

## **NOTE ON PREPARATION OF MASTER PLAN/COMPREHENSIVE DEVELOPMENT PLAN UNDER TOWN PLANNING STATUTE**

This note has been prepared to provide a brief understanding of the statutory provisions and procedures by which master plans/comprehensive development plans are required to be prepared and approved by the Government of Karnataka. The note also deals with the orders of the High Court of Karnataka in *Sobha Developers Limited v. Bruhat Bangalore Mahanagara Palike and others* and *Nama Krishnaiah v. Bruhat Bangalore Mahanagara Palike and another* wherein the issue of conflict between the master plan as approved by the State Government and other revenue records such as village maps had arisen for consideration by the High Court.

### **I. INTRODUCTION**

1. The Karnataka Town and Country Planning Act, 1961 (“**KTCP Act**”) empowers the State Government to declare any area as a local planning area and to constitute a ‘planning authority’ for such area, having jurisdiction over that area for purposes of performing functions assigned to it under the KTCP Act or the relevant statute constituting such planning authority.
2. In this regard, Section 2(6) of the KTCP Act provides that the ‘planning authority’ for the City of Bangalore is the Bangalore Development Authority (“**BDA**”) as constituted under the Bangalore Development Authority Act, 1976.
3. The KTCP Act read with the Karnataka Planning Authority Rules, 1965 (“**KPA Rules**”) also provides the manner in which a master plan is required to be prepared by a planning authority in respect of the planning area over which such authority has jurisdiction.
4. Section 12 of the KTCP Act provides that a master plan is a document which indicates the manner in which the development and improvement of a planning area is to be carried out and regulated, and includes a series of maps and documents showing the following:
  - (i) zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with zoning regulations;
  - (ii) a complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements;
  - (iii) areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments;
  - (iv) areas earmarked for future development and expansion;
  - (v) reservation of land for purposes of use by Central Government, the State Government, planning authority or public utility undertaking or any other authority established by law, and the designation of lands being subject to acquisition for public purposes or as specified in master plan;
  - (vi) declaring certain areas as areas of special control and development, subject to such regulations as may be prescribed with respect to building line, height of the building, floor area ratio, architectural features and such other particulars as may be prescribed; and

- (vii) the stage by which the plan is to be carried out.
- 5. Under Section 13-D of the KTCP Act, the planning authority may, and if directed by the State Government shall, revise the master plan at least once in 10 years by following the same procedure as prescribed for preparing the master plan.

**II. PREPARATION AND REVISION OF MASTER PLAN UNDER KTCP ACT**

- 1. Under Section 9 of the KTCP Act, for purposes of preparing the master plan, every planning authority is required to carry out a survey of the area within its jurisdiction and prepare and publish, in the prescribed manner, a master plan for such area. Once prepared, the planning authority is required to submit the same to the State Government for provisional approval.
- 2. Section 10 of the KTCP Act further provides that, before carrying out the survey, the planning authority has to make a declaration of its intention to prepare/revise the master plan and dispatch a copy of such resolution with a copy of the master plan showing the boundary of the area proposed to be included in the plan to the State Government. As per the KPA Rules, the planning authority is required to give wide publicity to such declaration by affixing the copy of the said declaration on the notice board of the office of the planning authority and in conspicuous places within the local planning area and also by publication in the Official Gazette.
- 3. Further, the planning authority is also required to publish a notice of such declaration in the Official Gazette and in one or more local newspapers, calling for suggestions from the public within a period of 60 days. Any suggestions from the public relating to the master plan are required to be considered by the planning authority and changes may be made to the plan based on such suggestions, at any time before the plan is sent to the State Government for approval.
- 4. Once the declaration and suggestions from the public have been obtained, the planning authority is required to submit the master plan to the State Government, along with the following reports:
  - (i) a report of the surveys carried out by the Planning Authority before the preparation of such plan;
  - (ii) a report explaining the provisions of the master plan;
  - (iii) regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the planning authority; and
  - (iv) a report of the stages by which it is proposed to meet the obligations imposed on the planning authority by such plan.
- 5. Upon receipt of the master plan along with the reports as afore-mentioned, Section 13 of the KTCP Act requires the State Government to return the master plan to the planning authority after making such modifications as it deems fit.
- 6. Once the master plan has been returned, the planning authority is required to publish, by notification, the plan and the reports for public comments within 60 days of such publication. If any comments or suggestions are received from the public within the

stipulated time period, the planning authority is required to consider such comments and suggestions and resubmit the plan and reports to the State Government, with recommendations for such modifications in the plan and reports as it considers necessary in the light of the public comments.

7. Only after receipt of the master plan and the reports containing the recommendations for modifications from the planning authority, does the State Government give its final approval to the plan and the reports, after consulting with the Director of Town Planning and along with such modifications as the Director may advise. The planning authority is then required to publish the approved master plan and the reports in the Official Gazette.
8. Section 14 of the KTCP Act provides that from the date on which a declaration of intention to prepare a master plan is published, every land use, every change in land use and every development in the area covered by the plan is required to conform to the provisions of the KTCP Act, the master plan and the reports, as finally approved by the State Government under Section 13. No change in land use or development can be made except with the written permission of the planning authority.
9. Most importantly, Section 76-M of the KTCP Act provides that the provisions of the KTCP Act and the rules, regulations and bye-laws made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.
10. A bare reading of the provisions of the KTCP Act concerning the procedure to be followed for preparing and revising a master plan/comprehensive development plan indicates that the final approval is granted by the State Government only after inviting comments/suggestions from the public and after considering the master plan and the reports submitted therewith in consultation with the Director of Town Planning. In light of this, the KTCP Act read with the KPA Rules provide adequate opportunity for the State Government or the public to raise any concerns regarding actual or potential conflicts between the master plan and any other revenue records such as village maps. In any case, by virtue of Section 76-M of the KTCP Act, the provisions of the KTCP Act have effect notwithstanding anything inconsistent in any other law and therefore, the master plan prepared in accordance with the provisions of the KTCP Act would have effect over any other document prepared previously, such as the village map.

### **III. SOBHA DEVELOPERS CASE**

1. The primacy of the master plan prepared by the planning authority under the KTCP Act arose for consideration in *Sobha Developers Limited v. Bruhat Bangalore Mahanagara Palike and others*<sup>1</sup>.
2. Sobha Developers, the petitioner, had purchased lands at Yeshwantpur, Bangalore North Taluk and, after converting the said lands for residential purpose, had obtained all necessary clearances, approvals and sanctions from various statutory authorities for the purpose of construction of residential apartment complex, including commencement certificate and plan sanction from BDA.

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<sup>1</sup> Order dated February 10, 2012 in Writ Petition No. 44277 of 2011 (LB-BMP) connected with Writ Petition No. 29108 of 2011 and 29318 – 27 of 2011 (LB-BMP)

3. Subsequently, Sobha Developers approached Bruhat Bangalore Mahanagara Palike (“**BBMP**”) for its permission to undertake road cutting for purposes of laying cables for its project. However, the permission was denied on *inter alia* the ground that Sobha Developers had diverted the natural course of a *naala* (drain) and pathway running in the property, as indicated in the village map under which the property fell.
4. Directing the respondents to give appropriate permission to Sobha Developers to undertake road cutting for purposes of laying cables for its project, the High Court of Karnataka held that the master plan prepared by BDA under the KTCP Act did not show the existence of any *naala* on the project site. Once the master plan had been prepared in accordance with the provisions of the KTCP Act and the BBMP had raised no objection to the master plan at the time of its preparation, and upon approval, such plan did not show the passage of any *naala* on the project site, it was not open for BDA and BBMP to raise objections against the construction and development of the project, on the sole ground that a *naala* as per the village map had been diverted.
5. The High Court also placed reliance on Section 76-M of the KTCP Act and Section 505 of the Karnataka Municipal Corporations Act, 1976<sup>2</sup> (“**KMC Act**”) to hold that, in light of the primacy of the KTCP Act over any other law, it was not permissible for BBMP to refuse permission on the basis of a village map.
6. The judgment of the High Court of Karnataka in this case provides a clear ruling on the over-riding nature of a master plan prepared in accordance with the provisions of the KTCP Act, when considered against other revenue records such as village maps.

#### **IV. NAMA KRISHNAIAH CASE**

1. In a recent order of a single judge of the High Court of Karnataka in the case of *Nama Krishnaiah v. Bruhat Bangalore Mahanagara Palike and another*<sup>3</sup>, the High Court of Karnataka dismissed a writ petition challenging the actions of BBMP in demolishing certain property on the ground that such property had illegally encroached on a *naala*.
2. While dismissing the petition, the High Court relied on Section 288A and Section 288D of the KMC Act and held that the said provisions cast a duty on the Commissioner, BBMP to remove any structure erected so as to result in encroachments on *naalas*. The High Court was also of the view that the notice issued to the petitioner under the Karnataka Land Revenue Code, 1964, which was responded to by the petitioner, and the hearing given to the petitioner before the

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<sup>2</sup> Section 505 of the Karnataka Municipal Corporations Act, 1976 provides that notwithstanding anything contained in the Act, a corporation or any officer required to exercise any power, or perform any function or discharge any duty under the Act (i) with regard to any matter relating to land use or development as defined in Section 14 of the Karnataka Town and Country Planning Act, 1961, shall do so with the concurrence of the Planning Authority, and (ii) shall not grant any permission, approval or sanction required by or under the Act to any person, if it relates to any matter in respect of which compliance with the provisions of the Karnataka Town and Country Planning Act, 1961 is necessary, unless evidence of such compliance is produced by such person to the satisfaction of the corporation or the officer or other authority, as the case may be.

<sup>3</sup> Order dated August 9, 2016 in Writ Petition No. 43278 of 2016 (LB-BMP)

Tahsildar was sufficient to hold that the petitioner had been given an opportunity of being heard prior to the demolition.

3. Further, the High Court relied on an order of the Division Bench of the High Court of Karnataka in *Five Year Law Course Advocates Association v. Principal Secretary, Urban Development Department and others*<sup>4</sup> to hold that the demolition had been undertaken pursuant to the undertaking provided and affidavit filed by the Chief Engineer (Storm Water Drain), BBMP in the said writ petition to the effect that all encroachments over storm water drains would be removed after following the procedure stated in the affidavit.
4. In this regard, in the *Five Year Law Course Advocates Association* case, it appears that the Chief Engineer (Storm Water Drain), BBMP had provided an undertaking and filed an affidavit laying down the procedure which would be followed to demolish all structures constructed on storm water drains. However, the order does not provide details of the undertaking, the affidavit or the procedure undertaken to be adopted. Therefore, it would not be possible to comment on the order till such time as the affidavit and undertaking have been reviewed. We have applied to obtain copies of the undertaking and affidavit as provided before the High Court in the said writ petition and will update you once we obtain and review the same.
5. Further, the order in the *Nama Krishnaiah* case has only discussed the issue concerning the authority of the BBMP Commissioner to demolish structures which encroach upon *naalas*. The order has not delved into whether there indeed was any encroachment by the petitioner, as per the comprehensive development plan or village map, and whether the demolition could be upheld despite the prior sanction having been granted by BBMP.
6. In this regard, the counsel for the petitioner had contended that the Comprehensive Development Plan of 1985 did not show the existence of any *naala* on the property, and therefore the reliance by BBMP on the village map to show the existence of a *naala* is incorrect. The counsel for the petitioner had further contended that the construction on the property had been put up on the basis of the plans sanctioned by BBMP, at which time no concerns were raised.
7. However, none of these contentions have been specifically considered and discussed by the High Court in its order. Therefore, on the issue of whether it is appropriate for BBMP to rely on the village map instead of the comprehensive development plan to show existence of a *naala* and demolish buildings on the basis of the village map, we are of the opinion that the order in *Sobha Developers* would have to continue to be followed and the master plan/comprehensive development plan would enjoy primacy over village maps.
8. Further, it could also be argued that, where the municipal corporation such as BBMP has granted approvals and sanctions for land use or development in accordance with the KTCP Act, such approvals and sanctions are valid and can be relied upon for purposes of undertaking the development sanctioned. In such a case, if the approvals

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<sup>4</sup> Order dated August 4, 2011 in Writ Petition No. 31394 of 2009

and sanctions so granted are sought to be cancelled or revoked at a later stage without any valid legal basis, such revocation or cancellation will be open to challenge on the principle of estoppel.

9. In this regard, the Supreme Court of India, in the case of *Express Newspapers Private Limited & others v. Union Of India & others*<sup>5</sup> has held that in public law, the limitation on the doctrine of estoppel is that it cannot be evoked so as to give overriding power to a government authority or its action, which it does not possess or could not have taken, in law. Therefore, while estoppel cannot be used to legitimize an action which is *ultra vires*, if an approval or sanction for land use or development has been granted by a municipal corporation in accordance with the provisions of the KTCP Act and is sought to be cancelled later without any legal basis, the same can be challenged on the principle of estoppels, and additionally, equity.
10. We understand that the decision of the single judge of the High Court of Karnataka in the *Nama Krishnaiah* case has been appealed against and the same is pending admission before the High Court.

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<sup>5</sup> AIR 1986 SC 872