

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.47882 OF 2014 (LB-BMP)

BETWEEN:

GOOD SHEPHERD CONVENT
MUSEUM ROAD
BENGALURU – 560 025
(REPRESENTED BY),
SR. MERCY ABRAHAM SUPERIOR.

... PETITIONER

(BY SRI D.L.N.RAG, SR. ADVOCATE A/W
SRI ANIRUDH ANAND, ADVOCATE (VIDEO
CONFERENCING))

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
URBAN DEVELOPMENT DEPARTMENT
VIDHANA SOUDHA
BENGALURU – 560 001.
2. BRUHAT BANGALORE MAHANAGARA PALIKE
REPRESENTED BY ITS COMMISSIONER,
HUDSON CIRCLE,
BENGALURU – 560 002.
3. ASSISTANT DIRECTOR OF TOWN PLANNING (EAST)
BRUHAT BANGALORE MAHANAGARA PALIKE,
22ND FLOOR, PU BUILDING,

M.G ROAD,
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI NITHYANANDA K.R., HCGP FOR R1;
SRI K.N.PUTTEGOWDA, ADVOCATE FOR R2 AND R3
(PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE DEMAND FOR PAYMENT OF BETTERMENT CHARGES / FEE AS PER IMPUGNED ORDER DATED 07.07.2014 VIDE ANN-C; DIRECT THE RESPONDENTS TO ISSUE THE SANCTION PLAN PERMISSION FOR THE PROPOSED SCHOOL BUILDING CONSISTING OF 4 FLOORS IN WITHOUT INSISTING ON PAYMENT OF BETTERMENT CHARGES MADE IN THE IMPUGNED ORDER DATED 07.07.2014 VIDE ANN-C.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 07-07-2014 by which, betterment charges/fee is demanded against him and also sought for consequential direction by issuance of writ in the nature of *mandamus* to grant permission for construction of proposed four floors on the existing school campus by way of an extension to the existing

building, without insisting on payment of betterment charges.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

The petitioner/Good Shepherd Convent is run by Good Shepherd Society, a society registered under the Mysore Societies Registration Act, 1960 (hereinafter referred to as 'the Society' for short). The Society or the School was established in the year 1854 and has been rendering education, which the petitioner claims to be as a service, for all these years. The area is comprised of about 23 acres in the heart of the City where the petitioner provides facilities like education, hostel, residential care and other allied activities concerning education to students.

3. Owing to increase in number of students and necessity for creation of few more class rooms, an

application was made to the 2nd respondent/Bruhat Bengaluru Mahanagara Palike ('BBMP' for short) on 11-06-2014 seeking building licence for construction of additional four floors on the existing school campus. All the necessary documents were also annexed to the application and as required under the building bye-laws of the BBMP a scrutiny fee of Rs.1,61,438/- was also enclosed to the said application. In reply to the said application seeking permission for construction of four floors on the existing building, a demand was raised by the BBMP making it a pre-condition for approval of plan demanding Rs.69,70,520/- to be the betterment charges that the petitioner had to pay.

4. The petitioner submitted a representation and sought information as to under what provision of law the said betterment charge is demanded. The BBMP in terms of its reply dated 1-08-2014 justified the action of demanding betterment charges taking recourse of

Section 18A of the Karnataka Town and Country Planning Act, 1961 ('the KTCP Act' for short) read with Government order dated 19-11-1993. The petitioner, on receipt of this reply, again represented that Section 18A of the Act would not empower the BBMP to demand betterment charges as is done in the case at hand. Several representations were made post the demand notice. Since there was no reply to those notices, the petitioner approaches this Court in the subject writ petition.

5. Heard learned senior counsel Sri D.L.N.Rao appearing for the petitioner, learned High Court Government Pleader Sri K.R.Nithyananda appearing for the respondent No.1 and learned counsel Sri K.N.Puttegowda appearing for the respondents No.2 and 3.

6. The learned senior counsel would contend that betterment charges under Section 18 or 18A of the

KTCP Act would become payable only when change of land use is sought or the land is being developed for the first time. Both these instances are absent in the case at hand. Building was constructed about 100 years ago with all the necessary payments made thereon at that point of time and what is now sought is only addition and alteration and not altogether a new construction in the entire area. The betterment charge now demanded is for the entire 23 acres of land that the petitioner possesses which is in the heart of the city and none of the instances would permit demand of betterment fee or charge in the instant case.

7. On other hand, the learned counsel Sri K.N.Putte Gowda appearing for respondent No.2/BBMP would seek to justify the demand and submit that the petitioner right from the date on which the Act came into existence has not even applied for any licence or paid any betterment fee. None of the statutory fee was

paid by the petitioner on the ground that it is a very old institution and all fees that were necessary to be paid earlier have been paid. He would submit that Section 18A of the KTCP Act empowers the BBMP to demand betterment charges and no fault can be found with the demand that is raised by the BBMP.

8. I have given my anxious consideration to the submissions made by the learned senior counsel and the learned counsel and perused the material on record.

9. The afore-narrated facts are not in dispute and therefore, are not reiterated. The only issue that falls for consideration is:

“Whether the BBMP was justified in demanding betterment fee/charge to the tune of Rs.69,70,520/-, taking the entire site as a whole which measures 23 acres, in the teeth of the application made for construction of four floors on the existing building?”

10. Before embarking upon consideration of the issue, I deem it appropriate to notice statutory

provisions under which demand is made for payment of betterment charges. Section 505 of the Karnataka Municipal Corporations Act, 1976 ('KMC Act' for short) empowers the BBMP to exercise powers in conformity with the Act. Section 505 thereof reads as follows:

“505. Exercise of powers by a corporation to be in conformity with the provisions of the Karnataka Town and Country Planning Act, 1961.- Notwithstanding anything contained in this Act, a corporation or any officer or other authority required by or under this Act to exercise any power, or perform any function or discharge any duty,-

(i) with regard to any matter relating to land use or development as defined in the Explanation to section 14 of the Karnataka Town and Country Planning Act, 1961, shall exercise such power, or perform such function or discharge such duty with regard to such land use or development plan or where there is no development plan, with the concurrence of the Planning Authority;

(ii) shall not grant any permission, approval or sanction required by or under this Act to any person if it relates to any matter in respect of which compliance with the provisions of the Karnataka Town and Country Planning Act, 1961 is necessary unless evidence in support of having complied with the provisions of the said Act is produced by such person to the satisfaction of the corporation or the officer or other authority, as the case may be.”

Section 505 of the KMC Act (*supra*) empowers the BBMP to exercise powers in conformity with the KTCP Act.

Sections 18 and 18A of the KTCP Act read as follows:

“18. Recovery of a fee in certain cases of permission for change in the use of land or building.- (1) *Where permission for change of land use or development of land or building is granted under section 14A or section 14B or section 15 or section 17 and such change of land use or development is capable of yielding a better income to the owner, the Planning Authority may levy a prescribed fee not exceeding one-third of the estimated increase in the value of the land or building in the prescribed manner for permitting such change of land use or development of land or building.*

(1A) Where an application for permission for development of building or land or sanction for subdivision of plot or layout of private street is submitted under section 15 or 17 to any Planning Authority, such Planning Authority shall levy and collect an additional prescribed fee for rejuvenation of lakes or tanks, if any, in that local planning area.

(2) Any person aggrieved by the levy of fee under sub-section (1), may within such period as may be prescribed, appeal to the District Court having jurisdiction on the ground that the change or development is not capable of yielding a better income to the owner. The decision of the District Court on such appeal shall be final.

(3) The State Government may exempt any Board, Authority or body constituted by or under any law and owned or controlled by the State Government or Central Government or an infrastructure Project promoted or implemented by any Company or person and approved

by the State Government or Central Government from the payment of fee specified under sub-section (1).

Explanation:- For the purpose of this section and section 18A “Infrastructure Project “ means,-

- (a) road, bridge, air port, port, inland water ways and inland ports, rail system or any other public facility of a similar nature as may be notified by the State Government from time to time;
- (b) a highway project including housing or other activities being an integral part of that project;
- (c) water supply project, irrigation project, sanitation and sewerage system.”
- (d) a tourism project with an investment of not less than Rupees one hundred crores as may be notified by the State Government from time to time.

18A. **Levy and collection of cess and surcharge.-** (1) Notwithstanding anything contained in this Act, the Planning Authority may while granting permission for development of land or building levy and collect from the owner of such land or building:-

- (i) a cess for the purpose of carrying out any water supply scheme;
- (ii) a surcharge for the purpose of formation of ring road;
- (iii) a cess for the purpose of improving slums; and

- (iv) *a surcharge for the purpose of establishing Mass Rapid Transport System.*

at such rates but all the above levies together not exceeding one-tenth of the market value of the land or building as may be prescribed.

(2) The cess and surcharge levied under sub-section (1) shall be assessed and collected in such manner as may be prescribed.

(3) Any person aggrieved by the levy, assessment and collection of cess or surcharge under this section may within thirty days from the date of the order appeal to the prescribed authority whose decision shall be final.

(4) The prescribed authority may after giving a reasonable opportunity of being heard to the appellant and the planning Authority pass such order as it deems fit.

(5) The State Government may exempt any Board Authority or Body constituted by or under any law and owned or controlled by the State Government or the Central Government or an infrastructure Projects promoted or implemented by any company or person and approved by the State Government or Central Government from the payment of cess or surcharge leviable under sub-section (1)".

Section 18 directs recovery of fee in certain cases of permission for change in the use of land and building.

Section 18A empowers levy and collection of cess and surcharge. The demand that is raised by the BBMP is to

be decided on the bedrock of ingredients of Sections 18 and 18A of the KTCP Act.

11. BBMP raises a demand of Rs.69,70,520/-. The justification sought by the BBMP is that it has demanded the said amount in terms of Section 18A of the KTCP Act. Section 18A (*supra*) empowers the BBMP while granting permission for development of land or building levy and collect from the owner of such building, a cess for carrying out water supply scheme; surcharge for formation of ring road; cess for the purpose of improving slums and surcharge for the purpose of establishing Mass Rapid Transport System. The permission sought should be for development of land or building. The application of the petitioner was unequivocal for alteration and addition of four floors on the existing building. The reason was also indicated.

12. After filing of the writ petition the BBMP has filed its objections changing the justification in its stand with regard to the demand of the said amount. Now the BBMP in its objections has justified the action taking recourse to Section 18(1) of the Act. Section 18(1) (*supra*) empowers recovery of fee in certain cases of permission for change of land use or building. Change of land use is dealt with under Section 14 of the KTCP Act. The petitioner nowhere applied for change of land use for the BBMP to demand betterment fee/charge by taking recourse to Section 18(1) of the Act. The other provision that is indicated in the statement of objections is that demand is made even in terms of Rule 37-A of the Karnataka Planning Authority Rules, 1965 ('the Rules' for short). Relevant portion of Rule 37A reads as follows:-

“37-A. Fees to be levied in certain cases of permission for change in the use or development of land or building. – (1) For the purpose of subsection (1) of Section 18, the fee leviable by the Planning Authority shall be.-

... ..

(B) *at the rates specified in the table below in the case of grant of permission for development under Section 15 of the Act involving carrying out of building on the plot namely –*

... ..

(C)

Note.-

... ..

(2) The Planning Authority shall serve a notice in Form VIII by registered post due acknowledgment to the applicant indicating the amount of fee payable by him which shall be paid within ninety days from the date of receipt of the said notice. Provided that the Planning Authority may, on application made in this behalf, for reasons to be recorded in writing, extend the period of payment to such further period not exceeding nine months, as it considers necessary. The Planning Authority may, with the previous approval of the Government, further extend the period of payment up to 24 months from the date of such approval, subject to collection of interest at the rate of the prime lending rate of the SBI and a penalty of 2% for the first twelve months and 3% for the next twelve months compounded quarterly. If the applicant fails to remit the fees within the extended period as prescribed above, the grant of permission stands cancelled.

(3) An appeal under sub-section (2) of Section 18 may be filed within ninety days from the date of receipt of notice under sub-rule (2).

(4) Increase in the value of the land or building for the purpose of sub-section (1) of Section 18 shall be estimated taking into consideration the increase in the market value of and increase in the income from the

land or building as a result of the change in the use or development thereof. For the purposes of determining the market value of and income from the land or building, the value and income from similar lands and buildings with similar environmental conditions and use in the neighbourhood shall be taken into consideration.”

The Rule that is germane, even according to the BBMP, is Rule 37A(1)(B). A table is depicted in the Rules at the rates at which permission is to be granted for development, involving carrying out of building on the plot as per the plan approved by the Planning Authority. Rule 37A empowers levy of fee on grant of permission for change of land use or development of land or building. Sub-rule (1)(A) depicts the rates specified in the table for grant of permission for change of land use under Section 14A of the of the KTCP Act for development of land. The soul of this Rule is levy of fee on permission being granted for change of land use under Section 14A of the KTCP Act.

13. The petitioner has not applied for change of land use, but has in its application at Annexure-A clearly spelt out, in the nature of sanction that is sought for, as 'addition and alteration'. There is no application even made under Section 14A of the Act. Therefore, a conjoint reading of Section 505 of the KMC Act 1976, Sections 18 and 18A of the KTCP Act and the Rules would lead to an unmistakable inference that the demand made by the BBMP runs counter to law. The submission of the learned counsel for the BBMP that the petitioner which is established long ago has not applied for any such sanction or has paid any betterment fee and the BBMP has no other alternative except to raise a demand under Section 18A of the KTCP Act read with Rule 37A of the Rules *sans* countenance, as charge or fee or imposition of any impost in law can only be in accordance with law. If there is no provision to charge fee there can be no demand and if there is no provision for imposition of

impost, there can be no impost, is the settled principle of law, as rendered in plethora of judgments of the Apex Court and that of other constitutional courts. Therefore, the impugned demand made by the BBMP is rendered unsustainable, as it has no legal legs to stand. However, this would not preclude the BBMP in inspecting the property and raising any demand strictly in consonance with law.

14. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The impugned order dated 7.07.2014 passed by the 2nd respondent/BBMP demanding payment of betterment charges/fee stands quashed.
- (ii) The 2nd respondent/BBMP is at liberty to consider the application made by the petitioner in accordance with law, if not already considered, bearing in mind the

observations made in the course of this order.

**Sd/-
JUDGE**

bkp
CT:MJ