

ORDER

Since the issues involved in these writ petitions are similar, the same are taken up together for disposal by common order.

WP No.9408/2020:

2. The petitioner is the owner of property bearing No.79/2 PID No.4308/79/2 measuring 12.08 guntas (13156 sq.ft.) situated in Yeshwvanthpura Hobli, Herohalli, Magadi Road, Bengaluru and out of which, an extent of 235.8 sq. meters (2538 sq.ft.) is earmarked for the purpose of widening of road in future in the revised Master Plan 2015.

3. The petitioner who intends to develop the property for the purpose of construction of the hospital submitted an application with the respondent - BBMP so as to sanction the building plan. The respondent - BBMP issued an endorsement stating that the application submitted by the petitioner for sanctioning of the building plan will be processed only upon the petitioner surrendering the property earmarked for the purpose of widening of road in the master plan free of cost. Hence, this petition.

WP No.14975/2021:

4. The petitioner is the owner of land bearing site No.23, BBMP Katha No.23, PID No.54-89-23 situated at 100 ft. Ring Road 5th block, 3rd Phase extension, Banashankari III Stage, Bengaluru measuring 3952 sq.ft. and out of which, an extent of 111 sq.meters is earmarked for the purpose of widening of road in future in the revised Master Plan 2015.

5. The petitioner who intends to develop the property for the purpose of construction of a building consisting of basement + ground floor + first floor and second floor submitted an application with the respondent - BBMP so as to sanction the building plan. The respondent - BBMP issued an endorsement stating that the application submitted by the petitioner for sanctioning of the building plan will be processed only upon the petitioner surrendering the property earmarked for the purpose of widening of road in the master plan free of cost. Hence, this petition.

WP No.19736/2021:

6. The petitioner is the absolute owner of land bearing Sy.No.18/1C/1A/C1/A3 measuring 8 guntas situated at

Doddakannalli village, Virthur Hobli, Bengaluru East Taluk, Bengaluru, out of which 152.40 sq.ft. is earmarked for widening of the road.

7. The petitioner who intends to develop the property for commercial purposes submitted an application with the respondent - BBMP for sanctioning of the building plan. The respondent - BBMP issued an endorsement stating that the application submitted by the petitioner for sanctioning of the building plan will be processed only upon the petitioner surrendering the property earmarked for the purpose of widening of road in the master plan free of cost. Hence, this petition.

WP No.19737/2021:

8. The petitioner is the owner of property bearing Sy.No.82/2 in Ward No.72, Khatha bearing No.134/4860/82/1/2 situated at Herohalli village, Yeshwanthapura Hobli, Bengaluru North Taluk admeasuring 10,000 sq.ft. (50 sq.ft x 200 sq.ft.) out of which 109.91 sq. meters is earmarked for widening of road in the revised Master Plan, 2015.

9. The petitioner who intends to develop the property to construct a building consisting of ground + 2 floors submitted an

application with the respondent - BBMP for sanctioning the building plan. The respondent - BBMP issued an endorsement stating that the application submitted by the petitioner for sanctioning of the building plan will be processed only upon the petitioner surrendering the property earmarked for the purpose of widening of road in the master plan free of cost. Hence, this petition.

WP No.14095/2021:

10. The petitioner is the owner of the property bearing Old No.32 and new Municipal Nos.32, its PID No.62-117-32, 32/1 its PID No.62-117-32/1 and 32/2 its PID No.62-117-32/02 present Municipal No.32 having its PID No.62-117-32 (in Ward No.145 Homebody Nagara) situated at 10th Cross, Wilson Garden Park Area, Bangalore-27 in all measuring 2600 sq.ft. out of which an extent of 719 sq.ft. is earmarked for widening of road in the revised master plan.

11. The petitioner submitted an application for developing the property in question for construction of residential building. However, the respondent - BBMP issued an endorsement stating that the application submitted by the petitioner for sanctioning of the building plan will be processed

only upon the petitioner surrendering the property earmarked for the purpose of widening of road in the master plan free of cost.

Hence, this petition.

12. Sri Shashi Kiran Shetty, learned Senior Advocate Sri B V Shankara Narayan, learned Senior Advocate, Sri G V Sudhakar and Sri Rohan Hosmath, learned counsel for the petitioner would make the following submissions:

The properties in question which are earmarked for widening of the road in the revised master plan are not included in the plans submitted by the petitioners. Hence, the requirement to relinquish the properties in question which are earmarked for widening of road as a condition precedent for sanctioning of the building plans violates Article 300A of the Constitution of India.

13. In the absence of any legal authority or support by competent legislature as enumerated in Article 300A of the Constitution of India, the petitioners cannot be deprived of their right over the immoveable property by mere executive fiat. In support, reliance is placed on the decision of Apex Court in the

case of KT Plantation Pvt. Ltd. -vs- State of Karnataka reported in AIR 2011 SC 3430.

14. Per contra, learned counsel appearing for the respondent - BBMP would make the following submissions:

(i) Section 17(3) of the Karnataka Town and Country Planning Act, 1961 which is applicable to a person who intends to develop a single plot or sub-division of plot or layout of private street specifies that no compensation shall be payable for sanctioning of single plot.

(ii) Regulations 7.1(5) and 7.2(d) of the Zoning of Land Use and Regulations - Revised Master Plan 2015 require that roads as shown in the revised Master Plan 2015 shall be incorporated within the plan and shall be handed over to the Authority free of cost.

iii) The circular dated 29.2.2016 issued by the respondent - BBMP requiring the owners to surrender the property earmarked for widening of the road free of cost is in consonance with the provisions contained in Section 17 of the KT and CP Act and also the Zonal Regulations, 2015.

15. Hence they submitted that the impugned endorsement issued by the respondent - BBMP is in accordance with law and the same does not violate Article 300A of the Constitution of India.

16. Having examined the submissions made by the learned counsel for the parties, the point that arises for consideration is: whether the requirement to relinquish the properties belonging to the petitioners designed as road in the master plan free of cost with the respondent - BBMP as a precondition for sanctioning of the building plans submitted by the petitioners violate Article 300A of the Constitution of India.

17. The properties in question are earmarked for the purpose of widening of road in the revised Master Plan 2015 under Section 12(1)(b) of the KT and CP Act. Section 17(3) of the KT and CP Act specifies that the owner is not entitled for compensation while sanctioning a single plot. However, reading of Section 17 of KT & CP Act in its entirety does not specify that the land earmarked as road in the master plan will have to be relinquished free of cost or that the owner is not entitled for compensation while sanctioning the layout plan. Section 17(3) is applicable only to lands enumerated in Section 17-2A like parks, open space, roads formed within the layout and civic amenity site.

18. Section 70 of the KT and CP Act specifies that land needed for the purpose of Town Planning Scheme or master plan shall be deemed to be land needed for public purpose within the meaning of Land Acquisition Act, 1894. Section 71 of the KT and CP Act specifies that the State Government can acquire land included in the scheme by taking recourse to the provision contained in Land Acquisition Act 1894 subject to payment of compensation to the owners of the lands.

19. A conjoint reading of Sections 12, 17(3), 70 and 71 indicate that if any land needed for the purpose of Town Planning Scheme or master plan shall be acquired by the Government by taking recourse to the provisions of Land Acquisition Act, 1894 subject to payment of compensation to the owners of the land. Section 17(3) of the Act does not specify that the property earmarked for widening of the road requires it to be surrendered free of cost at the time of sanctioning of the single plot.

20. The term Residential Development Plan under the Regulations 2015 is defined as plan containing proposal for construction of one or more residential building on a plot measuring more than 20000 sq. meter in an extent and the term Non-residential Development Plan is defined as plan containing

proposal for construction of one or more commercial building on a plot size measuring more than 20000 sq. meter.

21. Chapter 7 of the Regulations 2015 deals with the Regulations for residential development plan and non-residential development plan. Regulation 7.1(5) and 7.2(d) specify that the road as shown in the Master Plan 2015 shall be incorporated within the plan and shall be handed over to the authority free of cost.

22. A reading of the definition of Development Plan and Regulations 7.1(5) and 7.2(d) indicate that it is a condition precedent to incorporate the road shown in the Master Plan - 2015 in the plan and shall be handed over free of cost to the respondent - BBMP. However, these Regulations are applicable only to Development of lands, the extent of which is more than 20000 sq. meters in respect of residential plan and the extent of which is more than 12000 sq. meters in respect of non-residential plan.

23. In the present cases, the extent of land sought to be developed for residential/commercial purposes is far less than the extent of land specified in the definition development plan.

Hence, the Regulations 7.1(5) and 7(2)(d) of the Regulations 2015 are not applicable and cannot be invoked requiring the petitioners to relinquish the properties in question free of cost to the respondent - BBMP.

24. The Circular dated 29.2.2016 requiring the owners to surrender the properties earmarked for widening of road free of cost at the time of sanctioning of building plans violates Article 300A of the Constitution of India. The Apex Court in the case of KT Plantation (supra) has held that the owner of immovable property cannot be deprived of his property by mere executive order without any specific legal authority or support by competent legislation. In the absence of specific legal authority or support by competent legislation, the impugned Circular issued by the respondent - BBMP violates Article 300A of the Constitution of India.

25. Even otherwise, the impugned endorsements and circulars issued by BBMP is arbitrary and discriminatory since the owners of the properties earmarked as Road in Master Plan 2015 and who have not applied for sanctioning of building plan for developing their properties will be entitled for compensation

under Section 71 of KT & CP Act, if the said properties are acquired for implementing the Master Plan. The petitioners cannot be deprived of their properties earmarked as road in the revised Master Plan, 2015 merely because they intend to develop their properties by obtaining sanctioned building plan.

26. In view of preceding analysis, I am of the considered view that the impugned endorsements issued by the respondent - BBMP requiring the petitioners to relinquish the properties in question free of cost as a condition precedent for processing their applications for sanctioning of building plans is without authority of law and the same violate Article 300A of the Constitution of India. Accordingly, I pass the following:

ORDER

- i) Writ petitions stand allowed:
- ii) The Circular dated 29.2.2016 issued by the 2nd respondent vide Annexure-A & endorsement dated 20.5.2020 issued by respondent No.3 vide Annexure-B in WP No.9408/2020, endorsement dated 24.6.2021 issued by respondent No.2 vide Annexure-G in WP No.14095/2021, the order dated 18.12.2020 passed by respondent No.2 vide Annexure-A in WP No.14975/2021 and Circular dated 29.2.2016

vide Annexure-E issued by respondent No.2 in W.P. No.19737 of 2021 are hereby quashed;

iii) The respondent - BBMP is directed to process the applications submitted by the petitioners for sanctioning the building plans and pass appropriate order in accordance with law within a period of two months from the date of receipt of certified copy of this order.

Sd/-
JUDGE

BKM