



RELINQUISHMENT OF PROPERTY FREE OF COST NOT CONDITION PRECEDENT FOR PLAN SANCTIONS

The Hon'ble High Court of Karnataka, in its recent judgement dated 10/01/2022 in WP No. 9408/2020 and other connected matters, has held that the condition imposed by the BBMP requiring the builder to relinquish certain portions of their property free of cost as a condition precedent for processing their application for sanctioning their layout plan/building plan is without authority of law and the same is violative of Article 300A of the Constitution of India.

BRIEF FACTS

- The properties or portions of the properties of the various Petitioners were earmarked for purpose of widening of road in the RMP-2015 in terms of the Karnataka Town and Country Planning Act, 1961 (“**KTCP Act**”).
- The BBMP issued a circular dated 29/02/2016 *inter alia* mentioning that owners should relinquish their properties earmarked for road widening in the RMP-2015 free of cost at the time of building/layout plan sanction.
- When the Petitioners submitted an application to the BBMP for sanctioning their building/layout plans, the BBMP issued an endorsement stating that the application submitted by the Petitioners for plan sanction will be proceeded only after the Petitioners surrender the property earmarked for the purpose of widening of the road in RMP-2015 free of cost.

ISSUE IN QUESTION

- Whether the requirement to relinquish the property belonging to the petitioner designed as a road in RMP-2015 free of cost to the BBMP as a precondition for sanctioning of building plan submitted by the petitioner is illegal and violative of the provisions of Constitution of India?

CONTENTIONS OF THE PARTIES

The Petitioner – owner of Property

- The Petitioners contended that in the absence of any legal authority or support by any competent legislature as enumerated in Article 300A of the Constitution, the Petitioners cannot be deprived of their immovable property without payment of compensation.

The Respondent- BBMP

- The Respondent contended that 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.
- Regulations 7.1(5) and 7.2(d) of the Zoning of Land Use and Regulations - Revised RMP-2015 2015 require that roads as shown in the revised RMP-2015 2015 shall be incorporated within the plan and shall be handed over to the Authority free of cost.
- The circular dated 29/02/2016 issued by - 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.

DECISION

- **The High Court held that the Circular dated 29/02/2016 requiring the owners/developers to surrender the properties earmarked for widening of road free of cost at the time of sanctioning of building plans violates Article 300-A of the Constitution.**
- 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 BBMP violates Article 300-A of the Constitution of India.

- Further, the court held that the impugned endorsements and circular issued by BBMP is arbitrary and discriminatory since the owners of the properties earmarked as Road in RMP 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 RMP-2015. The Petitioners cannot be deprived of their properties earmarked as road in the revised RMP-2015 merely because they intend to develop their properties by obtaining sanctioned building plan.
- **Therefore, the High Court quashed the impugned circular dated 29 February 2016 issued by the BBMP and further directed the BBMP to process the applications submitted by the Petitioners for sanctioning the building plans as pass appropriate orders in accordance with law within a period of two months.**

SANCTUM LAW COMMENT

The judgement of the Hon'ble High Court of Karnataka comes to the rescue of the trade and business of the real estate developers who hitherto had to mandatorily relinquish earmarked property in order to obtain plan sanctions for construction. This not only hindered in the construction work but created heavy financial and legal burden on the real estate developers. The decision of the High Court has rightly understood the plight of the real estate developers and is therefore a welcome judgement. This is also a welcome relief for the general citizenry as it ensures that there is no surrogate acquisition in the form of relinquishment, and acquisition, if any, in whatsoever manner, has to appropriately compensate the landowner.

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