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IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 7TH DAY OF APRIL, 2026****PRESENT****THE HON'BLE MR. JUSTICE D K SINGH****AND****THE HON'BLE MR. JUSTICE T.M.NADAF****WRIT APPEAL NO. 1637 OF 2025 (LB-BMP)****BETWEEN:**

M/S. VISHNU SRI BUILDERS AND DEVELOPERS
A REGISTERED PARTNERSHIP FIRM,
REGISTERED UNDER THE PARTNERSHIP ACT, 1932,
HAVING ITS OFFICE AT NO.39, FLAT NO.4,
NAGASHREE APARTMENT, 30TH CROSS,
7TH BLOCK, JAYANAGAR, BANGALORE - 560 082.
REPRESENTED BY ITS
PARTNER SRI. SANDEEP ANAND,
S/O LATE B.M ANAND,
AGED ABOUT 44 YEARS.

...APPELLANT

(BY SRI. P.S. RAJAGOPAL. SENIOR COUNSEL FOR
SRI. SUDHAKAR G V., ADVOCATE)

AND:

1. THE COMMISSIONER
BRUHAT BANGALORE
MAHANAGARA PALIKE,
N.R SQUARE, HUDSON CIRCLE,
BANGALORE - 560 002.
2. JOINT DIRECTOR OF
TOWN PLANNING,
SOUTH ZONE,
BRUHAT BANGALORE MAHANAGARA PALIKE,
N.R. SQUARE,





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NC: 2026:KHC:18906-DB
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HUDSON CIRCLE,
BANGALORE - 560 002.

3. THE DIRECTOR GENERAL OF POLICE,
COMMANDANT GENERAL,
HOME GUARDS AND DIRECTOR OF CIVIL DEFENCE
AND DIRECTOR GENERAL KARNATAKA STATE FIRE
AND EMERGENCY SERVICES,
OFFICE AT NO.1, ANNASWAMY MUDALIAR,
K.G ROAD, BANGALORE - 560 009.
4. RAJASRI APARTMENT OWNERS ASSOCIATION,
REGISTERED UNDER THE PROVISIONS OF THE
KARNATAKA APARTMENT OWNERSHIP ACT 1972
OFFICE AT RAJSRI APARTMENTS NO.413/251,
KARNATAKA APARTMENT OWNERSHIP ACT, 1972,
SRI. TRICHY SWAMY ROAD, HALAGEVADERAHALLI,
RAJARAJESWARI NAGAR, BENGALURU - 560 098.
REPRESENTED BY ITS AUTHORISED SIGNATORY
SRI.K. BHASKAR SASTRY.
5. SRI. AJAY PALIMARKAR NAYAK,
S/O VASANTH NAYAK,
AGED ABOUT 45 YEARS,
RESIDING AT FLAT NO.B-905,
RAJSRI APARTMENTS NO.413/251,
SRI.TRICHY SWAMY ROAD,
HALAGEVADERAHALLI, RAJARAJESWARI NAGAR,
BENGALURU - 560 098.
6. SRI. ABHAY DESAI,
S/O RAGHUNATH DESAI,
AGED ABOUT 42 YEARS,
RESIDING AT FLAT NO.A-201,
RAJSRI APARTMENTS NO.413/251,
SRI. TRICHY SWAMY ROAD,
HALAGEVADERAHALLI, RAJARAJESWARI NAGAR,
BENGALURU - 560 098.

...RESPONDENTS

(BY SRI. M.N. SUDEV HEGDE, AGA FOR R3,
SRI. MADHUKAR DESHPANDE, ADVOCATE FOR C/R4)



THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER DATED:03.09.2025 PASSED IN WP NO.3076/2024(LB-BMP), BY THE LEARNED SINGLE JDUGE AND ETC.

THIS APPEAL, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

Respondent No.3 in W.P.No.3076/2024 is in appeal before us under Section 4 of Karnataka High Court Act, 1961, challenging the order dated 03.09.2025 passed by the Writ Court.

2. The Writ Court under the impugned order, declared that the modified sanction plan at **Annexure-H, H1** and **H2** would be kept in abeyance till the same is brought in conformity with the requirement of setback around the residential development Block A as noticed in



the Fire NOC dated 19.04.2014. Further, till such rectification of plan is made, the respondent No.3 is restrained from putting up construction and respondent No.4 is directed to demolish the construction made in the setback area around Block A Wing B insofar as the development in Commercial Block-B.

3. Parties are referred to as per their rankings before the Writ Court.

4. Heard Sri.P.S.Rajagopal, learned Senior counsel appearing for Sri.Sudhakar.G.V, learned counsel for the appellant and Sri.M.N.Sudev Hegde, learned Additional Government Advocate for respondent No.3 and Sri.Madhukar Deshpande, learned counsel for Caveator-respondent No.4.

5. The facts germane to filing of the present appeal are as under:



6. The petitioners who are the members of Rajsri Apartment Owners' Association filed the writ petition for the following reliefs:

- "(a) *Issue of a writ in the nature of certiorari or quash the Revised No Objection certificate bearing No.GBC(1)195/2013, Docket No.KSFES/NOC/059/2023 dated 13.06.2023, issued by the Respondent No.4 (Annexure-Q).*
- (b) *Issue of a writ in the nature of certiorari or quash the modified sanction plan bearing No.BBMP/Addl.Dir/JD South/LP/0021/20-21 dated 31.08.2021 issued by the Respondent No.2 (Annexure-H, H1 and H2).*
- (c) *Issue of a writ in the nature of mandamus to the Respondent No.1 and 2 to consider the representation dated 25.11.2023 (Annexure-L) submitted by the Petitioner No.1 and pass appropriate order on the said representation in accordance with law.*
- (d) *Grant such other order/s as this Hon'ble Court deems fit to grant in the circumstances of the case, in the interest of justice and equity."*

7. The petitioners were before the Writ Court, calling in question the Revised No Objection Certificate bearing No.GBC(1)195/2013 dated 13.06.2023 (**Annexure-Q**). By virtue of the said NOC, the Karnataka State Fire and Emergency Services Department-respondent No.4, while considering the request for grant of NOC pursuant to a proposal of revised plan has granted NOC.



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8. The petitioner has also sought for setting aside of the modified sanction plan dated 31.08.2021 vide ***Annexure-H, H1 and H2***, under which the builder had sought to modify the sanctioned plan earlier consisted of residential building into a mixed development including the commercial space. The residential development consists of Block B. The petitioner also sought for consideration of representation (***Annexure-L***), addressed by the Bruhath Bengaluru Mahangara Palike (BBMP), requesting for issuance of a direction to restrict or stop the construction work, while making out various grounds including reduced access to Fire-Engine, vehicles and ambulances to reach the destination in case of fire or any untoward incidents in the apartment building.

9. Before the Writ Court, the scope of the present *lis* is limited to examination of the requirement of maintaining the setback around the residential constructed portion of Wing B as provided under the FIRE NOC dated



19.04.2014, issued at the stage of sanction of plan for the residential development consisting of Wing A and B.

10. During the pendency of the writ petition, a direction was issued to Karnataka State Fire and Emergency Services Department to offer its views on whether the movement of fire fighting vehicles is possible on the setbacks area of the commercial building built in front of the Rajashree Apartments at Khata No.413/251, Ward No.160, Halagadevarahalli, Rajarajeshwari Nagar, Bangalore, by holding a local inspection. The Director General of Police and Director General, Karnataka State Fire & Emergency Services visited the spot and conducted the inspection and found the following details:

"In the order referred above the Honble High court of Karnataka have directed the Karnataka State Fire & Emergency Services department to offer its views on whether the movement of fire fighting vehicles is possible on the setbacks area of the commercial building built in front of the Rajashree Apartments at Khata No.413/251, Ward No.160, Halagadevarahalli, Rajarajeshwari Nagar, Bangalore-560098.

As per Revised NOC The height of the Building is 36.90 mtrs for which required setback is minimum 12.00 mtrs all

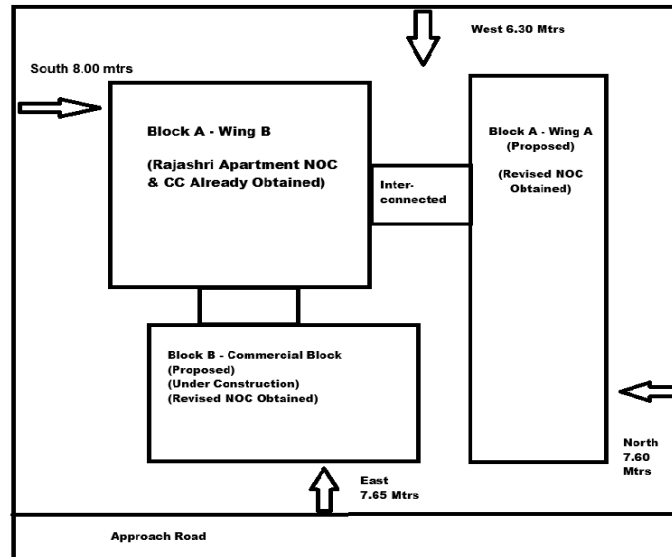


around the building where as the builder has claimed relaxation ins setbacks and allowed setbacks of Min. 8.0 mtrs on all the sides Under TDR provision vide Development Right Certificates.

Driveway space left:- As per Revised NOC, Proposed to provide 8.00 Mtrs. Wide setback/driveway all around the building line with a turning radius of minimum 9.00 Mtrs for easy movement of fire vehicle.

Allowed Setbacks (open space) on all around the building;-

Direction	As per NOC	At the time of inspection (present Setback)	Short fall of Setback
Front (East):	Min 8.00 mtrs.	Min 7.65 mtrs.	0.35 mtrs
Rear (West):	Min 8.00 mtrs	Min 6.30 mtrs.	1.7 mtrs
Side (North):	Min 8.08 mtrs.	Min 7.60 mtrs.	0.4 mtrs
Side (South):	Min 8.70 mtrs	Min 8.00 mtrs.	---



The Karnataka State Fire & Emergency Services has procured large fire fighting vehicles like Aerial Ladder



Platform which are being used to Fight fire and rescue during any disasters.. The required Driveway and setbacks around the building for easy movement of this vehicles is min. 8.00 mtrs.

Since as the required Setback/Driveway of 8.00 mtrs is not available around this, building. It is difficult to conduct rescue operations during an emergency as the easy movement of Aerial ladder Platform is not possible.

The above mentioned facts is submitted for your kind information."

11. The Director General of Police and Director General, Karnataka State Fire & Emergency Services has stated that Department have procured large fire-fighting vehicles like Aerial Ladder Platform which are being used to fight fire and rescue during any disasters. The required Driveway and setbacks around the building for easy movement of this vehicle is minimum 8.00 mtrs. Since the required Setback/Driveway of 8.00 mtrs is not available around this building, it is difficult to conduct rescue operations during any emergency as the easy movement of Aerial ladder Platform is not possible.

12. Upon the said report, a further report has been called from the BBMP. The BBMP has filed its report,



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wherein also it is clearly stated that towards south the setback maintained is below 8.00 mtrs. In that view of the matter the learned Single Judge considering these aspects and the importance of rescue operations in view of any event of unfortunate disaster, following the judgment of the Supreme Court in **RAJENDRA KUMAR BARJATYA AND ANOTHER VS. U.P AVAS EVAM VIKAS PARISHAD AND OTHERS**¹ and in **M.I.BUILDERS (P) LTD. VS RADHEY SHYAM SAHU**² opined that the Supreme Court in above decisions has categorically held that *"....If construction is made in contravention of the Acts/Rules, it would be construed as illegal and unauthorised construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under the ruse of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent on the said construction"* and further held that *"....No question of moulding a relief can arise as the*

¹ 2024 SCC Online SC 3767

² 1999 6 ACC 464



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builder made construction on the basis of the interim order of this Court at its own risk", proceeded to allow the writ petition and passed the orders, which we have already stated above. It is this order passed by the learned Single Judge is called in question in this appeal.

13. Sri.P.S.Rajagopal, learned Senior counsel submits that there are no rules fixed as such to maintain setbacks more than 8.00 mtrs. There is a sanctioned building plan, by the appropriate authority clearly shows that 8.00 mtrs of setbacks has already been provided on all the sides. Learned Senior counsel has filed a memo with documents and submits that the Karnataka Fire Force (Amendment) Act, 2023 to Section 13 comes into effect from the date of the amendment for the first time, which prescribes No Objection Certificate from the Karnataka State Fire and Emergency Services Department. Learned Senior counsel further submits that the plan is sanctioned in terms of the existing rules. In these circumstances the



order passed by the Writ Court is against the provisions and required to be set aside.

14. Sri.Madhukar Deshpande, in contrast submits that in view of the order passed by the Writ Court, an inspection was carried on by the Fire and Emergency Services Department, which clearly suggests that the driveway space left, as per revised NOC, proposed to provide 8.00 mtrs wide setback/driveway all along with the building line with a turning radius of 9 mtrs for easy movement of fire vehicle, with the opinion that as the required setback of 8.00 mtrs is not available around the building, it is difficult to conduct rescue operations during the emergency as the easy movement of Aerial ladder platform is not possible. Even the report subsequently called by the BBMP suggests and indicates that the setback left is not 8.00 mtrs, but less than the same towards South and sought to dismiss the appeal.

15. Sri.Sudev Hegde, learned Additional Government Advocate argued in the same line with Sri



Madhukar Deshpande and supported the judgment of the Writ Court.

16. Having considered the rival submissions, we have gone through the entire order passed by the Writ Court. The Writ Court having considered exhaustively and elaborately all the factors which has driven the Writ Court to pass the order, including the violation of fire safety norms stated in paragraph No.24 of the judgment, referring to the judgment of the Supreme Court in ***SUPERTECH LIMITED VS. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION AND OTHERS***³ and upon considering the report dated 12.07.2024 submitted by the Office of the Direct General of Police and Direct General, Karnataka State Fire and Emergency Services and State Disaster Response Force and also relying on the judgments in ***RAJENDRA KUMAR BARJATYA AND M.I.BUILDERS (P) LTD*** *supra* allowed the writ petition with directions.

³ (2021) 10 SCC 1



17. Considering the facts involved in the case on hand, the learned Single Judge, after going through the entire material on record and relying on the judgment of the Supreme Court in **Supertech** Supra, has thus observed in paragraph No.27 and 28:

*"27. It must be noticed that the maintenance of setback in terms of the NBC strictly speaking would be 12 meters. The contention of the respondents that the setback is to be measured from the edge of the cluster of buildings requires to be rejected in light of the law laid down by the Apex Court in **Supertech** (supra).*

*28. The residential unit Block A Wing B being a high rise building, the minimum distance from the commercial unit Block B that is sought to be put up would require a distance of 12 meters around it to be maintained. The second Fire NOC consequent upon issuance of modified plan including the commercial development while referring to the NBC has reduced the minimum distance to be maintained from 12 meters to 6.00 meters while observing that 8.00 meters as undertaken to be maintained by the developer would be sufficient and is to be maintained. However, the second Fire NOC at annexure Q had calculated the minimum distance from the edge of the cluster of building which would not be the right position in light of the observation made by the Apex Court in **Supertech** (supra)".*

18. Further, at paragraph No.35, the writ Court has clearly observed as under:

"35. The requirement of fire safety measures to ensure prevention of fire accidents as contemplated under section 13 of the Act, may call upon maintenance of certain standards insofar as open space to facilitate



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movement of vehicles as contemplated under the NBC discussed supra at para 19. Such requirement in particular to high rise buildings as stipulated by Fire regulation will have to be given precedence over the legislations operating in the general field of planning and regulation of building construction, as the Fire regulations operate in a specialized filed."

19. The writ Court in paragraph No.39 has held on the contention of the appellant that the petitioner was pursuing parallel remedy by way of suit and the withdrawal of suit goes against the petitioner to seek any remedy before the writ Court. The writ Court in paragraph No.39 has answered the said contention stating that the Fire and Emergency Services Department was not made as a party in the suit, and no adjudication on the validity of the Fire NOC could have been adjudicated upon in the absence of such department and further held that the withdrawal of the suit would not have the effect of tying the hands of the Constitutional Court seeking to enforce the statutory rights and accordingly rejected the contention. The contentions and consideration thereof by the writ Court are in paragraph No.39 which reads as under:



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"39. Insofar as the contention relating to the petitioner pursuing parallel remedies, it must be noticed that the Fire and Emergency Services Department was not a party in the suit for declaration and no adjudication regarding the validity of the Fire NOC could have been adjudicated upon in the absence of such department. The withdrawal of the suit could not have the effect of tying the hands of constitutional court that is seeking to enforce statutory rights and accordingly, this court rejects the contention raised by the respondent No.3 in that regard."

20. The very contention of the appellant-respondent No.3 on the premise that the sanction plan is an administrative decision and accordingly the petitioner should have approached the Appellate Authority under the provisions of the Act, has been considered by the writ Court and rejected in paragraph No.40 which would read as under:

"40. The respondent No.3 has contended that the sanction of plan is an administrative decision and accordingly, the petitioner ought to have approached the appellate authority. Insofar as such contention is concerned, it would be apposite to take into consideration the multiple affidavits filed before this Court by the respondent B.B.M.P. In the affidavit dated 28.03.2024 the Director of town planning has submitted that the B.B.M.P. should have taken consent/NOC from the petitioners and that the builder has tricked the B.B.M.P. in obtaining permissions. It is the further stand that question of clubbing residential unit with the commercial unit did not arise as the builder was no longer the owner of residential development having sold it and consequently taking note of height of the residential building, minimum of 16 meters in terms of zoning regulation 3.6. distance was



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required to be maintained between the two blocks. Thereafter, the same authority in its affidavit dated 23.04.2024 has taken a contra stand by stating that the development was a 'cluster of building' and regulation 3.6 of building zoning regulation would not apply as the entire commercial and residential block are sanctioned as a single cluster of building. Such contradictory stand taken by the authority does not inspire confidence of the Court. Accordingly, as the contention that the petitioner should approach the respondent authority by filing an appeal challenging the sanction of plan is rejected. Even otherwise the present lis is primarily as regards maintenance of setback in terms of Fire Department stipulation and is not a dispute regarding plan being in violation of building by-laws."

21. We have noticed from the inspection report of the fire department, in terms of the direction issued by this Court, that the setback as contented by the appellant before us has not been left and even if it is left since the turning radius of fire engines with Aerial Ladder is more than 9 metres and no sufficient space is available on the spot for easy movement of the fire vehicles, in the event any disaster. The builder in the case on hand knew it very well regarding the permissible construction, however for best reasons known to him not left the setback, which is clear from the report of the fire department.



22. Sri.Rajgopal, learned Senior counsel submits that the direction issued works hard on the petitioner, when the set back as provided under the modified sanctioned maintained. Further stressed more emphasis on Act of 2023 stated supra. A highly technical argument that the law has been subsequently enacted cannot be countenanced when it comes to the involvement of larger public interest, safety and security of the residents of the building complex, under the constitutional norms.

23. We are alive to the situation that the zonal regulations and planning do result in hardship to the individual property owners or the developers as their freedom to use their property the way they like, as the same are subjected to regulation and control. Even if they feel to that extent prevented, but the said reason alone cannot be termed controlling regulations as arbitrary or unreasonable. The report furnished by the fire department, as we have already noticed above, speaks of the real truth of the situation of the building, where it



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would become very difficult for the Fire Department to control and handle any unforeseen disaster, as there is no proper free passage to move the heavy vehicles with aerial ladder. The high rise buildings with pocket apartments, regardless the luxury they provide in the apartments cannot be permitted to stand at the risk of General Public particularly the residents of the building and others in the neighbouring and nearby vicinities. This is based on the principle that the private interest stands subordinate to the public interest and public good. The exercise of such a governance by the local authorities are justified on account of its being reasonably necessary for the public health, safety and general welfare of the residents of the apartment as well as nearby vicinities.

24. In these circumstances, the regulations and restrictions with respect to restriction on height, number of stories and other structures including percentage of Flat that may be occupied, the size of open spaces and density of population all matters in order to achieve a larger public



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safety and general welfare. In these circumstances, the proper set back provisions around the building, average alignments and structural alterations become indispensable. In that view of the matter, any deviation which is at the cost of the public safety at large cannot be condoned and brought in line, except taking the actions to make it in line by providing space including the demolition of the extent of building which has become an obstacle in the free passage of movement of vehicles including heavy fire engines with other safety equipments. The construction by the professional builders stand on a different footing than that of a private individual constructing his own building. The professional builder is supposed to understand the law and all other regulations and deviations, if any, keeping in mind the larger public interest in the apartment as well as in and around the apartment structures and neighbouring vicinity. Any shortfall be assumed as deliberate and done with an intention to earn profit, deserve to be dealt with sternly, so as to act as a deterrent in future.



25. The Supreme Court in catena of cases, with respect to deviation of plan and short of setbacks, held that stern action be taken against the builders who violates the building plan, especially while leaving the setbacks for free passage of vehicles and other emergency movements of vehicles like fire, police, ambulance etc.

26. A perusal of report by the Fire department dated 12.07.2024 along with the sketch of the building and the setback left clearly would show that the vehicle movement with Aerial ladder is not possible in the emergency rescue operations. In that view of the matter, on the prime point of larger interest of the residents of the apartment as well as in the neighbouring vicinity in view of the categorical report dated 12.07.2024 by Fire Department, we are not inclined to accept the submissions made by learned Senior counsel.

27. We find no infirmities in the order passed by the Writ Court, which is well reasoned on considering exhaustively the entire material placed before it. In that



view of the matter the writ appeal fails and accordingly,
dismissed.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

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