



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 3728 OF 2022 (LB-BMP)

C/W

WRIT PETITION NO. 21441 OF 2022(LB-BMP)

WRIT PETITION NO. 20383 OF 2023(LB-BMP)

R

IN W.P.NO. 3728/2022
BETWEEN:

AVENUE SUPERMARTS LTD.,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956 HAVING ITS REGD OFFICE AT
ANJANEYA CO OP HOUSING SOCIETY LTD
ORCHARD AVENUE
OPP HIRANANDANI FOUNDATION SCHOOL
POWAI
MUMBAI-400076
REPRESENTED BY ITS AUTHORISED SIGNATORY

...PETITIONER

(BY SRI. GOUTHAM CHAND S F.,ADVOCATE)

AND:

1. BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE HUDSON CIRCLE
BENGALURU-560002
REPRESENTED BY ITS COMMISSIONER/CHIEF
COMMISSIONER
2. THE JOINT DIRECTOR OF TOWN PLANNING (NORTH)
BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE HUDSON CIRCLE





NC: 2023:KHC:42431
WP No. 3728 of 2022
C/W WP No. 21441 of 2022
WP No. 20383 of 2023

BENGALURU-560002.

3. THE ASSISTANT EXECUTIVE ENGINEER
HORAMAVU SUB DIVISION
BRUHAT BENGALURU MAHANAGARA PALIKE
JAYANTHI NAGAR CIRCLE
OLD HORAMAVU PANCHAYATH BUILDING
BENGALURU-560113.
4. THE TAHSILDAR
DOORAVANINAGAR
KRISHNARAJAPURA
BENGALURU-560036.
5. BENGALURU DEVELOPMENT AUTHORITY
T. CHOWDAIAH ROAD,
BENGALURU-560020
REP BY ITS COMMISSIONER
(IMPLEADED VIDE C/O/D 08.09.2022)

...RESPONDENTS

(BY SRI. JAGADEESWARA N R.,ADVOCATE FOR R1 TO R3;
SRI. NAVEN CHANDRASHEKAR., AGA FOR R4;
SRI. K. KRISHNA., ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI AND/OR OF ANY LIKE NATURE, QUASHING THE IMPUGNED NOTICE UNDER SECTIONS 238, 239 OF THE BRUHAT BENGALURU MANAHANAGARA PALIK ACT 2002 BEARING NO. S.K.A/HORAMAVU/U.V/P.O/2021-22, DTD.17.1.2022 AT ANNEXURE-J AND ETC.

IN W.P.NO. 21441/2022

BETWEEN:

AVENUE SUPERMARTS LTD.,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956
HAVING ITS REGD OFFICE AT
ANJANEYA CO OP HOUSING SOCIETY LTD
ORCHARD AVENUE
OPP HIRANANDANI FOUNDATION SCHOOL
POWAI
MUMBAI-400076
REPRESENTED BY ITS AUTHORISED SIGNATORY/



NC: 2023:KHC:42431
WP No. 3728 of 2022
C/W WP No. 21441 of 2022
WP No. 20383 of 2023

DEPUTY GENERAL MANAGER
NIKHIL SURYANARAYAN

...PETITIONER

(BY SRI. GOUTHAM CHAND S F.,ADVOCATE)

AND:

1. BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE HUDSON CIRCLE
BENGALURU-560002
REPRESENTED BY ITS COMMISSIONER/CHIEF
COMMISSIONER
2. THE JOINT COMMISSIONER,
MAHADEVAPURA ZONE,
BRUHAT BENGALURU MAHANAGARA PALIKE,
WHITEFIELD MAIN ROAD, RHB COLONY,
OPPOSITE PHOENIX MARKET CITY
MAHADEVAPURA, BENGALURU-560048.
3. ASSISTANT DIRECTOR (TOWN PLANNING),
MAHADEVAPURA
BRUHAT BENGALURU MAHANAGARA PALIKE,
WHITEFIELD MAIN ROAD, RHB COLONY,
OPPOSITE PHOENIX MARKET CITY
MAHADEVAPURA, BENGALURU-560048.

...RESPONDENTS

(BY SRI. JAGADEESWARA N R.,ADVOCATE FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT AGAINST THE RESPONDENTS QUASHING THE ENTIRE PROCEEDINGS IN NO. AA/MA.WA/A-455/2022-23, PENDING BEFORE THE RESPONDENT NO.2 JOINT COMMISSIONER, MAHADEVAPURA ZONE, BBMP, VIDE ANNEXURE-A AND ETC.

IN W.P.NO. 20383/2023

BETWEEN:

AVENUE SUPERMARTS LTD.,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956
HAVING ITS REGD OFFICE AT



NC: 2023:KHC:42431
WP No. 3728 of 2022
C/W WP No. 21441 of 2022
WP No. 20383 of 2023

ANJANEYA CO-OP HOUSING SOCIETY LTD
ORCHARD AVENUE
OPP HIRANANDANI FOUNDATION SCHOOL
POWAI, MUMBAI-400076
REPRESENTED BY ITS GENERAL COUNSEL;
MR. ALLAN NOTT

...PETITIONER

(BY SRI. GOUTHAM CHAND S F.,ADVOCATE)

AND:

1. BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE HUDSON CIRCLE
BENGALURU-560002
REPRESENTED BY ITS COMMISSIONER/CHIEF
COMMISSIONER
2. THE JOINT COMMISSIONER,
MAHADEVAPURA ZONE,
BRUHAT BENGALURU MAHANAGARA PALIKE,
WHITEFIELD MAIN ROAD, RHB COLONY,
OPPOSITE PHOENIX MARKET CITY
MAHADEVAPURA, BENGALURU-560048.
3. ASSISTANT DIRECTOR (TOWN PLANNING),
MAHADEVAPURA
BRUHAT BENGALURU MAHANAGARA PALIKE,
WHITEFIELD MAIN ROAD, RHB COLONY,
OPPOSITE PHOENIX MARKET CITY
MAHADEVAPURA, BENGALURU-560048.

...RESPONDENTS

(BY SRI. JAGADEESWARA N R.,ADVOCATE FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI BY QUASHING THE IMPUGNED NOTICE DATED 21/07/2023, BEARING NO. BBMP/SA.NI.NA.YO (MA.WA)/PR/2023-24, VIDE ANNEXURE-A AND ETC.

THESE WRIT PETITIONS, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

1. The petitioner in W.P.No.3728/2022 is before this Court seeking for the following reliefs:

1. *To issue a writ of certiorari and/or of any like nature, quashing the impugned Notice under sections 238 & 239 of the Bruhat Bengaluru Mahanagara Palike Act, 2002 bearing No. S.K.A/Horamavu/U.V/P.O/2021-22, dated 17/01/2022 at Annexure-J*
2. *Writ of Certiorari and/or of any like nature, quashing the impugned notice under sections 238 & 239 of the Bruhat Bengaluru Mahanagara Palike Act, 2002 bearing No. S.K.A/Horamavu/U.V/P.O/2021-22, dated 27/01/2022 at Annexure-A and*
3. *Pass such other order as this Hon'ble Court deems fit in the facts and circumstances of the instant case, in the interest of justice and equity.*

2. The petitioner in W.P.No.21441/2022 is before this Court seeking for the following reliefs:

1. *To issue a writ of certiorari quashing the entire proceedings in No.Aa.Ma.Wa/A-455/2022-23 pending before the R2, Joint Commissioner, Mahadevepura Zone, BBMP, vide Annexure-A;*
2. *Quashing the Show cause Notice dated 12/09/2022 bearing No. BBMP/Ma.Wa/Na.Yo/419/2022-23 issued by the Respondent No.3 Assistant Direct Town Planning, Mahadevapura, BBMP, vide Annexure-T,*
3. *Quashing the Inquiry Cause Notice dated 26/09/2022 bearing No. BBMP/Sa.Ni.Na.Yo. (M.W.)/P.R.455/2022-23 issued by the R3, Assistant Direct Town Planning, Mahadevapura, BBMP, vide Annexure-V and*



4. *Pass such order/s as this Hon'ble Court deems fit in the facts and circumstances of the instant petition, in the interest of justice and equity.*

3. The petitioner in W.P.No.20383/2023 is before this Court seeking for the following reliefs:

1. *To issue a writ of certiorari by quashing the impugned Notice dated 21/07/2023, bearing No. BBMP/Sa.Ni.Na.Yo (Ma.Wa)/PR/2023-24, vide Annexure-A*

2. *Issue a writ of mandamus or appropriate writ, directing the Respondent No.3 to forthwith issue occupancy certificate to the petitioner, in respect of the Schedule property, and*

3. *Pass such other order/s as this Hon'ble Court deems fit, in the interest of justice and equity.*

4. In all the above matters, the facts are common inasmuch as the petitioner claims to be the company incorporated under the Companies Act, 1956 carrying on the business of retail/departmental store of grocery and daily essentials under the brand name 'D-Mart'. The petitioner being the owner of land in Sy.Nos.20 and 8 of Ammani Byrathi Khane Village, K.R.Puram Hobli, Bangalore East Taluk having purchased the same under the sale deed dated 30.03.2021 which had been converted for



agricultural to non-agricultural purposes by his vendor. After obtaining necessary 'No Objection Certificates' had applied for plan sanction with respondent - Corporation which came to be so sanctioned on 29.01.2021.

5. Prior to the sanction of plan, an inspection was carried out by the Chief Engineer, Storm Water Drain Department, BBMP who had submitted that there is no 'Rajakaluve' or 'Water Feed Canal' in the aforesaid property. Taking into consideration the same, the plan sanction came to be granted.
6. Subsequent thereto, on the ground that complaints were received from surrounding residents, a notice dated 17.01.2022 came to be issued at Annexure-J which was replied to on 18.01.2022 furnishing the documents requested. Thereafter, a notice-cum-order came to be issued under Section 238 and 239 of BBMP Act, 2020 on 27.01.2022 at Annexure-A calling upon the petitioner to stop construction on



the ground that the petitioner have encroached upon the 'Rajakaluve'. It is challenging the same that the petitioner in W.P.No.3728/2022 is before this Court.

7. In W.P.No.3728/2022, this Court vide order dated 18.02.2022 had stayed the operation of Annexure-A thereto.
8. While the said matter was pending, proceedings having been held on 29.09.2022. The Joint Commissioner, Mahadevapura Zone has observed that the plan sanction issued in favour of the petitioner would be required to be cancelled on account of encroachment of a 'Rajakaluve' in pursuance of which a show cause notice came to be issued on 12.09.2022 and an enquiry notice came to be issued on 26.09.2022. It is challenging the same that W.P.No.21441/2022 has been filed.
9. On the construction being completed and an application having been made for issuance of



occupancy certificate, the same not having been issued, W.P.No.20383/2023 has been filed seeking for the aforesaid reliefs.

10. In all the above matters, the issue that arises is whether the BBMP could have issued notices or initiated proceedings alleging that a 'Rajakaluve' had been encroached which 'Rajakaluve' is not shown in the Revised Master Plan, 2015?
11. Sri.K.G.Raghavan, learned Senior counsel appearing for the petitioner by relying upon the decision of Co-ordinate Bench of this Court in the case of ***Shobha Developers Limited vs. Bruhat Bangalore Mahanagara Palike and others***¹ which has been confirmed by order of Division Bench in the case of ***Bruhath Bangalore Mahanagara Palike and another vs. Shobha Developers Ltd., and another***² submits that if a 'Rajakaluve' has not been

¹ 2012 SCC Online Kar 2679

² 2020:KHC:12146:DB : WA No.3803/2016



shown in the Revised Master Plan, no action could be taken by the BBMP. The said contention having already been answered by Co-ordinate Bench of this Court and confirmed by the Division Bench of this Court, this Court is bound to apply the same to the present facts.

12. The submission of Sri.N.R.Jagadeeswara, learned counsel for the Corporation is that it is not 'Rajakaluve' but it is 'Haddigidada Halla' to an extent of 9 guntas which has been encroached upon by the petitioner. Though such a submission has been made across the Bar as also in the Statement of Objections which have been filed, the notices which have been issued and challenged in W.P.No.3728/2022 does not reflect or refer to any such encroachment of 'Haddigidada Halla' but only refers to an encroachment of a 'Rajakaluve'. The proceedings of the Joint Commissioner and the subsequent notices which have been issued which have been challenged



in W.P.No.21441/2022 also refers only to an encroachment of 'Rajakaluve' and not to any encroachment of 'Haddigidada Halla'.

13. Be that as it may, even the RTC which have been produced before this Court by the respondent – Corporation indicates that the undivided Sy.No.20 measures 2 acres 26 guntas out of which 2 guntas has been denoted as 'A' karab and totally the land in Sy.No.20 measures 2 acres 26 guntas. Thus, even in the RTC which has been produced, there is no demarcation of alleged 9 guntas of karab stated to have been encroached upon by the petitioner in respect of 'Haddigidada Halla'. Furthermore, 'Haddigidada Halla' being claimed to be one reserved for public use would naturally have to be demarcated as 'B' karab and not 'A' karab which is not so in the RTC which has been produced by the Corporation.
14. Thus, there being no 'B' karab at all in Sy.No.20, the question of Corporation contending that there is an



encroachment of a 'Haddigidada Halla' which is allegedly situated in Sy.No.20 would also not arise. The entire proceedings having been initiated by the Corporation on the basis of there being an alleged encroachment of 'Rajakaluve' which is not shown in the RMP, I am bound by the decision of Co-ordinate Bench of this Court in W.P.No.44277/2011 dated 10.02.2012 as confirmed by the Division Bench of this Court dated 13.07.2020 in W.A.No.3803/2016.

15. During the course of arguments, Sri.N.R.Jagadeeswara, learned counsel for the Corporation has contended that it is the 'Haddigidada Halla' which has been encroached upon by the petitioner.

16. No proceedings have been initiated and no notice based on the report submitted by ADLR has been issued. This Court has referred to the RTC earlier. However, in the event of the Corporation being of the



opinion that the proceedings have to be initiated as regards alleged encroachment of 'Haddigidada Halla', the respondent – Corporation is at liberty to initiate such proceedings against the petitioner by clearly detailing out the location of 'Haddigidada Halla' as also detailing out with documents under which the said classification has been made with reference to both location and area.

17. The last submission of Sri.N.R.Jagadeeswara, learned counsel for the Corporation is that in view of the construction made by the petitioner, the water flow is blocked and as such, action has been taken against the petitioner.
18. Any action could be taken against the petitioner if the petitioner had unlawfully or illegally contributed to such blocking of water. As aforesaid, the RTCs is not reflecting any 'B' Karab. The RMP is not reflecting any nala, rajakaluve etc. The blocking of flow of



water cannot be attributed to the petitioner. It is for the BBMP to ascertain the actual reason of the same which could be manifold including the capacity of the drains constructed by the BBMP, siltation in the said drains, gravity and flow of water in the said drains, the hydrological flow relating thereto etc. It appears that the BBMP in the present case is only trying to shift the blame to the petitioner when none lies on the petitioner.

19. It is for the BBMP to conduct a detailed hydrological survey and survey of all storm water drains in and around the area to ascertain the cause of blockage of water and not to seek to contend that the petitioner has blocked the drain in his property when the records do not indicate the existence of any such drain.
20. This aspect being a perennial problem, it would be required that proper monitoring system of the drains



NC: 2023:KHC:42431
WP No. 3728 of 2022
C/W WP No. 21441 of 2022
WP No. 20383 of 2023

constructed by the BBMP is maintained. The details of the drains uploaded on the website of the BBMP with maintenance details being uploaded from time to time including the amount of silt accumulated and/or removal of silt from such drains. In the event of any fresh storm water drains required to be constructed depending on the hydrological survey conducted by the BBMP, the BBMP through the state would always have the option to acquire the said land and form such storm water drain for the benefit of the citizens of the Bangalore. The Chief Commissioner of the BBMP along with other Stakeholders like the Principal Secretary, Revenue Department, Principal Secretary, Urban Development Department, Principal Secretary, Gram Panchayat are directed to look into the matter. The Chief Secretary, Government of Karnataka is directed to constitute a Committee comprising of the above officers and such other officers as he deems fit to have a constant



monitoring of the storm water drains more particularly in the rainy season in Bangalore.

21. As such, I pass the following:

ORDER

- i) W.P.No.3728/2022 is **allowed**, a certiorari is issued. The notice issued under Section 238 and 239 of BBMP Act, 2020 bearing No.S.K.A/Horamavu/U.V/P.O./2021-22 dated 17.01.2022 at Annexure-J is hereby quashed. Notice bearing No.S.K.A/Horamavu/U.V/P.O./M/2021-22 dated 27.01.2022 at Annexure-A is quashed.
- ii) W.P.No.21441/2022 is **allowed**. The proceedings in No.Aa.Ma.Wa/A-455/2022-23 dated 29.09.2022 at Annexure-A is quashed. The show cause notice bearing No. BBMP/Ma.Wa/Na.Yo/419/2022-23 dated 12.09.2022 at Annexure-T is hereby quashed.



Enquiry cause notice bearing No. BBMP/Sa.Ni.Na.Yo.(M.W.)/P.R.455/2022-23 at Annexure-V is quashed.

- iii) W.P.No.20383/2023 is **allowed**, a certiorari is issued. The impugned notice dated 21.07.2023 bearing No.BBMP/Sa.Ni.Na.Yo(Ma.Wa)/PR/2023-24 vide Annexure-A is hereby quashed.
- iv) A mandamus is issued directing respondent No.3 to consider the application submitted by the petitioner for grant of occupancy certificate in terms of the applicable building bye-laws and if any violation or deviation in the sanctioned plan is found, which is not compoundable, the Corporation is at liberty to reject the occupancy certificate.
- v) Though the above matter is disposed relist on 25.01.2024 to report compliance with the above directions. Learned AGA to communicate



NC: 2023:KHC:42431
WP No. 3728 of 2022
C/W WP No. 21441 of 2022
WP No. 20383 of 2023

the above directions to the concerned and file
compliance report.

Sd/-
JUDGE

PRS
List No.: 1 Sl No.: 82