



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO.17375 OF 2017 (BDA)

BETWEEN:

1. H.M. TAMBOURINE
APARTMENT OWNERS ASSOCIATION
A SOCIETY REGISTERED UNDER THE
PROVISIONS OF KARNATAKA SOCIETIES
REGISTRATION ACT, 1960
ITS REGISTERED OFFICE AT H.M. TAMBOURINE
NO.28, KANAKAPURA ROAD 6TH PHASE
J.P. NAGAR, BENGALURU-560 078
REPRESENTED BY ITS PRESIDENT- SRI PRADEEP RAO
& SECRETARY - SRI HEMENDRA MANDNAWAT.

2. SRI PRADEEP RAO
S/O. LATE SRI M.V. RAO
AGED ABOUT 45 YEARS
R/AT S-404, HM TAMBOURINE
KANAKAPURA MAIN ROAD, JARAGANAHALLI
BENGALURU - 560 078.

3. SRI D. NARASIMHA MURTHY
S/O. R. DASHARATHA RAM
AGED ABOUT 50 YEARS
R/AT R-404, HM TAMBOURINE
KANAKAPURA MAIN ROAD, JARAGANAHALLI
BENGALURU-560 078.

... PETITIONERS

(BY SRI D.R.RAVISHANKAR, SENIOR ADVOCATE FOR
SMT. RAMA R. IYER, ADVOCATE)





AND:

1. BANGALORE DEVELOPMENT AUTHORITY
KUMARA PARK WEST, T. CHOWDAIAH ROAD
BANGALORE - 560 020
REPRESENTED BY ITS COMMISSIONER.

2. M/S. PEDIGREE CONSTRUCTIONS
PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956 HAVING
ITS REGISTERED OFFICE AT NO.13/C.,
SHRUNGAR SHOPPING COMPLEX, 80
M.G. ROAD, BANGALORE-560 001.

... RESPONDENTS

(BY SRI N.R. GIRISH, ADVOCATE FOR R.1;
SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI V.B. SHIVAKUMAR, ADVOCATE FOR R.2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE MODIFIED SANCTION PLAN NO. NM/ AS/ AA/ 1/ TS/ 2D/ 07/ 2016-17 DATED 24.06.2016 (ANNEXURE-J) ISSUED BY THE RESPONDENT NO.1 BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI AND TO QUASH THE ORDER BEARING BDA/EM/EO-1/TA-2/T-457/2017-18 DATED 08.01.2018 (ANNEXURE-N) ISSUED BY THE RESPONDENT NO.1 BY ISSUING A WRIT IN THE NATURE OF CERTIORARI, ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.02.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THROUGH PHYSICAL HEARING/VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

1. Petitioner No.1 is an apartment owners' association consisting of owners of different apartments in H.M.Tambourine apartment complex and petitioner Nos.2 and 3 are individual owners in the said apartment complex. Respondent No.2 has got the said apartment complex constructed.

2. The case of the petitioners is that the apartment complex is constructed on Sy.No.28, Kanakapura Road, Jaraganahalli Village, Uttarahalli Hobli, Bangalore-560 078 and the property measures about 3 acres 18 guntas. The same is hereinafter referred to as 'property'. It is further submitted that after development of the apartment complex as per the earlier plan sanctioned by the Bangalore Development Authority (BDA), individual apartments have been sold in favour of several persons and apart from the ownership over a particular apartment, a portion of the undivided right, title and interest over the property is also sold in favour of each of the apartment



owners and though respondent No.2 is entitled to put up additional construction, it can be only in respect of the extent which is not already sold and that the modified plan has been sanctioned based on the maximum floor area ratio (FAR) permissible as of now for the entire property without taking into consideration the area already sold in favour of the individual apartment owners and further, the property is now within the jurisdiction of Bruhat Bengaluru Mahanagara Palike (BBMP) and BDA does not have the power to sanction the modified plan. It is also contended that even if it is presumed that the BDA has the necessary powers, the plan sanctioned is in violation of law, as the plan permits construction of a new building altogether by way of additional towers and the distance between the existing towers and the additional towers does not conform to the law and the cantilever joining the building to be newly constructed with that of the existing building does not make it one building. It is further submitted that the consent of individual apartment owners already owning apartments is not taken while granting the



modified plan. It is also submitted that the modified plan has the effect of infringing upon the rights of the apartment owners over the common areas. It is also submitted that it also has the effect of reducing the ownership of the individual apartment owners over the property. For the said reasons, it is prayed that the modified sanctioned plan be set aside along with the endorsement issued by BDA to the representation of the petitioners.

3. Per contra, the case of respondent no.2 is that the petitioners have already filed an original suit in the trial Court in respect of the exact extent of ownership that they are entitled to in respect of the property and the same cannot be subject matter of the writ petition. It is further contended that respondent No.2 reserved its rights to develop the property further, in the sale deeds executed in favour of individual apartment owners and hence consent of individual apartment owners is not required by BDA to sanction modified plan and upon respondent no.2



approaching the BDA, it has sanctioned the modified plan in accordance with law. It is further contended that the BDA is the planning Authority as contemplated under the Karnataka Town and Country Planning Act, 1961 and it has jurisdiction to issue necessary modified plan and the same has been issued in accordance with law taking into consideration maximum floor area ratio available for construction on the entire property of 3 acres 18 guntas and that the apartment complex being constructed as per the modified plan is only an additional construction to an already existing building and the same is being constructed in accordance with law and the entire apartment complex including the additional building being constructed has to be construed as one building and what is being put up is not a new building and that the same is permitted in law. It is further submitted that construction of additional building does not infringe the rights of already existing apartment owners in the common areas nor has it the effect of reducing their ownership in the



property. For that reason, it is prayed that the writ petition be dismissed.

4. The question as to the extent of land already sold in favour of individual apartment owners in the property and the consequences of it over the right of respondent no.2 to put up additional construction over the property involves disputed question of facts that has to be determined in the trial court. The only question that arises for consideration in the instant writ petition is whether BDA has the jurisdiction to issue the modified plan sanction and is it in accordance with law.

5. As per Section 2(7)(a)(i) of the Karnataka Town and Country Planning Act, 1961, the Bangalore Development Authority is the planning authority for the area comprising the City of Bengaluru. Admittedly, in the instant case, the BDA has initially sanctioned the plan for construction of apartment complex. The same has been constructed and individual apartments have been alienated in favour of



several persons including petitioner nos.2 and 3 herein. Along with the said apartments, a portion of the undivided right, title and interest in the property is also alienated in their favour. Thereafter, respondent no.2 has applied to BDA for modification of sanctioned plan, which has been granted to them and the building is presently being constructed in accordance with it. It is also not in dispute that presently the property is situated within the jurisdiction of Bruhat Bengaluru Mahanagara Palike (BBMP). The learned counsel for the petitioners has produced a Government Order dated 07.11.2015, which specifies that plan in respect of the properties situated within BBMP limits has to be sanctioned by BBMP. However, respondent no.2 has contended that the said notification pertains to new plans to be sanctioned and not for modified plans for buildings for which plan has already been sanctioned.

6. The petitioners have further relied upon two judgments of the Hon'ble Supreme Court in the case of



NEWTECH PROMOTERS AND DEVELOPERS PVT LTD
V. STATE OF UP AND OTHERS reported in **2021 SCC**
Online SC 1044 and also in the case of **SUPERTECH**
LIMITED V. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION AND OTHERS reported in
(2021) 10 SCC 1 and contend that the modified plan is in
violation of the building bye laws. It is contended that the
distance between the buildings being constructed is not as
per law, the cantilever connecting the buildings does not
make them into one building. Per contra, it is contended
by respondent no.2 that the additional building being
constructed has to be considered as part of an already
existing building and not a separate building. It is further
submitted that the entire building on the property is one
building and at certain areas the design of the building
appears to be having towers and if each tower were to be
considered as a separate building then in that event, the
already existing building also consists of more than one
tower and it also has to be held in violation of building bye
law and the petitioners having no complaints about the



same cannot now state that the additional construction is violative of the building bye law. For that reason, it is contended that the aforementioned judgments of the Apex Court does not come to the rescue of the petitioners.

7. As this Court does not have the necessary expertise to analyze the building plan, on 09.02.2024 directed the BDA to file an affidavit of a responsible Officer and state whether the modified plan which has been sanctioned in the instant case has been done in accordance with law or not and whether there is any violation of Clause 3.6 of the Regulations as alleged by the petitioners and also directed the BDA to clarify whether it has the jurisdiction to sanction the modified plan or that it has to be done by BBMP.

8. Respondent no.1 has filed an affidavit of one Technical Assistant and has submitted that as the building to be newly constructed is inter connected with the already existing building, it has to be construed as part of the building already existing on the property. It is further



submitted that the BDA has the power to issue the modified plan and not the BBMP. The learned counsel for the BDA in the course of the arguments, clarified that the notification dated 07.11.2015 authorising BBMP to sanction plans pertains only to new plans and it is the responsibility of BDA to sanction modified plans for buildings for which it has granted initial plan sanction and the same has been done in the instant case. He further supported the contention of respondent no.2 to the effect that if each of the towers on the property were to be construed as an independent building, then in that event the already existing building also becomes illegal. He submitted given the nature of the plan, the entire building on the property including the additional building has to be construed as one building. He further submitted that the dispute pertaining to ownership over the area of the property is between the petitioners and respondent no.2 and the BDA is concerned only about sanctioning building plan in respect of the entire property taking into consideration the total FAR available for the entire



property and in this regard, he submits that modified plan sanctioned is in accordance with law.

9. As the counsel for the BDA has submitted that the Government Order dated 07.11.2015 pertains only to new plan sanction and not for modified plans and the same is construed accordingly by all the authorities concerned and that the building being constructed is part of the already existing building and not a new building, it has to be held that the judgments of the Apex Court relied upon by the petitioners do not apply in the instant case, as it pertained to a case wherein the buildings being constructed were construed as a separate building, while in the instant case the new building being constructed is considered as part of the existing building.

10. For the aforementioned reasons, the writ petition is hereby ***dismissed***. However, it is clarified that the dismissal of the writ petition will not come in the way of the petitioners agitating their rights in respect of the



property where the apartment complex is situated before the Civil Court and if they succeed in the same and if it has a bearing on the new building being constructed, they are at liberty to take action in accordance with law.

11. Pending I.As., if any, stand disposed of.

**Sd/-
JUDGE**

VMB/hkh.