



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 26<sup>TH</sup> DAY OF OCTOBER, 2023**



**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO.3603 OF 2023 (LB-RES)**

**BETWEEN:**

MRS. SUNANDA NARASEGOWDA  
W/O NARASEGOWDA  
AGED ABOUT 62 YEARS  
R/AT NO.75, 2<sup>ND</sup> MAIN  
VIJAYANAGARA I STAGE  
MYSURU-570017.



...PETITIONER

(BY SRI. A.V. NISHANTH, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
URBAN DEVELOPMENT DEPARTMENT  
SOUDHA BUILDING, AMBEDKAR VEEDHI  
SAMPANGI RAMA NAGAR  
BENGALURU-560001  
REPRESENTED BY ITS PRINCIPAL SECRETARY.
2. MYSORE URBAN DEVELOPMENT AUTHORITY  
JHANSI RANI LAKSHMI BAI RD  
CHAMARAJAPURA  
CHAMARAJAPURAM  
MOHALLA LAKSHMIPURAM  
MYSURU-570005  
REPRESENTED BY ITS COMMISSIONER.
3. HOOTAGALLI CITY MUNICIPAL COUNCIL  
OPPOSITE S.R.S. HI-TENTION DOUBLE ROAD  
HOOTAGALLI-570018  
REPRESENTED BY ITS COMMISSIONER.

...RESPONDENTS



(BY SMT. B.P. RADHA, AGA FOR R1  
SMT. POONAM PATIL, ADVOCATE FOR R2  
SRI. G.M. ANANDA, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE ENDORSEMENT DATED 09/12/2022 PASSED BY THE R-2 INNO.MYNAPRA/NAYOSHA/PRAAPRAPA/1209/2022-23 VIDE ANNEXURE-J. ISSUE A WRIT IN THE NATURE OF MANDAMUS TO THE R-2 TO ACCORD SANCTION TO THE BUILDING LICENSE TO THE PETITIONER TO PUT UP COMMERCIAL BUILDING OVER THE PETITION'S SCHEDULE PROPERTY.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

1. The petitioner is before this Court seeking for the following reliefs:
  - a. *Issue a writ in the nature of certiorari setting aside the endorsement dated 09.12.2022 passed by the 2<sup>nd</sup> Respondent in No. MyNaPra/NaYoSha/PraaPraPa/1209/2022-23 vide Annexure-J.*
  - b. *Issue a writ in the nature of Mandamus to the 2<sup>nd</sup> Respondent to accord sanction to the building license to the petitioner to put up commercial building over the petition Schedule Property.*
  - c. *Pass such other Order/s, grant such other relief/s as this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice and equity.*
2. The respondent No.2 – Mysuru Urban Development Authority (**MUDA**) had notified various sites including



Site No.3165, Vijaynagar 4<sup>th</sup> Stage, II Phase, Mysuru for sale by way of public auction under the Karnataka Urban Development Authorities (Disposal of Corner Sites and Commercial Sites) Rules, 1991 (for short, '**Rules, 1991**').

3. The petitioner having participated in the said public auction was declared to be the highest bidder for site No.3165 for an amount of Rs.2,59,82,000/-. In pursuance thereof, a registered sale deed came to be registered in favour of the petitioner on 06.12.2021. The katha of the property having been transferred in the name of the petitioner, the petitioner has made the payment of necessary taxes in relation thereto.
4. The petitioner by taking advantage of the classification of the land as commercial axes under Regulation 6.6.1(2) of the Development Control Regulations (**DCR**) issued by the Mysuru Urban Development Authority had applied for sanction of plan on the said property for construction of a



commercial office space. The same came to be rejected by respondent No.2 vide its endorsement dated 04.12.2019 for the reason that the Hon'ble Apex Court in the case of ***M/s.Vinayak House Building Cooperative Society Ltd., vs. The State of Karnataka***<sup>1</sup> had observed that any Planning or Development Authorities in the State of Karnataka including BDA shall not permit change of land use of any particular property designated for a particular purpose in the layout plan which has been sanctioned and as such, contending that use of a site in a residential layout for commercial office building would come within the purview of the said judgment refused the plan sanction. It is challenging the same, the petitioner is before this Court.

5. Sri.A.V.Nishanth, learned counsel for the petitioner would submit that

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<sup>1</sup> 2019 INSC 952 (Civil Appeal No.3600/2011)



5.1. There is a specific categorization of the plot of the petitioner made in terms of Regulation 6.6 of the DCR and in terms thereof, the property of the petitioner being bounded by 24 mtrs wide road has been given special treatment as a "commercial axes" entitling the petitioner to make use of the said property for any of the uses that are permitted under Category C-3 (**C-3**) of the DCR.

5.2. Item No.1 of C-3 includes commercial and corporate offices and this is the very purpose for which the petitioner intends to make use of the same. He specifically submits that the petitioner would not be making use of the property for any other purpose other than as a commercial corporate office under Item No.1 of C-3 which is permissible and on this ground, he submits that the respondent having auctioned the property under the Rules, 1991 and as



such, he submits that the plan as submitted by the petitioner ought to have been approved by respondent No.2.

6. Ms.Poonam S.Patil, learned counsel for respondent No.2 would submit that since the site has been shown for residential purposes, the authorities being of the considered opinion that the same would come within the ambit of the judgment of Hon'ble Apex Court in Civil Appeal No.3600/2011 referred supra and has rejected the plan submitted by the petitioner and no fault could be found with respondent No.2 and as such, the petitioner would not be entitled for sanction of such a plan on a residential plot.
7. Sri.G.M.Ananda, learned counsel for respondent No.3 submits that the matter is between the petitioner and respondent No.2 and respondent No.3 has nothing much to say insofar as the grant of plan sanction subject matter of the above petition.



8. Smt.B.P.Radha, learned AGA for respondent No.1 also submits that the matter is between the petitioner and respondent No.2 and the State does not have anything much to say in the matter.
9. Heard Sri.A.V.Nishanth, learned counsel for the petitioner, Smt.B.P.Radha, learned AGA for respondent No.1, Ms.Poonam S.Patil, learned counsel for respondent No.2 and Sri.G.M.Ananda, learned counsel for respondent No.3 and perused the papers.
10. The short questions that would arise in the above matter is - Whether the land coming within the designation, demarcation and classification of commercial axes under the Development Control Regulations if used for a commercial purpose would amount to change of land use coming within the ambit of the judgment of Hon'ble Apex Court in Civil Appeal No.3600/2011 and whether on that ground, the respondent No.2 - MUDA could have rejected the



application for plan sanction submitted by the petitioner?

11. It is not in dispute that the property subject matter of the above Writ Petition viz., Site No.3165 measures 15 x 24 mtrs and is bounded on the south by 24 mtrs road which is clear from the sale deed executed by respondent No.2 in favour of the petitioner. It is also not in dispute that the said site No.3165 was brought for sale under the Rules. In terms of clause (c) of Rule 2 of the Rules, 1991 a 'Commercial site' is defined as under:

*"Commercial site" means any site formed in any extension or layout earmarked for locating a cinema theatre, a hotel or restaurant, a shopping center, a shop, a market area and includes sites for locating any business or commercial enterprises or undertaking but does not include any site earmarked for the location of any factory or any industry or any site earmarked for dwelling purpose;*

12. In terms of clause (d) of Rule 2 of the Rules, 1991, a 'Corner site' is defined as under:-

*"Corner site" means a site at the junction of two roads having more than one side of the site facing the roads.*



13. The definition of 'corner site' would not be relevant in the present matter since admittedly the site of the petitioner is not a 'corner site'. But the definition of a 'commercial site' would be relevant which indicates that any site formed in any extension or layout earmarked for locating a cinema theatre, hotel or restaurant, a shopping centre, a shop or market area and including sites for locating any business or commercial enterprises or undertaking but does not include any site earmarked for the location of any factory or industry would be a commercial site. Thus, the very definition of a 'commercial site' under clause (c) of Rule 2 of the Rules, 1991 would indicate that the 'commercial site' is one which can be used for business or commercial enterprise, and it is on that basis that the said site No.3165 was brought for public auction under the Rules, 1991 in terms of Rule 3 of Rules, 1991.



14. The other Rules indicate the manner in which the said auction has to be conducted which is not in dispute in the present matter and as such need not be gone into. The DCR have been brought into force in pursuance of the Government Order dated 12.01.2016. The said DCR having been formulated in pursuance of clause (a) and (f) of Section 12(1) and 12(2) (iii) of the Karnataka Town and Country Planning Act, 1961 (for short, 'KTCP Act') by the Mysuru Urban Development Authority. Thus, the said DCR have statutory force.
15. Regulation 6.6 of DCR, which relates to commercial axes is reproduced hereunder for easy reference.

### **6.6 Commercial Axes**

#### **6.6.1 Description**

1) *The Roads of 18.0 mtrs and above in various residential localities which are bounded by inner and outer ring road are recognized as Commercial Axes & are included in this zone.*

2) *In residential areas, outside the outer ring road (i.e. area beyond the area stated in (1) above), roads of 24.0 mtrs width and above are recognized as Commercial Axes & are included in this zone.*

#### **Regulations**



### **1) Permissible land use category**

- 1) *On all roads of 18m and above, with-in the area stated in category(1) above, Commercial uses upto C3 are permitted, subject to widening of road, as prescribed in table 5-5 and subject to space standards, as prescribed in table 4-7 and Parking norms.*
- 2) *In cases stated in category(2) above, on all roads of 24.0 mtrs and above, Commercial uses upto C3 are permitted , subject to space standards, as prescribed in table 4-7 and Parking norms.*
- 3) *Parks, Playgrounds & open spaces.*

### **2) FAR and Ground Coverage**

*The Far and Ground Coverage Regulations for the commercial Axes will be same as that of the table for the surrounding residential use through which it passes.*

#### **Note:**

*a. Set backs shall be in accordance with Table 5-1 or Table 5-2 depending on the height of the proposed building and the plot size and Table 5-5. The land required for road widening shall be handed over to the authority free of cost. The FAR allowed is for the original plot whereas the coverage is for the reconstituted plot.*

*b. If the road width is less than 90m then the maximum height is restricted to 11.5 meters.*

#### **6.6.2 Parking**

*As applicable vide Table No.7-1*

16. In terms of sub-Regulation (2) of Regulation (1) extracted above all residential areas, outside the outer ring road (i.e. area beyond the area stated in



regulation (1) above), with roads of 24.0 mtrs width and above are recognized as Commercial Axes & are included in this zone.

17. Thus in terms of sub-Regulation (2) of Regulation 6.6.1 of Development Control Regulations since the subject property of the petitioner is abutted by 24 mtrs road and it is by virtue thereof that the said property has been treated, classified and recognized as commercial axes and included in the zone denoted as commercial axes.
18. In terms of sub clause (2) of regulations 6.6.1 of Development Control Regulations which relates to permissible land use category any property abutted by 24 mtrs wide road can be used for purposes permitted upto C-3 subject to however to the space standards as prescribed under Table 4 to 7 for parking norms, FAR, ground coverage, setbacks in terms of Table 5.1 5.2, 5.5 etc.



19. The commercial uses permitted under C-3 are as under:

***C3 Commercial Uses***

- 1. Commercial and corporate offices.*
- 2. Retail Shopping complexes, computer training institutes.*
- 3. Restaurants and Hotel, darshinis*
- 4. Convention centres and banquet halls*
- 5. Financial institutions.*
- 6. Cinema and multiplexes*
- 7. Places of assembly, exhibitions centers*
- 8. Entertainment and amusement centers*
- 9. Hospitals and specialty hospitals.*
- 10. Automobile repair and garage centers, spares and stores*
- 11. Insurance and consulting and business offices*
- 12. Nursing homes and poly clinics/dispensaries/labs subject to minimum 300 sq. m plot size and NOC from pollution control board, after adequate parking facility is provided.*
- 13. Fuel stations and pumps, LPG storage ( as per Table 4-7)*
- 14. Kalyana Mantapa as per Table 4-7*
- 15. All uses of C1 & C2 are permitted.*



20. The very first use permitted is for commercial and corporate offices. Thus, the property which is owned by the petitioner being classified as a commercial axes property being entitled to the benefits under Regulation 6 can be made use of for construction of commercial and corporate office in terms of the Development Control Regulations approved by the State Government on 12.01.2016. This Development Control Regulations which is issued in furtherance of Master Plan-II - 2031 permits the property of the petitioner in a residential layout to be used for commercial purposes as commercial axes and such permission having granted under the Master Plan-II - 2031 and the Development Control Regulations, the grant of sanction of plan in my considered opinion would not amount to Change of Land Use within the purview of the judgment of Hon'ble Apex Court in the case of ***M/s.Vinayak House Building Cooperative Society Ltd., vs. The State of Karnataka*** (Civil Appeal



No.3600/2011) wherein at Para 42, the Hon'ble Apex Court has held as under:

*42. We make it clear that henceforth, the planning/development authorities in the State of Karnataka, including the BDA shall not permit change of land use within the layout formed by the BDA or a private layout formed under Section 32 of the BDA Act or the layout formed by any other authority contrary to the scheme sanctioned by the State Government or the layout plan approved by the competent authority. The BDA or the other planning/development authorities shall not venture to alter the sanctioned scheme/approved layout plan in any manner. The BDA and the other planning/development authorities, Bruhat Bangalore City Municipal Corporation Bangalore, or any other authorities in the State of Karnataka authorized to sanction the plan for construction of the buildings shall not sanction any plan for construction contrary to the sanctioned scheme/approved layout plan. The sites reserved for parks, playgrounds or for providing other amenities shall be used strictly for the purpose for which they were reserved. Be it noted that violation of any of these directions by the authorities will be viewed strictly.*

21. A perusal of the aforesaid paragraph 42 would only indicate that once a layout plan has been sanctioned, the development authorities, planning authorities including the BDA cannot permit change of land use which necessarily would have to be on an application made under Section 14 of KTCP Act and the said paragraph would not apply when no such application



is required to be made under Section 14 of KTCP Act for change of land use.

22. In the present case as afore observed, the designation of the property as commercial axes and usage being permitted in terms of C-3 would not come within the ambit of Para 42 of the judgment of Hon'ble Apex Court but would be covered by the Master Plan already issued by the State and the Development Control Regulations formulated thereunder.

23. In that view of the matter, I answer the above point by holding that the sanction of plan submitted by the petitioner would not come within the purview of Para 42 of the judgment of the Hon'ble Apex Court and as such, the petitioner would be entitled for sanction of the said plan in terms of Regulation 6.6 of the Development Control Regulations.



24. In that view of the matter, I pass the following:

**ORDER**

- i. The Writ Petition is **allowed**, a certiorari is issued.
- ii. The endorsement dated 09.12.2022 issued by respondent No.2 bearing No.MyNaPra/NaYoSha/PraaPraPa/1209/2022-23 at Annexure-J is hereby quashed.
- iii. Respondent No.2 is directed to consider the application of plan sanction submitted by the petitioner in terms of Regulation 6.6 of the Development Control Regulations read with land usage under C-3 and grant the said plan sanction if it otherwise confirms to the requirement of FAR, ground coverage, parking, setbacks etc., within a period of 45 days from the date of receipt of copy of this order.

**Sd/-  
JUDGE**