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2014

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24th DAY OF FEBRUARY, 2014

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

WRIT PETITION No.14387 OF 2013 (LB-BBMP)**BETWEEN:**

UNION OF INDIA
BY ITS SECRETARY
MINISTRY OF DEFENCE
REP. BY ITS ESTATE MANAGER,
ESTATE MANAGEMENT UNIT
DEFENCE RESEARCH
DEVELOPMENT ORGN (DRDO)
DRDO TOWNSHIP, CV RAMAN NAGAR
BANGALORE-560 093.

...PETITIONER

(BY SRI N.DEVADASS, SR. COUNSEL
FOR H.C.SUNDARESH, ADV.)

AND:

1. STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY
URBAN DEVELOPMENT DEPARTMENT
M.S.BUILDING, DR.AMBEDKAR ROAD,
BANGALORE-560 001.
2. BRUHAT BANGALORE MAHANAGARA PALIKE (BBMP)
BY ITS COMMISSIONER
CORPORATION BUILDING,
NR SQUARE, BANGALORE-560 001

3. ADDL. DIRECTOR OF TOWN PLANNING
TOWN PLANNING CELL,
BBMP, NR SQUARE,
BANGALORE-560 001
4. M/S PURVANKARA PROJECTS LTD.,
BY ITS MANAGING DIRECTOR,
CORPORATE OFFICE AT NO.131/1,
ULSOOR ROAD, BANGALORE-560 042.
5. SRI N H RUSTUMJI
S/O LATE SRI HOMI RUSTUMJI
AGED ABOUT 62 YEARS,
G15 & 16, GROUND FLOOR,
RICHMOND TOWERS
12, RICHMOND ROAD,
BANGALORE-560 025.

...RESPONDENTS

(BY SRI UDAYA HOLLA, SP.COUNSEL FOR
SRI MARUTHI S.H, J.HUDSON SAMUEL & PARTNERS FOR R4,
SRI MANJULA R KANNADOLLI, HCGP FOR R1,
SRI K.N.PUTTEGOWDA, FOR R2 & R3,
SRI C.S.PRASANNA KUMAR, FOR R5)

THIS WRIT PETITION IS FILED PRAYING TO CALL FOR THE
RECORDS RELATING TO SANCTION OF PLAN IN FILE
NO.JDTP/LP/29/06-07 DT.3-10-11 REFLECTED IN THE NOTE
SHEET VIDE ANN-P3, PASSED BY THE COMMISSIONER, BBMP,
R2 & ISSUE OF PALN BY THE ADDL. DIRECTOR OF TOWN
PLANNING DT.3-11-11, VIDE ANN-N & PASS ORDERS.

THIS PETITION HAVING BEEN HEARD & RESERVED FOR
ORDERS, COMING ON FOR PRONOUNCEMENT TODAY, THE
COURT MADE THE FOLLOWING:

ORDER

The Secretary, Ministry of Defence, represented by its Estate Officer of Defence Research Development Organization (D.R.D.O) having its office at Bangalore is the petitioner herein preferred this writ petition challenging the order passed by the Bruhat Bangalore Mahanagara Palike ('BBMP', for short) Respondent No.2 dated 3.10.2011 and plan sanctioned by the Respondent No.3 Town Planning Authority dated 3.11.2011 and further sought direction to Respondent No.2 BBMP to refer the application of the Respondent No.4 to Government for necessary action and sought writ of mandamus to the Respondent No.1, the Principal Secretary of Karnataka Urban Development Department to consider Annexure-P2 & P3 applications of Poorvankar Project Ltd., dated 4.8.2011 in accordance with the provisions of Karnataka Town & Country Planning Act, 1961 and revised Master Plan 2015. The direction is also sought to the Respondent Nos.1 & 2, Government of Karnataka and B B M P not to permit high rise buildings within 100 meters from C.A.I.R and D.R.D.O Campus of Defence Research Laboratories at

C.V.Raman Nagar, Bangalore. For the establishment of Defence Research Laboratories by D.R.D.O, Government of India, the first respondent Government of Karnataka acquired lands for their benefit and notifications were issued to acquire an extent of 113 acres 16.5 guntas vide Notifications dated 22.1.1987 and 30.5.1989 respectively u/s 4(1) and 6(1) of the Land Acquisition Act. But acquisitions were challenged by the land owners and the said writ petitions and writ appeals were dismissed by upholding the acquisition of lands in W A Nos.2189 and 97/1992 and W Ps. No.13653-665/1989 were dismissed by the order dated 15/22.4.1993. Against the order passed in W A and writ petitions, the land owners filed appeal before the Hon'ble Supreme Court in Civil Appeal Nos.2635-42/1996 and the said appeals were dismissed by upholding the notifications issued by the Special Land Acquisition Officer under the provisions of the Land Acquisition Act.

2. As per the order passed by the Hon'ble Supreme Court, the Land Acquisition Officer issued notification and handed over 42 acres of land to D.R.D.O and remaining extent of 57 acres

was not handed over. Instead of handing over 57 acres to the D.R.D.O the Government has issued de-notification u/s 48 of the Act. The said notification was challenged by the petitioner in W P No.38638-646/1998 which was dismissed and the said order was challenged in W A Nos.2002-2010/2000 and the writ appeals were allowed, de-notification was set aside and Government was directed to handover the remaining extent of land to the petitioner by its order dated 24.8.2000.

3. The said order passed in writ appeals was challenged by the owners in Civil Appeal No.6362-6368/2001 and the said appeals were disposed on the basis of the joint memo filed by the parties wherein Union of India would give 50% of the lands in question to the land owners. The petitioner again filed Review Petition No.793-797, 804/2006 and 810/2006 seeking review of the said portion of the order which came to be dismissed by the Supreme Court by its order dated 9.7.2010. By virtue of the order on Joint Memo, lands were handed over to the G P A holder of the owner one N H Rustomji in respect of 12 acres 01 gunta of land.

4. The petitioner submits that the Hon'ble Supreme Court considered the case of the petitioners since they were poor, houseless, they require the land for their families so that they can have their residential houses. It is learnt that the GPA holder clandestinely focused the petitioners before the Hon'ble Supreme Court in order to gain its sympathy on their behalf. Within a short span of time, the reasons for entering into a joint memo was disappeared and land owners were misled and the GPA holder became the real owner of the property. The power of attorney becomes the holder of the lands and the real owners were withered away.

5. There was an agreement entered into between the GPA holder with the 4th respondent who is a developer and the developer wanted to put up a 16 floor apartment which is abutting the defence land. The activities of the petitioner which is defence oriented and the activities consist of defence research and other activities which would get obstructed or that the apartment would be dangerous for their activities. The Township is a prohibited area for the purpose of Indian Official Secret Act,

Defence Act etc., He has submitted that within the defence land for which acquisition has been taken place, the petitioner is proposed to put up Centre for Artificial Intelligence & Robotic (C.A.I.R), Defence Avionics Research Establishment (D.A.R.E.) and D.R.D.O. All these institutions are sensible in nature, the sensitivity gets affected by permitting the 4th respondent to put up construction of 16 floors apartment. In order to draw attention of this Court about the threat that the apartment would be used against the defence institutions. The learned counsel referred Bombay bombings in the year 1993, 2005 December incident in Indian Institute of Science, Bangalore, 2008 Mumbai attacks, 2011 Mumbai bombings etc., By referring the said incidents, the learned counsel submits that the 4th respondent's action in putting 16 floors apartment is a threat to defence activities.

6. CAIR noticed an advertisement issued by the 4th respondent Poorvankar Project Ltd., published in Times of India news paper, Bangalore Edition on 16.3.2012 it is called Purva Season Project and further the project disclosed that the Bruhat

Bangalore Manahagara Palike (hereinafter referred to as 'the BBMP' for short) has approved. The project is to come up which is adjacent to CAIR boundary wall on the Western side. This action of the 4th respondent in putting up the multistoried construction has been challenged by the petitioner on several grounds in which main grounds would be the irregularities committed by the BBMP in granting the permission or licence to the 4th respondent in putting up the construction. The sanction plan to the 4th respondent is opposed to the provisions of Karnataka Town & Country Planning Act, 1961 (hereinafter referred to as "the KTCP Act" for short) and the revised Master Plan of 2015 approved by the Government vide notification UDD 540 BEM AA SE 2004 dated 22.6.2006 which is also noticed from the sanctioned plan dated 8.11.2011 by the BBMP and another plan was earlier sanctioned bearing No.29/2006-07 dated 26.6.2007 which is superseded by the new plan sanctioned, as per the orders of the Commissioner dated 3.10.2011.

7. The petitioner listed the lapses committed by the 4th respondent-Purvankaraa and respondents No.5, 6 and 7

(respondents No.6 and 7 have been deleted by court order dated 3rd July 2013) and also by the 2nd respondent -BBMP in processing the application for sanctioned plan. Karnataka Municipal Corporations Act and Rules, 1977 (hereinafter referred to as 'the KMC Act and Rules' for short), which demands that at the time of issuing sanction plan, where any person intends to construct or reconstruct a building, he has to submit the additional documents specified in Section 299 of the KMC Act and Rules, viz. title deed or possession certificate, khata certificate, tax paid receipts, Schedule-II Form of the Government of India, Ministry of Works and Housing, National Building Organisation, etc. The application for building licence in Form No.02564 was submitted by the 5th respondent-N.H. Rustumji and respondents No.6 and 7 claiming to be owners of the land, sought for sanction of building licence. The said application was processed by BBMP and the plan was sanctioned as per No.29/6 and 7 dated 26th June 2007 by the office of the Joint Director of Town Planning without even verifying the documents pertaining to the title and with regard to the ownership of the applicants. Respondents No.5, 6 and 7 were

not the title holders and on the other hand they hold the General Power of Attorney executed by the owners of the property as per Annexure 'E' and 'F'. The General Power of Attorney converted itself as a title deed for the purpose of submitting application for sanctioned plan. As per Rule 8 of the KMC Rules, the additional documents have to be furnished for the purpose of claiming licence, viz. the title deeds or possession certificate and khata certificate. Though the respondents 5, 6 and 7 were not having the title deeds and khata certificate, the BBMP has granted licence to put up construction.

8. For modification of the sanction plan, if it is required, then the application has to be made within a period of two years from the date of sanctioned plan. In the instant case, the sanction was made on 26th June 2007 and thereafter on the application filed by the respondent No.4, a modified sanction plan was issued to the fourth respondent. The modification plan is to sanction 660 units instead of 534 units. In this application Form, owner is shown as Purvankaraa Projects Limited represented by its Deputy Managing Director and the names of

the owners, in block letters, is mentioned as N.H.Rustumji the 5th respondent. This N.H. Rustumji, at no point of time became the title holder or the owner of the property. At the most, he was the GPA holder of the original owners. The modification application was processed and it was recommended and accepted by the Chief Engineer and also by the Special Commissioner, BBMP and thereafter plan was sanctioned by Commissioner on 30th October 2011. While sanctioning the plan, BBMP has ignored the details submitted by respondent No.4 seeking for modification of the plan and the mandatory requirements as per Rule 8 of KMC Rules.

9. The first plan was on 26th June 2007 and it was valid up to two years, i.e. till 25th June 2009 and within the expiry of these two years, if any modification is to be done, then the BBMP could exercise its power of sanctioning the modified plan. Contrary to the same, modification plan was sanctioned on 3rd October 2011, i.e. after the expiry of two years on 25th June 2009.

10. Building bye-laws No.3.2.8 provides for approval of the plan from the National Building Organisation, Ministry of Works and Housing, Government of India. But the said certificate has not been obtained by the respondent No.4- Purvankaraa Projects Limited. Respondents No.5, 6 and 7, who are the General Power of Attorney holders on behalf of original owners have executed General Power of Attorney dated 16th November 2010 in favour of Purvankaraa Projects appointing them as their Power of Attorney, to do the acts and deeds mentioned in the Power of Attorney. When respondents No.5, 6 and 7 themselves do not possess the title and ownership and thereafter, the question of executing the General Power of Attorney in favour of respondent No.4 appointing them as absolute owners does not arise. This aspect has not been considered by BBMP while granting the sanction plan. Granting of sanction plan to the fourth respondent in putting up sixteen floors is contrary to the provisions of KTCP Act. In the light of above discrepancies and lapses alleged on the BBMP and the respondent No.4, the petitioner submits to allow this petition and to grant relief as prayed for.

11. The fifth respondent filed his statement of objections. He denies the contentions raised by the petitioner stating the he was having no knowledge about the proposed construction of the fourth respondent building very recently. By referring Review Petition filed before the Hon'ble Supreme Court, he had submitted that in the year 2006-07 itself the petitioner has taken a ground before the Hon'ble Supreme Court that respondents No.5 to 7 are putting up multistoried apartments and made a prayer to review the order dated 7th October 2004. By its order dated 9th July 2010, the Hon'ble Supreme Court dismissed the Review Petition. Further, the prayer of the petitioner for invoking Section 3 of Works of Defence Act, 1903 was also not considered and it directed the petitioner not to invoke the said provision. It is not only the fourth respondent putting up its construction and only this apartment is the threat to the petitioner's Defence land. Petitioner is having knowledge with regard to the various developments which was being carried out in and around DRDO complexes as early as 2005. There are two major residential complexes and the same are having basement, ground and five upper floors and the other complex

having basement, ground and eleven upper floors are coming up almost adjoining the DRDO complex, DARE Complex and CAIR. These apartments overlook the Defence complex and its building. Another developer had developed approximately two million square feet of Tech Park within ten meters from Electronics and Radar establishments. When all these developments are coming up within close vicinity of the petitioner's land, then it is not known as to why the petitioner is targeting only the project of the fourth respondent. The action of the petitioner is contrary to Article 14 of the Constitution of India since the petitioner has made baseless allegation that the fourth respondent is the only threat to it. The fifth respondent, along with sixth and seventh respondents, are putting up constructions after obtaining sanction plan and No objection certificate from the authorities like Airport Authorities of India, Environment Impact Assessment Authority, Pollution Control Board Directorate, Fire and Emergency Services, BESCO, Town Planning Authority and Authority of Ecology and Environment. It also obtained an order from Bangalore Development Authority in earmarking certain areas for parks, and open space and the said

area has been relinquished in favour of Bangalore Development Authority. It is his further case that the petitioner has failed to obtain review of the order dated 7th October 2004 and also suffered an order from Hon'ble Supreme Court in not to invoke provisions of Section 3 of the Works of Defence Act, 1903. Now he is making an attempt to obtain an order before this Court. The Hon'ble Supreme Court has disentitled the petitioner from invoking Section 3 of the Works of Defence Act, 1903. The direction to the petitioner not to invoke the said provision is made applicable to all the adjoining high-rise buildings. If the fourth respondent is threat to the petitioner, then the same is not the case of the other developers also against whom the petitioner could have invoked Section 3 of the Works of Defence Act, 1903 and the impugned action is contrary to Article 14 of the Constitution of India which contemplates equity before law and equal protection of law. If the other apartments are protected by the petitioner, the same is to be extended even to the fourth respondent. If the other projects are entitled to come up, the same treatment is to be extended to the petitioner. The learned counsel submits that if the fourth respondent has

obtained sanction plan and other permissions from the competent authority in contravention of the provisions of the Act, it is open for the said authority to take action and this petitioner cannot have any complaint. Hence, the learned counsel submits to dismiss the petition.

12. In reply, it is submitted on behalf of the petitioner that the petitioner was not aware about the developmental activities of the fourth respondent in the year 2006-2007 itself. In the year 2006-07, the construction work virtually was not initiated. The fifth respondent obtained sanctioned plan only on 26th June 2007 and hence it is submitted that the fourth respondent tried to misguide the Court. In the Review Petition, only the apprehension of high-rise buildings coming up in the close vicinity of DRDO was stated. Hence, it is submitted that a high-rise building that is being put up by the fourth respondent was not within the knowledge of the petitioner. In the statement of objections, the fourth respondent has stated that there are other apartments that are coming up in close vicinity of the petitioner's land, which is not correct. It is stated that several

apartments, including the constructions of Salarpuria, Magnefecia, Warse Regency, Jyoti Enclave, Sai Sarovar that are situated about 72 to 260 meters away from the DRDO complex. By referring to the decision of the Hon'ble Supreme Court in the case of STATE OF ORISSA & ANOTHER vs. MAMATA MOHANTY, reported in 2011(3) SCC 436 the learned counsel submitted that if some persons have been granted the benefit, inadvertently or by mistake, such orders do not confer any legal right on the petitioner to get the same relief. He has produced Annexure-S to S4 to substantiate his submission that the apartments as referred by the fourth respondent are not very close.

13. Heard the learned counsel appearing for the parties. The land was acquired for the public purposes, viz. for the establishment of Defence Research Laboratories by Defence Research Development Organisation, Government of India. The lands were situated in various adjoining places at Bangalore (East) Taluk. The acquisition of land was challenged before this Court in Writ Petitions and Writ Appeals by the land owners; and the beneficiary, viz. the Government of India, also filed Writ

Petitions and Writ Appeals. Writ Appeals were disposed of on 24th August 2000. The order passed in the Writ Appeal has been challenged by the land owners in Civil Appeal No.6362-68 of 2001 in respect of 31 acres. The Hon'ble Supreme Court, by its order dated 7th October 2004, permitted the authorities to file a joint memo and the terms of the Joint Memo is that the Union of India would give 50% of the land in question to the land owners and DRDO would keep the remaining land. As the consequence of the joint memo, 50% of the land has been handed over to the beneficiaries. The lands were handed over to the beneficiaries through the General Power of Attorney holder. Finally, the acquisition dispute was settled in the Review Petition No.793-797, 804, and 810 of 2006, in which the beneficiary the petitioner herein, sought a review of the portion of the order in Civil Appeal No.6362-68 of 2001. In the Review Petition, the prayer made by the petitioner was to review the order dated 7th October 2004 passed by the Hon'ble Supreme Court in Civil Appeals referred above. The case of the petitioner in the Review Petition that when the de-notification was made by the Government of Karnataka, the land owners have sold land to

third persons and the Special Leave Petition was filed at the instance of the third persons and now the General Power of Attorney holders, who are the third persons are having plan to put up multistoried apartments adjoining DRDO complex, which is a Defence Organisation. If the apartment owners are permitted to put up high-rise buildings within close vicinity of DRDO complex, there is a threat to DRDO. The purpose of filing joint memo was to help small holders, but quite contrary to the same, the small holders sold the land to the builder and the builders are putting up high-rise buildings. If the high-rise buildings are permitted to come, it causes serious problem to national security, safety, etc. and consequently the work of DRDO is being curtailed and tampered. It is also averred by the learned counsel for the petitioner that the Hon'ble Supreme Court directed the petitioner not to invoke Section 3 of the Works of Defence Act, 1903 adversely affecting the safety and security of the sensitive defence laboratories. The said Review Petition came to be dismissed on 7th September 2010 by the Hon'ble Supreme Court refusing to review the order passed in Civil Appeal. In the present writ petition, the prayer is for

issuance of writ in the nature of mandamus or any other appropriate writ; to quash the order dated 3.10.2011 passed by the Commissioner of the second respondent-BBMP. Mandamus is also sought in the nature of direction to the Commissioner, BBMP to refer the dispute in respect of application filed by the fourth respondent-Purvankaraa Project dated 4th August 2011 and further direction be issued to the Government to consider the application made by the fourth respondent. A direction is also sought to the first and second respondents not permit high-rise buildings within 100 meters distance of the defence land consisting of Defence Research Laboratory, Bangalore. While seeking such relief, the grounds urged by the petitioner is that the compromise entered into between the parties who are 253 in number in respect of 12 acres 1 guntas of land in question, was on the ground that the petitioners were landless and poor people and have entered into compromise in order to see that these people will get a roof over their head and quite contrary to the said project, the power of attorney holder, in whose favour the land has been registered by the owners, themselves become the holders of land. In respect of this submission, this Court cannot

go into the matter for the reason that on the basis of the joint memo the Hon'ble Supreme Court disposed of C A Nos.6362-6368/2001 by the order dated 7.10.2004, which cannot be relooked into by this Court. What is definite on the basis of the submission made by the parties is, the Supreme Court has permitted the parties to file a joint memo. When such being the case, appreciating the case of the petitioner on the basis of the fact that the direction issued by the Supreme Court was by looking at the small holders, may not be open for this Court to re-appreciate or Review. If at all the power of attorney holders themselves become the land holders, it is for the petitioner to approach the Hon'ble Supreme Court or to the fact finding courts, i.e. the Civil Courts. It is also the matter not for this Court to interfere and to give new approach in view of the fact that the matter has been settled before the Hon'ble Supreme Court in both Civil Appeals as well as Writ Appeals.

14. The joint memo was permitted to be entered into since the beneficiaries are small holders and to see that they will get a roof over their head. However, it was brought to the

notice of the Hon'ble Supreme Court that these General Power of Attorney holders are permitted to build high-rise buildings within the close vicinity of the DRDO complex. This submission cannot be appreciated by this Court. After the joint memo has been entered into between the parties, again the petitioner has prayed the Hon'ble Supreme Court to review the order and the same was not considered and the Review Petition came to be rejected. Putting up of high-rise buildings within the vicinity of the DRDO complex was raised in the review petition, though after having brought to the notice of the Hon'ble Supreme Court, when the highest Court itself was not inclined to interfere, then this Court's interference does not arise and I am not inclined to interfere.

15. The prayer of the petitioner that the sanction plan to the fourth respondent is to be reconsidered for which direction be issued to the first respondent-Government of Karnataka, may not arise. As it is submitted by the respondents No.4 and 5 in their statement of objections that the petitioner is very much hostile only to respondent No.4 for one or more reasons. Along

with the construction put up by the fourth respondent, there are number of other apartments that have come up and are already handed over to the owners. In this regard, in my opinion, what is the distance which is dangerous to the security of the defence land and what should have been the distance to prevent threat to the defence land, are not available before this Court. Distance itself is not the matter to assess the safety and security of the defence land. If the fourth respondent is danger to the safety and security of the petitioner, to that extent the approach itself is not well-founded. The Hon'ble Supreme Court directed the petitioner not to invoke Section 3 of the Works of Defence Act, 1903. It could have invoked the same provision in respect of other apartments and builders. No reasons have been assigned why it is not ready to attack other apartments and only targeting the fourth respondent which is not forthcoming and there are no materials placed before this Court. The approach of the petitioner that building of the fourth respondent is threat and others in and around are not, cannot be appreciated. If certain distance is permitted to the safety and security of DRDO, then even now it can invoke Section 3 of the Works of Defence Act,

1903 as against other apartments and also against the fourth respondent, it is for the petitioner to approach the Hon'ble Supreme Court.

16. In the statement of objections filed by the fourth respondent it has been stated that the fourth respondent is putting up apartments in close vicinity of CAIR and other sensitive places. The fourth respondent has stated that on the southern side of the CAIR establishment one August Park apartments consisting of basement and eleven upper floors overlook CAIR and adjoining DRDO and apartments of Salarpuria, Magnefecia are on the Eastern side of CAIR. When such being the factual position, the petitioner has not stated as to why the petitioner is confronting only the fourth respondent. In addition to these builders, other buildings like Warse Regency, Jyoti Enclave, Sai Sarovar also overlooks CAIR. Baghmane Tech Park which is situated at only ten meters away which is a commercial complex with several floors and measures approximately two million square feet of built up area. When these developers have come up within the close vicinity of the

petitioner's land, there shall not be any justification to confront the case only in respect of fourth respondent. When several persons, who are similarly situated like the fourth respondent, are offending as alleged, why the petitioner is confronting only the fourth respondent, is not forthcoming. Unless there is reasonableness and rationality for the purpose of seeking relief, then Article 14 of the Constitution of India which confers equality before law and even protection of law, comes on to play. As already stated no materials are placed before this Court as to exactly what is the length prescribed for the safety of the petitioner's land. Under the circumstance, the said submission of the petitioner is to be rejected. Accordingly it is rejected.

17. In order to impress its case on the ground of safety and security of the petitioner's land, the learned counsel for the petitioner referred several instances that have taken place in India, viz. Bombay Bombing 1993; shoot out at Indian Institute of Science, Bangalore 2005; Mumbai attack 2008, Mumbai bombings in 2011. In respect of this submission, this Court feels that this shall not be a reason and a matter for considering the

case of the petitioner, specially in the light of the disposal of the Review Petition by the Hon'ble Supreme Court. If these facts were not brought to the notice of the Hon'ble Supreme Court, and it is, even now open for the petitioner to place it before the Hon'ble Supreme Court and seek for necessary orders.

18. Sanction plan given in respect of the fourth respondent has been challenged on many technical grounds mainly that the sanction plan is opposed to the provisions of the KTCP Act and Revised Master Plan of 2015 approved by the Government by its Notification dated 22nd June, 2007. While obtaining the plan from the Town Planning Authority dated 8th November 2011, the fourth respondent has produced the sanction plan of 26th June, 2007 issued by the Director of Town Planning, BBMP has flouted Section 299 of the Karnataka Municipal Corporation Act and Rule 8 of KMC Rules 1977. Chapter IV provides for production of additional documents. Rule 8 requires additional documents to be furnished in obtaining sanction. Additional documents, viz. Title Deed, Khata certificate, etc. Bye-law No.3 of the BBMP Bye-laws, 2003 provides for administration of building licence.

While obtaining licence, the fourth respondent committed illegality. Bye-law 3.2.8 of Schedule-II of the National Building Organisation from whom proper authorization had not been obtained by the fourth respondent. Bye-law No.4.2 of Part-III, bye-law No.8 of Section 300 of the Corporation Act are highlighted by the petitioner. The fourth respondent is not a khata holder and title deeds have not been transferred. The title deed and khata certificate are the important documents for obtaining licence and sanction plan could not be issued without those and hence the sanction plan issued by the BBMP is an illegal one. As per the revised plan of 2011, the width of Kaggadasapura Main Road is shown as 15.10 meters whereas the actual width of the said road is 10 meters. This aspect has not been looked into by the Corporation. The Corporation has plainly gone by the width of the road mentioned by the applicant, i.e. the fourth respondent herein. The plan has been sanctioned by the Joint Director of BBMP, without reference to the documents pertaining to title and ownership of the land. These lapses on the part of fourth respondent, though it looks as violation of Acts and Bye-laws in sanctioning the licence, but the

some should not have been taken by the petitioner as a ground. When the ground taken to attack the fourth respondent is on the basis that it gives threat to the land of the petitioner, it has to be seen, whether it could be cured or not. In the facts and circumstances of the case, a direction is to be issued to the second respondent-BBMP to re-examine as to whether the approval at the time of sanctioning the plan, whether the fourth respondent had title deed and ownership. Whether the title deeds have been transferred to fourth respondent or not should be examined. In respect of the contention of the petitioner viz. national interest and national security, it is submitted that the petitioner should not have taken the ground of municipal laws, viz. the Corporation Act, Bye-laws and Rules. Latin Maxim: *de minimis non curate lex*, i.e. Law does not notice trifling matters, would squarely apply to the case on hand. ***In India TV Independent News V/s. Yashraj Films Pvt. Ltd. (FAO (OS) 533 & 584/2011) on 21/08/2012 the Delhi High court has observed as follows:***

"But, what qualifies as a trifle? And, when can de minimis apply? Applying de minimis as an adjective and giving it the meaning;

trifling, unimportant or insufficient, Courts have held that trifling, unimportant or insufficient violations would be treated as minor legal violations and hence would either be non-actionable or would be a good defence to an action for violation of a legal right".

Even if the case of the petitioner is considered to the effect that the fourth respondent committed an illegality in obtaining sanction plan and licence, that itself will not solve the problem of the petitioner and the said contention could not become subject matter for consideration. Accordingly the same is rejected. However, the second respondent is directed to re-look the entire matter with regard to the fourth respondent's construction on each ground raised in the petition which is available with the learned counsel for the second respondent and pass a speaking order. While doing so, the fourth respondent be given an opportunity by way of issuance of notice and calling for records.

19. Impleading application is filed to come on record as an additional respondent. The said application cannot be considered at this stage. If the applicant is an aggrieved party,

it is for him to approach the appropriate authorities and also to approach this Court at the initial stage itself. Hence, the impleading application is rejected. EBMP is directed to pass appropriate order on each and every ground taken in the writ petition as expeditiously as possible but not later than six months from the date of receipt of a copy of this order.

20. This Court by the order dated 28.1.2014 directed the 4th respondent not to encroach the defence land even by aerially by using any cranes. In case, if it is used, the petitioner to take action in accordance with law. This direction will also remain.

With the above observations the petition stands disposed of.

AKD

**Sd/-
JUDGE**