



BBMP
REPRESENTED BY COMMISSIONER,
HAVING OFFICE AT
N.R SQUARE,
BANGALORE - 560 002.

4. ASSISTANT EXECUTIVE ENGINEER,
BRUHAT BENGALURU MAHANAGARA PALIKE,
VASANTHAGAR SUB-DIVISION,
MEENAKSHI KOLI STREET,
BANGALORE - 560 051.

...RESPONDENTS

(BY SRI. M.B. PRABHAKAR, ADVOCATE FOR R2;
SMT. SARITA KULKARNI, HCGP FOR R1;
SMT. NAMITHA MAHESH, ADVOCATE FOR
SRI. S.N. PRASHANTH CHANDRA, ADVOCATE FOR
R3 AND R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO STRIKE DOWN THE NOTIFICATION FROM ACTION OF THE RESPONDENT NOTIFYING COMMERCIAL / RESIDENTIAL PROPERTIES BEARING NO.1, 1/1, 1/2, 1/3, 2, 3, 4, 5, 6, 7 AND 8 PRESENTLY KNOWN AS 'JAYAMAHAL PALACE HOTEL' BY CLASSIFYING IT AS GREEN BELT / ZONE IN THE REVISED MASTER PLAN OF BANGALORE CITY 2015 ISSUED BY BDA NOTIFIED ON 07.05.2012 VIDE ANNEXURE-AD AS ULTRA VIRES TO THE CONSTITUTION AND ILLEGAL

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 28.11.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for the following reliefs:

a) *The Petitioner request this Honourable Court to strike down the notification from action of the respondent*



*notifying Commercial / Residential properties bearing no.1, 1/1, 1/2, 1/3, 2, 3, 4, 5, 6, 7 and 8 presently known as '**Jayamahal Palace Hotel**' by **classifying it as green belt** / zone in the revised master plan of bangalore city 2015 issued by Bangalore Development Authority notified on 07.05.2012 vide **annexure-ad** as Ultra Vires to the Constitution and illegal.*

- b) Direct the Respondent / BDA to restore the status of the properties to residential / commercial zone as in CDP of 2011 vide Annexure-AC dated 05.01.1995 as notified by the 3rd Respondent (b.b.m.p).*
- c) Issue appropriate and necessary directions / orders as this Honourable Court deems fit to the Respondent so as to safeguard the right, title, interest in the Schedule Property in the interest of justice and equity.*

2. The petitioners claim to be the owners of the land covered under Sy.Nos.32 and 38 earlier numbered as Sy.Nos.65 and 66 of Oobarpad Village, Ulsoor Hobli, Bengaluru Taluk and District which is now bearing CTS Sy.No.114 and new municipal Nos.1, 1/1, 1/2, 1/3, 2, 3, 4, 5, 6, 7 and 8 of Jayamahal Main Road, Bengaluru. In the revised Comprehensive Development Plan (CDP) of the year 2011 which was approved on 05.01.1995. The aforesaid land had been earmarked for usage for residential purposes.
3. In the Revised Master Plan 2015 which was approved on 25.06.2007 the demarcation was changed and the land was reserved for the purposes of parks and green spaces,



sports/play grounds, cemeteries/burial ground. The petitioners are before this Court contending that the said reservation is ultra vires the constitution and therefore unconstitutional and are seeking for restoration of the status of the properties to residential / commercial zone as per CDP of 2011. The above writ petition having been filed on 14.01.2015.

4. The contention of the learned counsel for the petitioners is that:

4.1. The BDA could not have reserved the land for Park and open spaces, when it has already been put to use for a commercial purpose as a Hotel, which the BDA ought to be aware of.

4.2. The reservation of the land of the petitioner having been made for parks and open spaces, the said reservation has lapsed after a period of five years, which period of five years expired in the year 2012 and therefore, the reservation no longer stands good and is required to be quashed.



4.3. Once the reservation is quashed it is required that the land is reverted to the same use as that denoted in CDP 2011.

5. Sri. M.B.Prabhakar, learned counsel appearing for respondent No.2/BDA would submit that:

5.1. The mere reservation of land made for parks and open spaces would not come in the way of the petitioners making use of the said land in view of the general exception granted, wherein it is categorically stated that any permission granted for use of the land for a particular purpose before the Revised Master Plan came into force is protected and such usage would continue. The Revised Master Plan being prospective in nature would not affect the petitioners adversely.

5.2. There is no cause of action for the Petitioners to file the above petition, since the rights of the Petitioners are not adversely affected, the Petitioners have not sought to develop the land in any particular manner which has been rejected by



the Respondent BDA, as such no grievance can be made out by the Petitioners.

5.3. The petitioners did not object to the demarcation and/or classification made in the draft Revised Master Plan, when the draft was published and as such, the petitioners cannot now raise that issue before this Court in a writ petition.

5.4. Lastly, he submits that it is only when the State or an instrumentality of the State wishes to make use of the property for a public purpose including for establishment of park etc., that the State / BDA is required to acquire the land under Subsection (1) of Section 69 of the Karnataka Town and Country Planning Act, 1961 (for short "KTCP Act") and if the State does not want to establish such park or open spaces there is no requirement to acquire the land. Irrespective of whether the land is acquired or not the classification in the Revised Master Plan will continue and the petitioners cannot challenge it



since such reservation has been made for orderly growth of the city of Bengaluru.

6. Heard Sri Mahesh Arkalgud, learned counsel for the petitioner, and Sri M.B.Prabhakar, learned counsel appearing for respondent No.2.
7. Learned counsel for respondent Nos.3 and 4 submits that the matter is between the petitioner and respondent No.2, but respondent Nos.3 and 4 have nothing to do with the same and perused the papers.
8. The points that would arise for my consideration are:
 1. **Whether the reservation made in terms of Clause (c) of Subsection (1) of Section 12 of KTCP Act would lapse after a period of five years in terms of Subsection (2) of Section 69 of the KTCP Act?**
 2. **Whether the acquirement of acquisition in terms of Subsection (1) of Section 69 of KTCP Act, is only if the State or its instrumentality were to use the land for the designated public purposes as designated under Subsection (1) of Section 12 of the KTCP Act?**
 3. **Whether there is a requirement of an application being made by the land owner for the development of land or the plan being rejected for the land owner to approach this Court by invoking Subsection (2) of Section 69 of the KTCP Act?**



4. **Whether the designation of or earmarking of land under Subsection (1) of Section 12 of the KTCP Act cannot be challenged by the land owner in terms of Subsection (2) of Section 69 of the KTCP Act?**
5. **Whether for invoking Subsection (3) of Section 69 of the KTCP Act, an application has to be made by the land owner for redesignation of the land subsequent to the alleged lapsing in terms of Subsection (2) of Section 69 of the KTCP Act?**
6. **Whether on the deemed lapsing of the designation/earmarking made under Subsection (1) of Section 12 in terms of Subsection (2) of Section 69, the status of the property would revert to that designated in the earlier comprehensive development plan, 2011?**
7. **What order?**
9. I answer the above points as under
10. **Answer to point No.1: Whether the reservation made in terms of Clause (b) of Subsection (1) of Section of 12 of KTCP Act would lapse after a period of five years in terms of Subsection (2) of Section 69 of the KTCP Act?**

10.1. Section 12 is of the KTCP Act, 1961 is reproduced hereunder for easy reference:

12. Contents of Master Plan.- (1) The Master Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated, such plan shall include proposals for the following, namely:-



(a) zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations;

(b) a complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements;

(c) areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments;

(d) areas earmarked for future development and expansion;

(e) reservation of land for the purposes of Central Government, the State Government, Planning Authority or public utility undertaking or any other authority established by Law, and the designation of lands being subject to acquisition for public purposes or as specified in Master Plan or securing the use of the land in the manner provided by or under this Act;

(f) declaring certain areas, as areas of special control and development in such areas being subject to such regulations as may be made in regard to building line, height of the building, floor area ratio, architectural features and such other particulars as may be prescribed;

(g) stages by which the plan is to be carried out."

Explanation:

(i) "Building Line" means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme;

(ii) "Floor Area Ratio" means the quotient of the ratio of the combined gross floor area of all the floors, excepting areas specifically exempted under the regulations, to the total area of the plot.



(2) The following particulars shall be published and sent to the State Government through the Director along with the masterplan, namely:-

(i) a report of the surveys carried out by the Planning Authority before the preparation of such plan;

(ii) a report explaining the provisions of the Master Plan;

(iii) regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the Planning Authority;

(iv) a report of the stages by which it is proposed to meet the obligations imposed on the Planning Authority by such plan.

(3) Master Plan shall indicate "Heritage Buildings" and "Heritage Precincts" and shall include the regulations made therein for conservation of the same.

10.2. Section 12 deals with the contents of a master plan, and in terms of Subsection (1) thereof, a proposal for regulation of the planning area is required to be part of the master plan. Clause (c) of Subsection (1) of Section 12 of the KTCP Act deals with areas reserved for parks, playgrounds and other recreation uses, public open spaces, public buildings and institutions, and areas reserved for such other purposes as may be expedient for new civic developments.



10.3. The master plans would contain both developments which have already occurred and the developments which have been proposed. Insofar as the developments which have already occurred, there can be no change since any master plan is prospective and proposes to develop the area in a particular manner. In the present case, when any master plan is brought into force, it could contain the proposal for future developments and the manner of developments thereof.

10.4. Clause (c) deals with one such set of proposals to use some lands for parks. Section 69 of the KTCP Act deals with the acquisition of land designated for certain purposes in a master plan which designation and purpose is in terms of Section 12 of the KTCP Act. Section 69 of the KTCP Act is reproduced hereunder for easy reference:

69. Acquisition of land designated for certain purposes in a Master Plan.- (1) *The Planning Authority may acquire any land designated in the Master Plan for "public purposes" by agreement or under the Right to Fair Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) as in force in the State.*



Explanation.- For the purpose of this section land "designated for public purpose" means designated for the purpose of providing parks, open spaces, public or semi public utilities and infrastructure relating to transport.

(2) If the land designated for public purpose, as under sub-section (1), except land designated for purpose of clause (b) of sub-section (1) of section 12 is not acquired either by agreement within five years from the date of publication of the Master Plan under sub-section (4) of section 13 nor the proceedings under the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) are commenced within period of five years, the designation shall be deemed to have lapsed.

(3) When the designated land use lapses under sub-section (2), the Authority may consider the new land use sought by the land owner of such land, based on the surrounding developments, in the meeting of the Authority, after previous publication in one or more daily newspapers of which at least one shall be in local language having wide circulation in the area and call for objections and suggestions in this regard.

(4) The Planning Authority shall after considering the proposals to assign land uses and objects and suggestions received in that behalf in the meeting of the Authority, the Authority may convey the assignment of new land use to the owner or reject the proposal for the reasons recorded there in.

10.5. Subsection (2) of Section 69 of the KTCP Act mandates that if the land designated for a public purpose under Subsection (1) of Section 12 of the KTCP Act except land designated for the purpose in Clause (b) of Subsection (1) of Section 12 of the KTCP Act is not acquired either by agreement or initiating proceedings under the Right To Fair



Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 [‘LA Act of 2013’ for short] within five years from the date of the publication of the master plan, the designation shall be deemed to have lapsed i.e., to say if there is a designation made for public purpose under Clause (c) of subsection (1) of Section 12 of the KTCP Act and if the same were not to be acquired by the aforesaid two methodologies within five years from the date on which the master plan came into force, such designation would lapse.

10.6. In the present case, the master plan came into force on 25.06.2007, when the approval from the government was received and the same came to be published. Thus, the five-year period prescribed under Subsection (2) of Section 69 of the KTCP Act would commence from 25.06.2007 and end by 24.06.2012. If no acquisition is made in terms of Subsection (1) of Section 69 of the KTCP Act, then the designation and/or the reservation are deemed



to have lapsed, and as such, the designation made in the master plan would not continue to be binding on the owner of the land.

10.7. Thus I answer point No.1 by holding that the reservation made in terms of Clause (c) of Subsection (1) of Section 12 of the KTCP Act for parks, play grounds and other recreation uses, public open spaces, public open buildings and institutions, other than areas reserved for new street developments under clause (b) of Subsection (1) of Section 12 of the KTCP Act would lapse after a period of five years in terms of Subsection (2) of Section 69 of the KTCP Act, if the same were not acquired within the said period by agreement or by initiating proceedings under the Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013.

11. Answer to point No.2: Whether the acquirement of acquisition in terms of Subsection (1) of Section 69 of KTCP Act, is only if the State or its instrumentality were to use the land for the



designated public purposes as designated under Subsection (1) of Section 12 of the KTCP Act?

11.1. As observed in answer to point No.1 in terms of Subsection (1) of Section 12 of the KTCP Act, the various areas covered under the Revised Master Plan could be designated to be reserved for particular purposes. When any area is reserved for parks, play grounds or other recreation uses, public open spaces, public buildings, or institutions, the said reservation could either be made in respect of government land or private land.

11.2. If the reservation is made in regard to government land, then the said land already being owned by the government, the government or its instrumentality, as may be authorized, could use the said land for the said purpose at any point of time. However, in the event of such designation having been made in respect of the private property, during the subsistence of such a reservation, the private owner cannot make use of the said land for any other purpose other than the



reservation made. Thus, such private owner would be deprived of the use of his own lands.

11.3. It is to bring about a balance that in terms of Subsection (1) of Section 69 of the KTCP Act, an obligation has been imposed on the planning authority to acquire the land designated in the master plan for public purpose under the LA Act of 2013 within a period of five years as mandated under Subsection (2) of Section 69 of the KTCP Act. Thus, the above leads to the following conclusions:

- (1) When the land belongs to the State no acquisition is required to be made.
- (2) When the land belongs to a private individual or entity, acquisition is to be made in terms subsection (1) of Section 69 of the KTCP as answered in point no. (i) above.
- (3) When no such acquisition is made within a period of five years of such designation, then the designation would lapse thereby lifting the restriction on the owner subject to compliance with subsection (3) of section 69 of the KTCP Act.



11.4. The above would also indicate that the proposal for use of the land of a private individual or entity has to be given effect to within a period of five years of the master plan coming into force by acquiring the land either by agreement or in terms of the LA Act of 2013. In the event of the Planning Authority not implementing the proposal for using the land for public purposes and the land not being acquired, the reservation would lapse.

11.5. Thus, it is not the use of the land for the designated public purpose, but it is the proposed use in terms of which the acquisition notification is to issued that is relevant and as such, if the property is neither acquired by agreement nor by any notification, the reservation would lapse.

11.6. Hence, I answer point No.2 by holding that the acquisition in terms of Subsection (1) of Section 69 of the KTCP Act is required to be made within a period of five years from such designation, irrespective of the immediate use, so long as there



is a proposal to use the land for public purposes as designated under Subsection (1) of Section 12 of the KTCP Act.

12. **Answer to point No.3: Whether the requirement of an application being made by the land owner for the development of land or the plan being rejected for the land owner to approach this Court for invoking Subsection (2) of Section 69 KTCP Act?**

12.1. The requirement of acquiring the property by way of agreement or under the LA Act of 2013 is not predicated on any application made by the land owners for making use of their land so long as the land is not acquired by way of agreement or under the LA Act of 2013 within a period of five years from the date of designation and/or the master plan coming into force, the designation would be deemed to have lapsed, which would provide a cause of action to a land owner to invoke Subsection (2) of Section 69 of the KTCP Act and consequently, Subsection (3) of Section 69 of the KTCP Act.



- 12.2. In my considered opinion, it is not necessary that any particular application is to be made by the land owner/s for the development of the land or for it to be rejected, for the land owner to approach this Court for invoking the deeming provision under Subsection (2) of Section 69 of the KTCP Act.
- 12.3. Hence, I answer Point No.3, holding that there is no requirement for an application to be made by the land owner for the development of land or for the plan to be rejected for the land owner to approach this Court for invoking Subsection (2) of Section 69 KTCP Act.
13. **Answer to point No.4: Whether the designation of or earmarking of land under Subsection (1) of Section 12 of the KTCP Act cannot be challenged by the land owner in terms of Subsection (2) of Section 69 of the KTCP Act?**
- 13.1. The earmarking of the land and/or designation of the land under Subsection (1) of Section 12 of the KTCP Act, in respect of the proposed development of the said land, the challenge, if any, is to be made to such designation under Subsection (1) of Section



12 of the KTCP Act would have to be a challenge to the master plan or a revised master plan.

13.2. The invocation of the provision under Subsection (2) of Section 69 of the KTCP Act is not a challenge to the designation under Subsection (1) of Section 12 of the KTCP Act but is made accepting the designation under Subsection (1) of Section 12 to contend that since the prescribed period of five years has elapsed, the designation made under Subsection (1) of Section 12 of the KTCP Act is deemed to have lapsed.

13.3. Thus, when Subsection (2) of Section 69 of the Act is invoked, it is not a challenge to the reservation but deals with the effect of non-acquisition for the purpose of such reservation within a period of five years from the date of such reservation.

13.4. Hence, I answer point No.4 by holding that a writ petition filed invoking subsection (2) of Section 69 of the KTCP Act is not a challenge to the



earmarking of land under Subsection (1) of Section 12 of the KTCP ACT.

14. **ANSWER TO POINT NO. 5: Whether for invoking Subsection (3) of Section 69 of the KTCP Act, an application has to be made by the land owner for redesignation of the land subsequent to the alleged lapsing in terms of Subsection (2) of Section 69 of the KTCP Act?**

AND

ANSWER TO POINT NO.6: Whether on the deemed lapsing of the designation made under Subsection (1) of Section 12 in terms of sub Section (2) of Section 69, the status of the property would revert to that designated in the earlier comprehensive development plan, 2011?

- 14.1. Since both the points are related to each other, I answer the same together.
- 14.2. Once the reservation made under Clause (c) of Subsection (1) of Section 12 of the Act has lapsed in terms of Subsection (2) of Section 69, the land cannot remain unregulated or unclassified. If the land owner wants to make use of his/her/its land for a different purpose than for which it was designated and the designation has lapsed, then such landowner would necessary have to make an application under Subsection (3) of Section 69 of



the KTCP Act for consideration of a new land use proposed by the land owner, which would be considered on the basis of the surrounding developments after inviting objections from the general public by way of paper publication and would be considered in a meeting of the Authority.

14.3. The application in terms of Subsection (3) of Section 69 of the KTCP Act cannot be said to be one under Section 14A for change of land use since such an application is restricted to the circumstances stated under Section 14A of the KTCP Act.

14.4. An application under Subsection (3) of Section 69 of the Act would be considered on the basis of the proposal made by the landowner, which would be based on the surrounding developments subject to objections filed by the general public. Thus, if a landowner, for example, seeks to make use of the property for residential use, the surrounding area having already been put to residential use and



there being no objection on part of the general public in that regard, then the land could be designated for residential purposes by issuing a Change of Land Use order. Similarly, if the land owner proposes to use the property for commercial purposes and the surrounding area having been developed for commercial purposes and there being no objection from the general public, then the land could be designated for commercial purposes by issuing a Change of Land Use order. However, if the land owner proposes to use the property for commercial purposes and the surrounding area having been developed for residential purposes and there being objection from the general public, then the land cannot be designated for commercial use.

- 14.5. An application under Subsection (3) of Section 69 is far more favourable to the land owner than Section 14A of the KTCP Act, and would have to be considered on the basis of the surrounding developments, which will determine the use for which this land would be put to.



- 14.6. Thus, I answer points No.5 by holding that upon lapsing of the reservation made under Clause (c) of Subsection (1) Section 12 of the KTCP Act in terms of the deeming provision under Subsection (2) of Section 69 of the KTCP Act, the land owner would have to make an application under Subsection (3) of Section 69 of the Act, which would have to be considered on the basis of the surrounding developments and not restrictively in terms of Section 14A of the KTCP Act.
- 14.7. An application being required to be made under subsection (3) of Section 69 of the KTCP Act, the deeming fiction is restricted to the lapsing of the reservation made in the Master Plan and does not create any further deeming fiction that on such lapsing, the earlier reservation would be applicable. Once the deeming fiction under Subsection (2) of Section 69 of the KTCP Act is made applicable, it is only the reservation made under that particular plan that would lapse, and as referred to supra, thereafter, an application under Subsection (3) of



Section 69 of the KTCP Act would have to be made, which would have to be considered on its own merits.

14.8. Hence, I answer point No. 6 by holding that on the deeming fiction being made applicable, the reservation of the land would not be restored to the status as indicated in the earlier master plan or development plan.

15. Answer to point No.7: What order?

15.1. In view of my answers to the aforesaid points in the present case, the land of the petitioners having been designated for public use in terms of Clause (c) of subsection (1) of Section 12 of the KTCP Act under the Revised Master Plan which came into effect on 25.06.2007, such designation is deemed to have lapsed from the midnight of 24.06.2012 since no acquisition has been made of the said land in terms of Subsection (1) or Subsection (2) of Section 69 of the KTCP Act. On such designation having lapsed, it is available for the landowners to



make necessary application under Subsection (3) of Section 69 of the KTCP Act for re-designation of the land for a purpose for which the surrounding land having been put to use and that cannot be done by re-designating it for the same purpose as in the earlier CDP 2011. Hence, I pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The reliefs sought for by the petitioners are modulated. It is declared that the designation of the land of the petitioners for parks and green spaces, sports/play grounds, cemeteries/burial ground in the Revised Master Plan, 2015 is deemed to have lapsed from midnight of 24.06.2012.
- (iii) The petitioners are at liberty to make an application in terms of Subsection (3) of Section 69 of the KTCP Act on the basis of surrounding developments, which shall be considered and necessary orders passed thereon by respondent No.2 within a period of 180 days from the date of receipt of such application.

**Sd/-
JUDGE**

GJM
List No.: 1 Sl No.: 91