

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON' BLE MR.JUSTICE R. DEVDAS

WRIT PETITION NO.11744 OF 2020 (LB-BMP)

Dated:15-12-2020

Mrs suvarnamma and Another vs. The State of Karnataka and Others

ORDER

The prayer in this writ petition is to quash the 'No Objection Certificates' issued by the Health Officer, Bruhat Bengaluru Manahangara Palike (BBMP) and the Commissioner of Police, Bengaluru City, in favour of the 6th respondent, permitting stocking of 25 KL of Motor Spirit and 30 KL of HSD for retail outlet of petrol pump/fuel station at property bearing Municipal New No.17, Old Nos.161 and 162, 12th main road, Mahalakshmi Layout, Bengaluru.

2. The petitioners are the residents and neighbours of the property in which the 6th respondent has obtained permission to establish a petrol pump/fuel station. The contention of the petitioners is that the 'No Objection Certificates' (hereinafter referred to as 'NOCs', for short) have been issued in flagrant violation of the statutory provisions, including, but not limited to the Revised Master Plan 2015 (RMP) and the Zoning Regulations framed under the RMP. The other contentions are that the objections filed by the

petitioners and other residents of the locality have been ignored; the Health Officer of the BBMP has abdicated his responsibility in applying his mind and not arriving at an independent decision and has merely relied upon the permissions/NOCs granted by the Karnataka Fire and Emergency Services Department; the Commissioner of BBMP and the Health Officer have ignored the opinion of the Planning Authority i.e., Bangalore Development Authority (BDA) which had opined that the property does not meet the requirement for establishment of a petrol pump/fuel station.

3. On an earlier occasion, petitioner No.2 herein along with two other persons had filed a Public Interest Litigation in W.P.No.8859/2020. However, since personal allegations were made against petitioner No.2 herein, the said writ petition was withdrawn with liberty to file a fresh petition for protecting the rights of the petitioners. The Hon'ble Division Bench, by order dated 20.08.2020, disposed of W.P.No.8859/2020, reserving liberty to file a fresh petition, while observing that no adjudication was made on the merits of the controversy.

4. During the course of these proceedings the Commissioner, BDA was impleaded as a party respondent and his opinion was sought since it was pointed out from the Zonal Regulations that in case of uncertainty as regards the boundary or interpretation, it shall be referred to the

authority for final decision. Consequently, the Commissioner, BDA, by way of an affidavit dated 28.11.2020, submitted his opinion stating that though the property in question is situated on a road, which is identified as Commercial Axes and the plot size is more than 240 sq. mtrs. and in addition to the uses allowable in the respective zone, additional usage in the category-Commercial 3 (C3), Transport 2 (T2) and Industrial 2 (I2) are permissible, however, the usage are subject to the Space Standards of Zonal Regulations of the RMP 2015 as mentioned in Table 7 of the Zonal Regulations. It was therefore opined that the requirement as per Table 7, for establishment of petrol pump/fuel station the minimum road width being 18 mtrs. and minimum size of the plot being 500 sq.mtrs., on both counts the property in question does not fulfill the minimum requirements. Even as per the admission of the contesting respondents, the plot measures 405.51 sq.mtrs., and the width of the road facing the property is 15 mtrs.

5. Learned Senior Counsel Sri. D L N Rao, appearing for respondent Nos.7, 8, 10 and 11 submitted that the terms "petrol pump", "filling station" or "service station" have not been defined in the Zonal Regulations. On the other hand, each of the terms are specifically defined in the Petroleum Act and other related statutes. It is submitted that a petroleum

retail outlet (PRO) is defined under the Petroleum Natural Gas Regulatory Board Act, 2006 as an area approved by PESCO (Petroleum and Explosive Safety Organization) and provided with facilities, specially designed for storage and dispensing of fuel tanks of motor vehicles and any other approved receptacles. "service station" has been defined in The Petroleum Rules, 2002, as any premises specially prepared for the fuelling of motor vehicles and includes such places within the premises which have been specially approved by the licensing authority for the servicing of motor vehicles and for other purposes. The term "retail outlet" has been defined in the Petroleum and Natural Gas Regulatory Board Act, 2006, as a filling station where one or more dispensing pumps have been provided for sale of motor spirit, high speed diesel, auto-liquefied petroleum gas or natural gas and includes distributorship for liquefied petroleum gas or dealership for superior kerosene oil or CNG stations. It is further submitted that in the Zonal Regulations, under Chapter 2.0, where the list of land use category permissible in commercial category is provided, in C2 category, at Sl.No.10, fuel stations and pumps, LPG storage is provided for. Similarly, in Table No.5 which lists the permissible land use in Transportation Category, at T1, in Sl.No.4, provision is made for filling stations, service stations and under T2 category, all uses of T1 category are permitted. The learned Senior Counsel has made the submission in view of the admitted position in terms of the affidavit filed by the Commissioner, BDA, that as per Chapter 4.6.2 Regulations (i) if the size of the plot is more than 240 sq. mtrs. and faces a road width of 15 mtrs and above, C3, T2 and I2 uses in addition to uses

allowable in respective zone is permissible. It is submitted that in C2 category fuel stations and pumps are permissible; in T1 category filling stations and service stations are permissible. Since, C3 category includes all uses of C1 and C2 categories and under T2 category all uses of T1 are permitted, there can be no doubt that filling stations/petrol pumps and service stations are permitted having regard to the size of the plot and width of the road attached to the property in question. The learned Senior Counsel submits that since the word petrol pumps, as used in Table 7 is not the permissible use under C3 and T2 categories, the invocations of Table 7 is not permissible in the case on hand. In other words, it is submitted that since NOC has been issued for retail outlet of filling station, Table 7 is not applicable to the facts and circumstances of this case. The learned Senior Counsel submits that each word carries a specific meaning as assigned in the Petroleum Act and a generalized meaning cannot be assigned to them.

6. The learned Senior Counsel Sri. Ashok Haranahalli, appearing for respondent No.9 submits in addition to what was submitted by the learned Senior Counsel Sri. D L N Rao that a Division Bench of this Court, in the case of ***Mrs.Kamini Srinivasan Kurpad Vs. Ms.Malathi Rau*** and other, reported in ***ILR 2013 KAR 1891*** has held that the right to build on one's land is a right incidental to the ownership of that land. Within the city, the exercise of that right has been regulated in the interest of the community residing within the limits of the city. The power to restrict the

use of land by the owners thereof, is a drastic power. The designation or reservation of the land and its use results in sever abridgment of the right to property. Statutory provision enabling the States and its authority to impose restriction on the rights to use one's own land are required to be construed strictly. The Courts cannot also be oblivious of the fact that the owners who are subject to the embargos placed under the statute are deprived of their valuable rightful use of the property for a long time. The restriction imposed in the planning law though in public interest should be strictly interpreted because they make an inroad in to the rights of a private person to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted and requires strict construction. The construction placed by the Court on statutory provision has to be meaningful. The legislative intent has to be found out and effectuated. There are two competing interests viz., one, the interest of the State *vis-a-vis* the general public and, two, to have better living conditions and the right of property of an individual which although is not a fundamental right but is a Constitutional and Human right.

7. Learned Counsel for the petitioners submitted that after the introductory Chapter No.1 of the Zonal Regulations

of RMP 2015, in Chapter 2.0 where various land uses permissible within each zone are listed and before commencement of the Tables, it is clearly provided that though the various uses are listed, the corresponding Space Standards for buildings/uses are to be referred. The two main parameters are minimum size of plot and minimum width of road. It is submitted that the Space Standards for various buildings/uses are contained in Table 7. The learned Counsel, therefore submits that the Commissioner, BDA has rightly opined that though in terms of Clause 4.6.2 of the Regulations, if the plot size is more than 240 sq.mtrs. and faces a road width 15 mtrs. and above, C3, T2 and I2 uses in addition to uses allowable in the respective zone are permissible, however, they are subject to the Space Standards provided in Table 7. Moreover, it is submitted that if the submission of the learned Senior Counsels for the respondents are accepted, Table 7 would be rendered otiose or redundant.

8. The learned Counsel for the petitioners further submitted that the words and phrases used in the Zonal Regulations are required to be read and understood in their natural and plain sense. The words cannot be interpreted by

importing the definitions given to such words in another statute.

9. After the arguments were heard and the matter was reserved for judgment on 07.12.2020, the learned Counsel for respondent Nos.7, 8, 10 and 11 has filed a memo dated 10.12.2020, furnishing a copy of a communication dated 07.12.2020, made by the Deputy Controller of Explosives, Chennai, informing the 6th respondent herein that License No.P/SC/KA/14/7009 (P469689) dated 07.12.2020, is granted in Form XIV under the Petroleum Rules, 2002 and valid till 31.12.2022.

10. Heard the learned Counsel for the petitioners, learned Senior Counsels for the respondents and perused the petition papers.

11. In Chapter 2.0 of the Zonal Regulations, various land uses permissible within each zone are listed. There are five main categories under which the land uses are grouped. They are Residential, Commercial, Industrial, Transportation, Public and Semi-Public. In the Tables enumerated under each category, there are sub classifications. But, most importantly, before the Tables could commence, a Clause which reads as follows, is provided:

- Though the various uses are listed, the

corresponding Space Standards for buildings/uses are to be referred. The two main parameters are minimum size of Plot and the minimum width of Road.

12. What is noticeable is even at Sl.No.10, in C2 category of Commercial uses, where fuel stations and pumps are provided, it is clearly written in the brackets, "as per Table 7". It is also noticeable that at Sl.No.11, which provides for Kalyana Mantaps, again it says, as per Table 7. Going by Clause 4.6.2 which regulates Commercial Axes, a Kalyan Mantap could be constructed if the plot size is more than 240 sq. mtrs., and road width is 15 mtrs. and above. In the wisdom of the legislature or the delegated legislature, a clear distinction has been drawn by further imposing a restriction by providing Table 7, following the precondition as noted above, before commencement of the Tables. Though as a general requirement, all commercial uses listed out in Table C2 is permitted if the size of the plot is more than 240 sq.mtrs. and the plot faces a road which is 15 mtrs. in width or above, as per Table 7, a Kalyan Mantap is permissible only if the road width is 18 mtrs. and size of the plot is 1000 sq.mtrs. Similarly, in the case of Cinema and Multiplexes which are listed in C3 category, the applicable Regulations under the Commercial Axes is 4.6.2, again the same is pre-conditioned and under Table 7 the requirement of Space Standards for cinema and multiplexes is 18 mtrs. road width and 2000 sq.mtrs. of minimum size of the plot.

13. If the argument of the learned Senior Counsels

appearing for the respondents is accepted, Table 7 and the Space Standards stipulated therein would be rendered otiose or redundant. A cardinal rule of interpretation of statutes is that no provision are part of the provision should be rendered useless or surplusage or otiose, while placing a construction on a provision of law. As noticed earlier, the additional requirements or restrictions placed in Table 7 seems reasonable and justiciable.

14. The other contentions of the learned Senior Counsels for the respondents that the distinct meaning assigned to the terms, filling station, service station, petroleum retail outlet, provided in the Petroleum Act and other related statutes should be kept in mind and the general meaning attributed in the Zonal Regulations should be avoided while interpreting the provisions of the Zonal Regulations, cannot be countenanced. As rightly submitted by the learned Counsel for the petitioners, the words employed in the provision and statute must receive their plain and simple meaning. If there is no ambiguity in the plain language of the provision, Courts should not embark upon stretching or straining the words to give a different meaning, unless the plain meaning would lead to absurdity. There cannot be any ambiguity that the terms – filling station, petrol pump, fuel station, used in the Zonal Regulations carry the same meaning, in the context and scope of the Zonal Regulations.

15. In *Union of India Vs. Tata Chemicals Limited (2014)*

6 SCC 335, it was held that it is a cardinal principle of interpretation of statutes that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of a statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have proper application in the circumstances conceivable within the contemplation of the statute.

16. On facts, though the NOCs were given by the Health Officer, BBMP on 19.03.2020 and by the Commissioner of

Police, on 20.05.2020, a few months after that, at the instance of the petitioners and other residents, a spot inspection was conducted by the authorities of BDA and having found that a petrol bunk/filling station was not permissible in the property in question, the Commissioner, BDA issued a communication dated 15.09.2020 to the Commissioner, BBMP bringing to his notice the requirement of adhering to the Space Standards as provided in Table 7 of the Zonal Regulations. The Commissioner, BBMP was requested to look into the complaints made by the residents in the matter of issuance of NOC for establishment of a petrol bunk in the land in question. The Commissioner, BBMP has given a reply dated 08.10.2020 to the Commissioner, BDA stating that in Table No.5 (T2), filling station, service station is permitted and in Table No.7, the words filling station, service station are not used. It is rather unfortunate that the opinion/advise of the Commissioner, BDA, was not heeded to. If the contesting respondents have proceeded in spite of such opinion expressed by the authorities of BDA, the respondents have taken the risk and they are to blame themselves.

17. For the foregoing reasons, this Court is of the considered opinion that the NOCs granted by the Health Officer, BBMP and the Commissioner of Police, Bengaluru City, cannot be sustained.

18. Consequently, the writ petition is allowed. The two

NOCs, dated 19.03.2020 issued by the Health Officer, (BBMP) and the Commissioner of Police, Bengaluru City, in favour of the 6th respondent, permitting stocking of 25 KL of Motor Spirit and 30 KL of HSD for retail outlet of petrol pump/fuel station at property bearing Municipal New No.17, Old Nos.161 and 162, 12th main road, Mahalakshmi Layout, Bengaluru, are hereby quashed and set aside. No order as to costs.

19. In view of disposal of the main petition, I.A.No.1/2020 does not survive for consideration and is accordingly disposed of.