

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2016

BEFORE

THE HON'BLE MR.JUSTICE L.NARAYANA SWAMY

WRIT PETITION Nos.22383-22384/2016(LB-BMP)

BETWEEN:

1. DILIP JAMES,
S/O MR. BABY JAMES,
AGED ABOUT 53 YEARS,
RESIDING AT NO.402, OUTER CIRCLE,
WHITEFIELD,
BENGALURU-66.
2. MS. DEEPA PECK,
W/O (LATE) G.A.PECK,
AGED ABOUT 63 YEARS,
RESIDING AT NO.406, OUTER CIRCLE,
WHITEFIELD,
BENGALURU-66.

...PETITIONERS

(BY SMT S.R. ANURADHA ADV., FOR SMT.SAYA KOTHARI, ADV.,)

AND:

1. THE BRUHATH BENGALURU MAHANAGARA PALIKE,
N.R. SQUARE, BENGALURU-02,
REP. BY THE COMMISSIONER.
2. THE ASSISTANT ENGINEER (WHITEFIELD)
BRUHATH BENGALURU MAHANAGARA PALIKE,
MAHADEVAPURA,
BENGALURU-48.

3. SAFARI KID,
NO.347 OUTER CIRCLE,
WHITEFIELD,
BENGALURU-66,
AND:
HAVING ITS INDIA HEAD OFFICE AT:
BAITUL KARIM, BORAN ROAD,
OPP. RELIANCE TRENDS,
OFF. HILL ROAD, BANDRA,
MUMBAI-400050.

... RESPONDENTS

(BY SRI B.V.MURALIDHAR, ADV., FOR R1 & R2
SRI RAVI H.K., ADV., FOR R3)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT R-1 AND 2 NOT TO ALLOW THE STARTING OF THE INTERNATIONAL SCHOOL SAFARI KID AT NO.347, OUTER CIRCLE, WHITEFIELD, BENGALURU AS THE SAME IS IN VIOLATION OF ZONING REGULATIONS AND ETC.,

THESE WRIT PETITIONS COMING ON FOR PRL.HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioners being aggrieved by the inaction on the part of the 1st and 2nd respondent authorities in not taking any steps against the illegal setting up of commercial activity by the 3rd respondent at the premises bearing No.347, Outer Circle, Whitefield, Bengaluru. The said premises is

specifically within the residential Main Zone in the Comprehensive Development Plan and can be used only for residential use. The 3rd respondent is a company which is setting up a franchise of a play school/pre-school that is for children up to the UKG class, which is not permitted under the residential zone activities.

2. Despite this, in complete violation of the same, the 3rd and 4th respondents are making arrangements to open the said school where the road width is only 24 feet and the respondent Nos.1 & 2, BBMP has not taken any steps to prevent such commercial activity from being commenced. Such action would not only be in violation of the law but also a risk to the health and safety of the petitioners who are the neighbours and they are directly affected and it is a violation of their right to life, clean air and clean environment envisaged under Article 21 of the Constitution. Hence, this petition.

3. The learned counsel for the petitioners submitted that as per the zoning of land use and regulations issued by the 1st respondent BBMP under the CDP 2015, the only development and land use that is permitted within the residential – main zones are plotted residential developments, villas, semi detached houses, apartments, hostels, dharmashala, multi dwelling housing, service apartments and group housing. There cannot be any other kind of land use permitted in the residential main zone.

4. Further he submitted that the petitioners are presently concerned with the proposed unauthorized and illegal use of an adjoining residential property for the purpose of a pre-school by the respondent No.3. This property has been taken on lease by the respondent No.3/company that has since February 2016, started renovating the same and making modifications to the building which was an old

residential villa. The respondent No.3 has been converting the same to use it as a play school and pre-primary school for children up to the age of 5 and half years. The signage on the property was displayed and announced the opening of an international school called "Safari Kid". This is a complete violation of the zoning regulations which do not permit a crèche and play school in the residential main zone.

5. Further he submitted that the petitioners on coming to know about it, they and other residents of the said street, immediately sent a letter to the respondent No.3 dated 23/02/2016 and an email dated 24/02/2016 and requested the respondent No.3 to relocate its school to another locality so as to not initiate commercial activity in a purely residential area and then made yet another representation to the respondent No.1 BBMP Commissioner on 21/03/2016, bringing to his notice that despite all the earlier representations, the

respondent No.3 was opening its international school and requested the respondent No.1 to intervene and take appropriate action. However, there has been no response to this representation as well.

6. Further he submitted that the respondent officials have not taken any action in enforcing the building regulations and in the meanwhile, the respondent No.3 is making hectic announcements to open the international school in the said premises and has been announcing the same in the public media.

7. Heard the learned counsel for the parties. In the facts and circumstances of the case, submission made by the respondent No.3 and objections made by the petitioner are considered. The respondent No.2/ Corporation has to pass an appropriate order more particularly with regard to the Revised Master Plan 2015, Bangalore dated 20/03/2015.

8. The Respondent No.2 / Assistant Engineer (Whitefield), who is the statutory authority under the provisions of the Act, has not placed any reliance on the provisions of law in the notice. Hence, it is to be held that, under the circumstance, Assistant Engineer is without authority of law to issue such notice without referring to the provisions of law in the notice.

9. In the result, petition stands ***disposed of*** by directing the Corporation to consider the reply made by the petitioners to the notice issued and pass an appropriate order on the same. Till the orders are passed, respondent No.3 is permitted to go on with the opening of the school, however it is also made clear that Respondent No.3 shall not claim any equity, in case, if there is any deviation.

**Sd/-
JUDGE**

MS*