IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

WRIT APPEAL NO. 73 OF 2025 (LB-BMP)

C/W

CIVIL CONTEMPT PETITION NO. 1332 OF 2024

IN W.A. NO. 73 OF 2025

BETWEEN:

1. THE BRUHATH BENGALURU MAHANAGARA PALIKE
   REP. BY ITS CHIEF COMMISSIONER
   N.R. SQUARE
   BENGALURU - 560 002.

2. THE JOINT DIRECTOR OF TOWN PLANNING
   BBMP, N.R. SQUARE
   BENGALURU - 560 002.

…APPELLANTS

(BY SRI MONESH KUMAR K.B., ADVOCATE)

AND:

1. M/S. SANGAM ENTERPRISES
   NO.15, DHANAVANTHRI ROAD
   MAJESTIC, BENGALURU-560009
   REP. BY ITS MANAGING PARTNER
   R CHANDRU.

2. THE STATE OF KARNATAKA
   REP. BY ITS PRINCIPAL SECRETARY

URBAN DEVELOPMENT DEPARTMENT
VIKAS SOUDHA
BENGALURU - 01.

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE A/W
SRI VIJAYKUMAR, ADVOCATE FOR R-1 &
SRI K.S. HARISH, GOVERNMENT ADVOCATE FOR R-2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P.No.80/2023 (LB-BMP) DATED 29.05.2024 AND BE FURTHER PLEASED TO DISMISS THE SAME & ETC.

IN CCC NO. 1332 OF 2024

BETWEEN:

1. M/S. SANGAM ENTERPRISES
REPRESENTED BY ITS MANAGING PARTNER,
SRI. R CHANDRU
AGED ABOUT 54 YEARS
NO.15, DHANVANTRI ROAD
MAJESTIC, BENGALURU - 560 009.

…COMPLAINANT

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE A/W
SRI VIJAYKUMAR, ADVOCATE)

AND:

1. SRI TUSHAR GIRINATH (IAS)
CHIEF COMMISSIONER,
BRUHAT BENGALURU MAHANAGARA PALIKE
BENGALURU - 560 002.

2. SMT. SAVITHRI PATIL
JOINT DIRECTOR TOWN PLANNING
BRUHAT BENGALURU
MAHANAGARA PALIKE
N.R SQUARE
BENGALURU - 560 002.

…ACCUSED

3. THE STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY,
URBAN DEVELOPMENT DEPARTMENT,
BANGALORE 560001

…PRO FORMA RESPONDENT

(BY SRI K.B. MONESH KUMAR, ADVOCATE)

THIS CCC IS FILED UNDER SECTION 11 AND 12 OF THE CONTEMPT OF COURTS ACT, 1971, PRAYING TO INITIATE CONTEMPT OF COURT PROCEEDINGS AGAINST THE ACCUSED FOR HAVING COMMITTED CONTEMPT OF COURT IN NOT IMPLEMENTING THE DIRECTION ISSUED BY THIS HON'BLE COURT DATED 29.05.2024 IN W.P. NO.80/2023 AND PUNISH THE ACCUSED IN ACCORDANCE WITH LAW.

THIS WRIT APPEAL AND CCC, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C M JOSHI

CAV JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. For the reasons stated in the application - I.A.1/2025, the same is allowed. The delay in filing the appeal is condoned.

2. The appellants – Bruhath Bengaluru Mahanagara Palike [hereinafter **BBMP**] – have filed the present appeal impugning an order dated 29.05.2024, passed by the learned Single Judge in W.P.No.80/2023 (LB-BBMP) captioned M/s. Sangam Enterprises v. The State of Karnataka and others, whereby the said writ petition was allowed. Respondent No.1, a partnership firm, had filed the aforementioned writ petition praying that directions be issued to BBMP to consider approving the Modified Plan submitted by it on 28.03.2014 [**Modified Plan**] in terms of the Rules that existed on the date of filing the Modified Plan. The writ petitioner also sought directions to be issued to BBMP for considering the representations submitted by the petitioner in this regard.

3. The Modified Plan is not in accordance with the Karnataka Town and Country Planning (Benefit of Development Rights)

Rules, 2016, which were notified on 04.03.2017. Notwithstanding the same, the petitioner claims that the Modified Plan is required to be approved as the same is in accordance with the Rules that existed on the date of the application, that is, as on 28.03.2014. BBMP contends to the contrary.

4. The controversy arises in the context of loading of Transferable Development Rights [**TDR**] and the provisions for relaxation of the set back requirements under the applicable Rules.

5. The learned Single Judge had accepted the writ petitioner's contention that the Rules as in force on the date when the approval of Modified Plan was sought, are applicable. The learned Single Judge reasoned that the statutory amendment of Section 14B of the Karnataka Town and Country Planning Act, 1961 [**KTCP Act**] and the Rules as notified on 04.03.2017 did not have any retrospective operation. Thus, the principal question that requires to be addressed in the present appeal is whether the approval of the Modified Plan is required to be considered in accordance with the KTCP Act and the relevant Rules that were in operation on the day of the application of the Modified Plan or on the date of sanction.

Prefatory facts

6. The writ petitioner holds lease hold rights in respect of the properties bearing the address No.15, Dhanvanthri Road, Bengaluru and No.13/3, Subedar Chatram Road (both adjacent properties) measuring 5630.30 square meters.

7. The writ petitioner furnished a plan for construction of a building comprising of a basement, ground floor, first floor, second floor, third floor and terrace conforming to the height of 15 meters. It proposed constructing the building for commercial complex and a multiplex. The said building plan for construction of the commercial complex was sanctioned by BBMP on 16.04.2013.

8. The writ petitioner proposed to raise additional construction with the intermittent height up to 29.60 metres, with relaxation of the set back norms. Accordingly, it entered into an agreement with one M/s. Aishwarya Heights Infra Private Limited for purchasing development Rights [**TDR**] on 15.11.2013. The writ petitioner claims that it also made advance payment of Rs.1.00 crore for purchasing the said TDRs. In addition, the writ petitioner also purchased TDRs from one Smt. Aanemma, wife of late Aaneppa, measuring 7477.06 square meters.

9. Thereafter, the writ petitioner furnished the Modified Plan for construction of additional floor by loading the TDRs. The Modified Plan also entailed relaxation of set backs in accordance with the Circular dated 23.11.2009 issued by BBMP, which was applicable at the material time. The Modified Plan was not accepted and appellant No. 2 issued an endorsement (order) directing the writ petitioner to secure and furnish an NOC from the Fire Service Department.

10. In view of the said endorsement, the writ petitioner applied for NOC with regard to the Modified Plan, to the Fire Service Department. The Fire Service Department inspected the site and issued an endorsement dated 08.05.2017, *inter alia* stating that it was not accepting plans that entail relaxation of set backs.

11. The writ petitioner being aggrieved by the endorsement dated 08.05.2017, filed a writ petition being WP.No.25321/2017. The said petition was disposed of on 22.06.2017 with a direction to the concerned department to dispose of the writ petitioner's application for NOC as expeditiously as possible and in any event with an outer limit of two weeks from the date of the said order. The learned Single Judge also held that *"the consideration of the*

petitioner's application shall date back to 22.02.2017, on which date the petitioner first submitted the application for issuance of NOC".

12. In compliance with the said directions, the Karnataka Fire Service Department issued NOC dated 07.10.2017. Thereafter, on 13.10.2017, the writ petitioner submitted a representation to the BBMP to approve the Modified Plan, which was submitted on 28.03.2014 as per the Rules existing on that date. Similar representations were also made on 04.07.2018 23.01.2019 22.02.2021, 24.11.2021 and 19.10.2022. However, The said representations did not elicit any response. In the aforesaid context, the writ petitioner filed a writ petition being WP.No.80/2023 (LB-BMP), which was disposed of in terms of the impugned order.

The Controversy

13. The Bangalore Development Authority [**BDA**] issued the Revised Master Plan 2015 on 22.06.2007. Thereafter on 12.07.2019, BBMP had issued a Circular providing for relaxation of set backs for sanctioning of building plans.

14. The KTCP Act was amended by Act No.23 of 2004 with effect from 03.06.1994. The amendments included insertion of

Section 14B, which contained provisions for providing benefit on development rights [TDRs] in the KTCP Act. The relevant extract of Section 14B of the KTCP Act as introduced with effect from 03.06.2004 is set out below:

> "14-B. Benefit of development rights: Where any area within a local planning area is required by a Planning Authority or local authority for a public purpose and the owner of any site or land which comprises such area surrenders if free of cost and hands over possession of the same to the planning authority or the local authority free of encumbrances, the planning authority or the local authority, as the case may be, may notwithstanding anything contained in this Act or the regulations but subject to such restrictions or conditions as may be specified by notification by the State Government, permit development rights in the form of additional floor area which shall be equal to one and half times of the area of land surrendered. The development right so permitted may be utilised either at the remaining portion of the of the area after the surrender or anywhere in the local planning area, either by himself or by transfer to any other person, as may be prescribed. The area remaining after surrender shall have the same floor area which was available before surrender for the original site or land as per regulations.
>
> **Explanation:** For the purpose of this section,-
>
> (a) "Public purpose" means,-
>
> (i) widening of an existing road or formation of a new road;
>
> (ii) providing for parks, playgrounds and open spaces or any other civic amenities;

> (iii) maintaining or improving heritage building or precincts notified by the State Government. '
>
> (iv) Any other purpose notified by the State Government from time to time.
>
> (b) "Development right" means the right to carry out development or to develop land or building or both."

15. The scheme entails providing for development rights in the form of additional floor area equal to one and a half times the area surrendered by an owner of any site or land, which is required for any public purpose, such as widening of the roads, parks etc. The development rights could be utilized for additional construction in the portion of the area remaining with the owner after the surrender of part of the site or land for public purposes, free of cost. Additionally, the right holder could also transfer these rights to another person for utilizing the same.

16. Paragraph 10 of Chapter X of the Revised Plan also permitted relaxation of the set back area upto a maximum extent of 50%, in cases where the permissible floor area ratio would not be achieved after utilizing the TDRs. Paragraph 10 of the Revised Master Plan, 2015, is set out below:

> "10. The Authority may consider relaxing set backs, and coverage to a maximum extent of fifty percent,

> when the permissible Floor Area Ratio cannot be achieved, in case of D.R.C. arising out of land surrendered free of cost for road widening. This relaxation is also permissible in the receiving plot or in the same plot left over after surrender. When plot generating the TDR utlises the DRC as the receiving plot, then the incremental parking need not be insisted. No relaxation can be given for area required for parking in receiving plot. While exercising the above power, the Authority shall finalise the building line for the entire road taken up for widening keeping in view the developments existing, feasibility and smooth flow of traffic and notify the same. No construction shall be allowed in violation of such notified building line".

17. On 23.11.2009, BBMP issued a Circular holding that "50% discount is allowed in the areas and median spaces".

18. The writ petitioner seeks benefit of the relaxation to the extent of 50% of set backs as per the policy that was in vogue prior to the notification of the Rules on 04.03.2017.

19. Section 14B of the KTCP Act was substituted by virtue of Act No. 38 of 2015 with effect from 10.09.2015. Sub-section (12), (13) and (14) of Section 14B of the KTCP Act as introduced are relevant and are set out below:

> Section 14.
>
> *** *** ***
>
> Section 14-B

*** *** ***

(12) The Development Rights so issued shall be utilised within the same Local Planning Area to which it is issued.

[(13) The Development rights may be utilised within the same plot or in other area in the same Local Planning area or as notified by the Government, by the owner or the owner of such Development Rights may transfer the Development rights to a transferee as Transferable Development Rights which may be sold or utilised in any area as prescribed within the Local Planning Area or as notified by the Government.]

(14) The utilisation of Development Rights at the receiving plot shall be subject to limitations, as may be prescribed.

20. Thereafter, the Karnataka Town and Country Planning (Benefit of Development Rights) Rules, 2016 [The Rules] were framed under the KTCP Act and were notified on 04.03.2017. The said Rules provided for set back relaxations. Sub-Rule (8) of Rule 4 of the Rules is relevant and set out below:

”4. Terms and Conditions for grant of Development Rights:-

*** *** ***

(8) Setback relaxation:

(a) In Originating plots

(1) **With building below 15.0 m. height** – In the originating plot where there is no option for increasing the setback area in case of loading of the Development Rights on the existing building, the available existing side and rear setbacks shall be considered as the permitted back in case of the final height of the building is below 15.0 m. after loading of the development rights.

In case of road widening the available front setback shall be the permitted setback after road widening

(ii) **With building above 15.0m.** In case the height of the building is 15.0m and above, due to utilization of Development Rights on the existing building, setbacks shall be followed as under,-

(a) Relaxation in setback and coverage in the remaining plot after surrender shall not exceed beyond twenty five percent of the prescribed setback proportionate to the quantum of the Development Rights utilized as explained below:

Example (1) ********

Example : (2) ********

(b) For buildings with 15 Meters and above height the No objection Certificate from Fire Force Department shall be produced.

(c) In case of Road widening the available front setback shall be treated as the permitted setback after road widening.

(iii) On vacant land: When the originating plot itself becomes the receiving plot the terms and conditions applicable to the plot size after deducting the surrendered area and the setback relaxation shall be as per sub-rule (8)(b).

(b) Transfer of Development Rights at Receiving Plots,-

(i) The Development Rights shall be utilized over and above the ordinarily permissible Floor Area Ratio at the receiving plot which is either vacant or has an existing building. In case if the applicant utilizes Floor Area Ratio less than the permissible Floor Area Ratio to avail the benefit of relaxation of set back by utilizing the Transferable Development Rights, in such cases the additional Floor Area Ratio shall be 0.6 times the actual Floor Area Ratio utilized within the permissible Floor Area Ratio.

(ii) Relaxation in setback and coverage may be permitted for the buildings in the receiving plots utilizing Transferable Development Rights and this relaxation shall be proportionate to the quantum of the Transferable Development rights utilized and in any case shall not exceed beyond twenty five percent of the prescribed setback as explained below:

Example: (1) **********
Example:(2) **********

Note. A Transferable Development Right when utilized in respect of an existing building, the existing all round setbacks shall be in compliance with the requirements for the additional Floor Area Ratio and the additional height of the building due to loading of Development Rights / Transferable Development Right".

21. It is apparent from the above, that the relaxation of setbacks is permissible upto the maximum extent of 25%. Concededly, the Modified Plan does not conform to the said set back norms. In the aforesaid context, the point in issue is whether the policy/Rules as existing at the time of filing the application for sanction of the

Modified Plan or as in force on the date when the approval is granted, is applicable.

Impugned Orders

22. As noted above, the learned Single Judge accepted the contention that the rules as applicable on the date when the application for approval of Modified Plan was made is applicable.

23. The learned Single Judge referred to the decision of this court in the case of ***M/s. Aishwarya Heights Infra Private Limited v. State of Karnataka and others: WP.No.2618/2016 (LB-BBMP)*** decided on 24.03.2016. In that case the court had allowed the writ petition and directed BBMP to consider approval of modified plans, which were submitted on 28.07.2014 in accordance with the bye-laws as on the date of the application and in terms of the Circular dated 23.07.2009. The learned Single Judge held that the Section 14B as amended with effect from 10.09.2015 would have no application since the approval for the re-modified plan was furnished prior to the substituted Section 14B coming into effect.

24. The impugned order was passed following the decision in ***M/s. Aishwarya Heights Infra Private Limited*** (supra).

Reasons and Conclusions

25. The decision in ***M/s. Aishwarya Heights Infra Private Limited (supra)*** is founded on the premise that filing an application for sanction of building plan results in vesting of an absolute or indefensible right with the applicant. Thus, application would require to be considered on the basis of the Rules as on that date. The relevant extract of the decision in ***M/s. Aishwarya Heights Infra Private Limited*** *(supra)* is set out below.

> "11. Section 14-B of the Act has been amended w.e.f. 10.9.2015 by Karnataka Act No.38/2015. It is evident that this amendment has prospective effect. It is no doubt true that Rules have not been framed under Section 14-B of the amended Act. However, this amendment has no application to the instant case.
>
> 12. It is settled position that when a particular provision of an Act is in force when particular transaction was effected, then, the subsequent repeal of the statute will not affect the merits, rights or liabilities of the parties on the date of that transaction. A statute affecting vested rights is prima facie prospective unless it expressly or by necessary implication indicates to the contrary. The Legislature has full power to make a law retrospective so as to destroy a right or a remedy altogether but this must be expressly laid down or this result must flow by necessary implication.
>
> 13. The word 'vest' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. The Hon'ble Supreme Court in J.S.YADAV's case (supra), has explained the meaning of the expression 'vested right' as under:

> "21. The word 'vest' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word 'vest' has also acquired a meaning as 'an absolute or indefeasible right'. It had a 'legitimate' or 'settled expectation' to obtain right to enjoy the property, etc. Such 'settled expectation' can be rendered impossible of fulfillment due to change in law by the legislature. Besides this, such a 'settled expectation' or the so-called 'vested right' cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law (vide Howrah Municipal Corporation Vs. Ganges Rope Co. Ltd. – (2004) 1 SCC 663).
>
> 22. Thus, 'vested right' is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course."
>
> (emphasis supplied by me)

14. Section 6 of the Karnataka General Clauses Act states that repeal of the Act shall not affect any right or privilege accrued or acquired under an enactment so repealed, unless a different intention appears. This Section does not profess to preserve an abstract right accrued under a repealed statute. It would apply to specific rights given to a party consequent on happening of one or the other event as specified in the statute.

15. In VIDEOCON INTERNATIONAL LIMITED's case (supra), the Hon'ble Supreme Court has held that the amendment of a statute, which is not retrospective in operation, does not affect pending proceedings, except where the amending provision expressly or by

necessary intendment provides otherwise. Pending proceedings are to continue as if the un-amended provision is still in force. When a *lis* commences, all rights and obligations of the parties get crystallized on that date and the mandate of Section 6 of the General Clauses Act simply ensures that pending proceedings under the un-amended provision remain unaffected.

16. Section 14-B of the Act was amended by Karnataka Act No.38/2015, which has come into effect from 10.9.2015 is not retrospective in operation either expressly or by necessary implication. Therefore, the rights accrued under the repealed enactment are saved and the old procedure will subsist for enforcement of the rights accrued under the repealed enactment. The amended Act does not affect any right, privilege, obligations or liability acquired or incurred under the repealed enactments In fact with an intention to secure certain relaxation in the set back and to increase the number of multiplexes from 3 to 5 along with incremental height to 29.63 meters, petitioner purchased development right from B.S.Leelavathy. The TDR certificates dated 23.7.2010 are at Annexure-H series. The petitioner was also granted loan in principle on the project by the Syndicate Bank, which is evident from the communication at Annexure-J dated 17.6.2014. Having secured the financial assistance from the Nationalised Bank, subject to sanction of the re-modified plan to be submitted to the 2nd respondent, the petitioner applied for sanction of the re-modified plan after loading the TDRs seeking relaxation of the set backs as per the circular at Annexure 'D' dated 23.11.2009.

17. It is also to be stated here that the Deputy Commissioner, Bengaluru District under the Cinema Regulations has granted approval for construction of five screen multiplex in 6th and 7th floor under Regulation 31(3) of the Regulations as per Annexure 'R' dated 14.12.2015. During the pendency of the petitioner's application for grant of re- modified plan, Section 14-B was amended w.e.f. 10.9.2015 prescribing

> certain restrictions regarding relaxation in the set backs, which has no application to the instant case. In my opinion, the 2nd respondent has to consider approval of the re-modified plan submitted on 28.7.2014 in terms of the existing bye-laws as on the date of the application in terms of the circular at Annexure-D dated 23.11.2009".

26. In our view, the question whether the building plan has to be sanctioned on the basis of the Rules and bye-laws prevailing on the date of the application or on the date when the sanction is accorded, is no longer *res integra*. It is also material to note that in ***M/s. Aishwarya Heights Infra Private Limited (supra),*** the learned Single Judge had set out paragraph 21 of the decision of the Supreme Court in ***J.S. Yadav v. State of Uttar Pradesh and another : 2011 6 SCC 570,*** which in turn referred to the decision in the case of ***Howrah Municipal Corporation and others v. Ganges Rope Co. Ltd., and Others: (2004) 1 SCC 663.*** However, the learned Single Judge had erred in not considering the import of that decision.

27. In ***Howrah Municipal Corporation*** (*supra*), the Supreme Court considered an appeal arising out of the decision of the Division Bench of the Kolkata High Court directing grant of sanction for construction of three additional floors in a multi storey complex. The said complex was constructed upto four floors and the

sanction of a modified plan for constructing the additional floors was denied by the Howrah Municipal Corporation. In that case, the respondent company (Ganges Rope Co. Ltd.) had applied for sanction for construction of a complex upto seven floors on 06.07.1992. The said sanction was not accorded within a period of sixty days as required under the applicable Building Rules.

27.1. In the given circumstances the said company had approached the Calcutta High Court by filing a writ petition, which was disposed of on 26.04.1993 with a direction to the Howrah Municipal Corporation to consider the application for grant of sanction of a building plan submitted on 06.07.1992 in accordance with the Howrah Municipal Corporation Act and Building Rules. However, the Corporation neither granted nor refused to grant sanction within the stipulated period. This led the respondent to once again approach the Calcutta High Court on 23.12.1993. The Court disposed of the application by directing Howrah Municipal Corporation to grant sanction to the respondent's plan upto fourth floor level if all requirements were duly complied with. The Court further directed the Howrah Municipal Corporation to grant the sanction within a period of one month from the date of communication of the order. Additionally, the Court clarified that

the order would not prevent the writ petitioners from applying for further sanction, if the same is permissible, at a later date.

27.2. The writ petitioner completed the building complex up to the fourth floor level and in view of the liberty granted by the Calcutta High Court applied for sanction to construct additional three floors beyond the fourth floor by a letter dated 27.05.1994. The Howrah Municipal Corporation did not entertain the said application. Aggrieved by the same, the writ petitioner once again approached the Calcutta High Court. The Court observed that the right of the writ petitioner to apply for sanction of further floors was explicitly reserved under the order dated 23.12.1993 and therefore directed the Corporation to pass appropriate orders regarding sanction for construction of the additional three floors within a period of four weeks.

27.3. The writ petitioner sent a letter dated 28.06.1994 seeking sanction for construction of additional three floors. In response to the said letter, the Corporation called upon the writ petitioner to furnish fresh plans. Thereafter, the Corporation sent another letter dated 19.09.1994 calling upon the writ petitioner to submit requisite number of prints of the proposal, tax clearing certificate, previous

sanction plan, indemnity bond for deep foundation work, approval of the Fire Services Authority and documents showing permission for change of user. The writ petitioner complied with the said directions.

27.4. While the petitioner's application for sanction of additional floors was pending, the Government of West Bengal issued a notification dated 15.07.1994 amending the Building Rules, whereby the height of the high rise buildings was restricted to a prescribed level depending on the width of the street on which the building is proposed to be constructed.

27.5. In view of the amended Building Rules restricting the height of the buildings commensurate to the width of the road, the writ petitioner's proposal for constructing additional floors was cancelled. The learned Single Judge declined to interfere with the said decision. The writ petitioner appealed the said decision before the Division Bench of the Calcutta High Court, which reversed the judgment passed by the learned Single Judge.

27.6. The Division Bench reasoned that the writ petitioner's application seeking sanction for additional construction was governed by the amended rules and regulations as in force on the

date of submission of the applications and the amendment of the Building Rules could not take away the vested rights. At this stage, we may note that this is precisely the reasoning on which the decision in ***M/s. Aishwarya Heights Infra Private Limited (supra)*** rests.

27.7. In view of the above, one of the questions that fell for consideration of the Supreme court was whether the application filed by the writ petitioner in ***Ganges Rope Co. Ltd.*** had resulted in a vested right for the same to be construed in accordance with the law as was in force on the date of the application. In this regard, the Supreme Court held as under.

> "37. The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right" [see K.J. Aiyer's Judicial Dictionary (A Complete Law Lexicon), 13th Edn.]. The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used. What we can understand from the claim of a "vested right' set up by the respondent

> Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a "legitimate" or "settled expectation" to obtain the sanction. In our considered opinion, such "settled expectation", if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in f exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such "settled expectation" has been rendered impossible of fulfilment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules g and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon".

28. In ***M/s. Aishwarya Heights Infra Private Limited (supra),*** the learned Single Judge had set out an extract from the decision of the Supreme Court referring to the decision in the Howrah Municipal Corporation (supra). But the decision ***M/s. Aishwarya***

Heights Infra Private Limited (supra) is quite contrary to the principles as explained in the said decision.

29. In ***Howrah Municipal Corporati*****on (supra)**, the Supreme Court had also referred to the decision in the case of ***Usman Gani J. Khatri v. Cantonment Board : (1992) 3 SCC 455.*** The following observations of the Supreme Court in that case are equally instructive:

> "In any case, the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30-4-1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit."

30. In ***New Delhi Municipal Council and others v. M/s. Tanvi Trading and Credit Private Limited and others : Civil Appeal Nos.5292/2008 and 5293/2008*** decided on 28.08.2008, the Supreme Court reiterated the view as expressed in ***Usman Gani J. Khatri (supra).*** We consider it apposite to set out the following extract from the said decision.

> "11. It is well settled that the law for approval of the building plan would be the date on which the approval is granted and not the date on which the plans are submitted. This is so in view of paragraph 24 of the decision of this Court in **Usman Gani J. Khatri of Bombay** vs. **Cantonment Board and others** etc. etc. (1992) 3 SCC 455. It would not be out of place to mention that on February 7, 2007, the Master Plan 2021 has been approved in which the LBZ guidelines have been incorporated and since plan submitted by the respondents were not approved up to the date of coming into force of Master Plan of 2021, the LBZ guidelines will apply with full force to the plan submitted by the respondents and the plan which is contrary to the LBZ guidelines could not have been directed to be sanctioned".

31. The decision in the case of ***M/s. Aishwarya Heights Infra Private Limited (supra)*** is contrary to the law as settled by the Supreme Court in ***Howrah Municipal Corporation and others v. Ganges Rope Co., Ltd., and others; Usman Gani J. Khatri v. Cantonment Board;*** as well as the decision of the Supreme Court in ***NDMC and others v. Tanvi Trading and Credit Private Limited and others.*** The said decision is accordingly overruled.

32. Coming to the facts of the present case, the writ petitioner filed an application for seeking NOC for the Modified Plan from the Karnataka Fire Service Department on 22.02.2017. However, as on that date, Section 14B of the KTCP Act had been amended and the Rules had been notified. In terms of the Rules, the set back

relaxation is confined to 25%. Admittedly, the Modified Plan is not in conformity with the said norms. Accordingly, no directions could be issued for sanction of the Modified Plan. Thus, the impugned order directing the appellants to sanction the Modified Plan, permitting the petitioner to utilize the TDR certificate dated 18.04.2015, cannot be sustained.

33. Before concluding, we may also note that Mr. Chinnappa, learned Senior Counsel had during the course of his arguments referred to paragraph 10 of Chapter X of the Revised Master Plan, 2015 and submitted that in terms of paragraph 10, the BBMP was required to consider relaxing of set backs and coverage to a maximum extent of 50% and therefore, the writ petitioner was entitled to such relaxation. This was countered by the learned counsel for the BBMP. He submitted that the paragraph 10 of the Revised Master Plan is applicable only where the permissible floor area ratio cannot be achieved. He submitted that in the present case the said condition was not satisfied.

34. We are not persuaded to accept that the writ petitioner can draw any benefit from paragraph 10 of the Master Plan. It is clear from the plain language of paragraph 10 of the Revised Plan that

the same enables the concerned authority to consider relaxing set backs up to a maximum extent of 50%. It does not mandate that relaxation to 50% set backs is required to be granted. BBMP has framed Rules regarding the permissibility of the norms relating to set backs and cannot sanction a plan contrary to the Rules.

35. In view of the above, the present appeal is allowed and the impugned judgment is set aside.

36. The Contempt petition – CCC.No.1332/2024 – which alleges wilful disobedience of the order impugned in the appeal (WA.No.73/2025) is, accordingly, closed.

37. Pending application stands disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C M JOSHI)
JUDGE

SD