfied with their decisions, they can still file Civil Suits separately against each of the private Respondents - Builders separately and impleading even the public authorities like BBMP & BDA etc., as defendants.

Date of Order 28-11-2016 W.P.Nos.3881-3883/2014
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17. However, in view of the aforesaid, this Court is not inclined to proceed further with this case and cases of this nature and holds that these type of writ petitions are not maintainable. The writ petitions, therefore, deserve to be dismissed and are accordingly dismissed. No costs.

**Sd/-
JUDGE**

BMV*

