



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 27<sup>TH</sup> DAY OF SEPTEMBER, 2023**



**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO. 21775 OF 2023 (LB-BMP)**

**BETWEEN:**

SRI. ASLAM PASHA

~~SRI. ASLAM PASHA~~

...PETITIONER

(BY SRI. MALLIKARJUN.M.N. ADVOCATE)

**AND:**

1. CHIEF COMMISSIONER  
APPELLATE AUTHORITY  
BRUHAT BANGALORE MAHANAGARA PALIKE  
N.R. SQUARE, CORPORATION CIRCLE  
BENGALURU-560 002
2. ASSISTANT EXECUTIVE ENGINEER AND  
COMPETENT AUTHORITY  
H.A.L. AIRPORT SUB-DIVISION  
BENGALURU-560 017
3. SRI. GOPALKRISHNA

...RESPONDENTS

(BY SRI. PAWAN KUMAR., RESPONDENT NO.1 AND 2;  
V/O DATED 27.9.2023- NOTICE TO R3 IS DISPENSED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227  
OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT IN THE  
NATURE OF CERTIORARI QUASHING THE ORDER DATED 17.6.2023

Digitally signed  
by  
NARAYANAPPA  
LAKSHMANNA  
Location: HIGH  
COURT OF  
KARNATAKA





PASSED IN APPEAL NO.7/2023 BY THE RESPONDENT NO.1-CHIEF COMMISSIONER, BRUHAT BANGALORE MAHANAGARA PALIKE, VIDE ANNEXURE-A AND ETC.

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

**ORDER**

1. Sri.Pawan Kumar., learned counsel is directed to accept notice for respondents No.1 and 2. Notice to respondent No.3 is dispensed with on account of the order proposed to be passed.
2. The petitioner is before this Court seeking for the following reliefs;
  - a. *Issue writ in the nature of certiorari quashing the order dated 17.6.2023 passed in Appeal No.7/2023 by the respondent No.1-Chief Commissioner, Bruhat Bangalore Mahanagara Palike, vide **Annexure-A**.*
  - b. *Consequently, set aside the **provisional order** dated 28.06.2023 passed under **Section 248(1) of BBMP Act, 2020** bearing No.SAM.B.B.M.P/SA.KA.A/H.A.L U.V/P.R No. 51/21-22 by the respondent No.2 vide **Annexure-H**, and*
  - c. *Set aside the **Confirmation Order** passed under **Section 248(3)** of BBMP Act, 2020 dated 13.07.2022 bearing No. SAM.B.B.M.P/SA.KA.A./H.A.L Airport Sub-division /C.O/57/2022-23 passed by the respondent-2 vide **Annexure-J**.*
  - d. *Pass such other as this Hon'ble Court deems fit in the facts and circumstances of the above case, in the interest of justice and equity.*



3. The petitioner claims to be the absolute owner of site No.20 carved out in old Sy. No.115/6A having katha No.6380, totally measuring 6588.75 sq. ft. situate at Annasandra Palya, Vibuthipura Dakle, KR Puram Hobli, Bengaluru East Taluk having purchased the same under the registered sale deed on 27.1.2011.
4. The petitioner had entered into a joint development agreement on 27.8.2020 with the developer M/s Hindustan Developers who had applied for and obtained a sanction plan and building licenses from Assistant Director Town Planning (ADTP), BBMP. On account of a complaint having been filed against the said construction notices has been issued under Section 313 of BBMP Act, 2020 followed by notices under Section 248(1), 248(2) and Confirmatory Order under Section 248(3) of the BBMP Act, 2020.
5. The respondent No.3 being aggrieved by the inaction on part of the BBMP had approached this Court in WP No.23444/2020 which came to be disposed by this Court vide order dated 13.9.2023 permitting the



petitioner and the developers to challenge the notices issued under Section 248(1), 248(2) and 248(3) and until then restrain the respondents from taking coercive steps.

6. Before the order could be passed, the petitioner had already filed an appeal in Appeal No.7/2023 which came to be disposed by order dated 17.6.2023 on the ground that the petitioner had not produced the plan sanction in respect of such property and in that view of the matter, it was held that the construction was unauthorized. It is challenging the same that the petitioner is before this Court seeking for the aforesaid reliefs.
7. Heard Sri.Mallikarjun.N.K., learned counsel appearing for the petitioner and Sri.Pawan Kumar., learned counsel appearing for respondents No.1 and 2. perused papers.
8. The points that would arise for consideration are:
  - 1. Whether the notices under Section 248 (1) and 248 (2) and the confirmatory order under Section 248 (3) of the BBMP Act, 2020**



**can be issued by the Assistant Executive Engineer?**

**2. Whether the BBMP can on the ground that plan sanction and other documents have not been furnished by the noticee confirm the provisional order?**

**3. What order?**

9. I answer the above points as under.

10. **Answer to point No.1: Whether the notices under Section 248 (1) and 248 (2) and the confirmatory order under Section 248 (3) of the BBMP Act, 2020 can be issued by the Assistant Executive Engineer?**

10.1. The notices which have been issued under 248(1) and 248(2) as also the confirmation order under Section 248(3) have been issued by the Assistant Executive Engineer and Competent Authority viz., respondent No.2 and not by Zonal Commissioner as required under Section 248. The Assistant Executive Engineer does not have the power under Section 248 to issue either the notices or the confirmatory order as held by this Court in ***Smt. Kavitha***



***Jain & another Vs. The Commissioner & Others***<sup>1</sup> dated 17.08.2023 in that view of the matter, the said notices themselves are non est and this aspect ought to have been considered by the Commissioner while dealing with appeal under Section 253.

11. **Answer to point No.2: Whether the BBMP can on the ground that plan sanction and other documents have not been furnished by the noticee confirm the provisional order?**

11.1. In the appeal filed by the petitioner, the Commissioner has come to a conclusion that since plan sanction has not been produced, the construction is illegal. The Petitioner would however contend that there is a plan sanction issued and the same could not be produced in time before the commissioner.

11.2. Plan which has been sanctioned in favour of the petitioner has been so sanctioned by the Corporation itself. When sanctions are made by

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<sup>1</sup> WP No.9934 of 2023



the Corporation and/or documents are issued by the Corporation which are in the custody of the Corporation though with a different department than that which had issued a notice under Section 248, it would but be required for the Zonal Commissioner who is authorized to issue notices under Section 248 to verify those documents from the records of the Corporation.

11.3. If there is a plan sanction in respect of the said property when was it issued, purpose, extent etc., If there is Khatha issued as regards the said property in whose name the said khatha stands. If taxes has been paid as regards the said property have all due taxes been paid and by whom. If there are self-assessment filed what is the constructed area as regards which the self-assessment has been filed, if there is any discrepancy between the plan sanction and self-assessment made.



11.4. In the meanwhile an inspection of the property is to be carried out, ascertain the deviation if any from the plan sanctioned in terms of the area, setback, height, ground coverage etc., to demarcate the same in a sketch to be prepared and thereafter issue a show cause notice in terms of the 248 (1) and 248 (2) of the BBMP Act, 2020.

11.5. The plan sanction, khatha certificate, tax paid receipt, self-assessment being available with the Corporation itself, all these documents can be examined by the concerned officers without requiring a private party to produce it. This would also obviate any fabrication or falsification of documents.

11.6. The Corporation who is in custody of the documents cannot call upon the citizen to furnish the selfsame documents which are in the custody of the Corporation and on account of non-production draw any adverse inference,





as that done in the present case. If the same had not been produced there was nothing preventing the corporation officials from examining its own records.

11.7. The different departments of the Corporation though deal with different aspects, the Corporation is one single entity comprising of all those departments and it is therefore required that access to all the documents are available to any person authorized under the Act to take penal measures by issuing notices.

11.8. It does not now lie for the Corporation to contend that the plan has been sanctioned by the ADTP but the notices has been issued by the Assistant Executive Engineer (who is not authorized to under Section 248) or the Zonal Commissioner who is in fact so authorized under Section 248, therefore the issuing officer not being in custody of the documents, has sought for the same from the Petitioner.



- 11.9. Any authority who is authorized to and who issues notices to take any penal action under the BBMP Act is required to verify from its own record i.e., the records of the Corporation as to whether there is a plan sanction before alleging that the construction is illegal on account of no plan sanction having been produced.
- 11.10. The submission of Sri.Pawan Kumar., learned counsel in this regard is for older buildings the plan sanction, other documents are not readily available since they have not been digitized.
- 11.11. If that be so, it would be required for the corporation to initiate digitization of all the old records, so that same is available electronically/digitally tagged to all other documents relating to that particular property.
- 11.12. In that view of the matter, the Chief Commissioner, BBMP is directed to co-ordinate with the Principal Secretary, e-Governance Department to formulate a mechanism for



making available the plan sanctions, katha certificates, tax paid receipts, Self-Assessment forms etc., as regards any particular property to all officers of the corporation who are authorized to take penal action under the Act, of course by granting them user credentials in terms of user name and password so that the same is not available to the any third parties.

11.13. He is also directed to formulate and implement a mechanism for digitization all old records so has to make them available to all the aforesaid officers.

11.14. It may also be required that documents relating to a particular property are available with other departments like Revenue Department, Urban Development Department, Planning Authority, Sub-Registrar office, etc., it would therefore be required that those documents are also mapped and tagged to the said property, so that all the documents relating to the said property are



available to any officer authorized to take any penal action under BBMP Act, 2020.

11.15. In this regard, cooperation from those departments through Principal Secretary Urban Development Department, Principal Secretary Finance Department, Principal Secretary Rural Development and Panchayath Raj Department, BESCO, BWSSB and any other department would be required to be solicited and the records as also documents available with those departments be mapped and tagged with the concerned property.

11.16. Learned AGA is directed to inform the Principal Secretary, e-Governance Department about the above order so as to enable the learned AGA to co-ordinate for filing of compliance report. Hence, the registry is directed to print the name of learned AGA in the cause list.

**12. Answer to point No.3: What Order?**

In view of the above, I pass the following;



**ORDER**

- i. The writ petition is ***allowed***.
- ii. The provisional order dated 28.6.2023 under Section 248(1) of BBMP Act 2020 issued by respondent No.2 at Annexure-H and confirmation order under Section 248(3) dated 13.7.2023 issued by respondent No.2 at Annexure-J are hereby quashed.
- iii. Liberty is however, reserved to the Zonal Commissioner to initiate such action as is necessary under Section 248 by categorical stating the deviation if any from the plan which has been sanctioned by the BBMP and available with BBMP.
- iv. A certiorari is issued, the order dated 17.6.2023 passed in Appeal No.7/2023 by respondent No.1- the Chief Commissioner at Annexure-A is hereby quashed.



- v. Though the above matter is disposed, to report compliance with aforesaid directions re-list on **3.11.2023** at 2.30 p.m.

**Sd/-**  
**JUDGE**

SR  
List No.: 1 SI No.: 16