



To,

30 July 2019

The Chief Secretary

Government of Karnataka
Room No. 321, Vidhana Soudha
Bengaluru

Dear Sir,

Sub: Letter seeking sanction for prosecution of Mr. Lakshminarayana, former
Commissioner, Bruhat Bengaluru Mahanagara Palike, 2015

This letter seeks sanction for the prosecution of Mr. Lakshminarayana, retired Commissioner of the Bruhat Bengaluru Mahanagara Palike ('**BBMP**'), for offences committed under the Indian Penal Code, 1860, ('**IPC**').

The Bengaluru Revised Master Plan, 2015 ('**RMP-2015**') was notified in June 2007, pursuant to Section 13 of the Karnataka Town and Country Planning Act, 1961 ('**KTCP Act**'). A public interest litigation ('**PIL**') was filed before the Hon'ble High Court of Karnataka in 2008 by Citizens Action Forum (among others), seeking to address *inter alia*, the issue of "mixed land use" set out in the RMP-2015, whereby commercial developments were proposed to be allowed in residential areas. The Commissioner, Bangalore Development Authority ('**BDA**') had in February 2014, filed an affidavit before the Hon'ble High Court of Karnataka ('**Affidavit**') stating *inter alia* that:

- There shall be no fresh commercial activity allowed in Residential – Main and Residential – Mixed zones if abutting roads are forty (40) feet or less in width.
- Only specified ancillary usages as mentioned in BDA's resolution filed along with the Affidavit shall be permitted in Residential – Main and Residential – Mixed Zones, if the abutting roads are above forty (40) feet in width; and
- Conversion of ancillary usage to main usage shall be permitted only in "Ring 3" areas as defined in RMP-2015, and not in "Ring 1" and "Ring 2" areas as defined in the RMP-2015.

In addition, it was indicated in BDA's resolution filed along with the aforesaid Affidavit that consideration would be given to restricting commercial activity in portions of the mutation corridor that passes through predominantly residential areas. In light of this Affidavit, the Hon'ble High Court had disposed of the matter



stating that revised zoning regulations must be drafted and forwarded to the State Government for approval. A copy of this order of the Hon'ble High Court of Karnataka is attached hereto as **Annexure 'A'**. The Hon'ble High Court had also noted that an office order was issued by the Special Commissioner (Planning), of BBMP on November 8, 2012, withdrawing all sanction plans issued subsequent to the Court's interim order dated February 25, 2012.

Subsequently, amendments to the zoning regulations of the RMP-2015 have been notified on December 11, 2014 pursuant to the provisions of the KTCP Act. In these amended regulations, the specific averments made before the High Court have been disregarded. Details of the amendments to the RMP-2015 are attached hereto as **Annexure 'B'**. The deviations between the Affidavit filed before the Hon'ble High Court of Karnataka and the amendments made to the RMP-2015 are set forth hereto as **Annexure 'C'**.

We note that pursuant to Section 14 of the KTCP Act, every new development in the area covered by the RMP-2015, is required to conform to the provisions of the said plan. Pursuant to Sections 295, 299 and 300 of the Karnataka Municipal Corporations Act, 1976, read with Bye-Law 3 of the Bangalore Mahanagara Palike Building Bye-Laws, 2003, a building license from the Commissioner, BBMP is required by any person who intends to erect or re-erect a building, or make material alterations to such building in the relevant area. In addition, a trade license under Section 353 read with Schedule X of the Karnataka Municipal Corporations Act, 1976, is required for carrying on certain commercial activities within city limits. The Commissioner, while considering such application, is required to consider the land use for the relevant area specified in the RMP-2015.

Despite these amendments to the RMP-2015 and the Affidavit filed by the Commissioner, BDA before the hon'ble High Court of Karnataka, the BBMP has continued to permit establishment of commercial concerns in certain residential areas of Bengaluru, in violation of the amended RMP-2015 and the aforesaid Affidavit of the BDA. The addresses and description of certain such commercial establishments are set out below:

ADDRESS	NATURE OF ESTABLISHMENT
Plot 361, 6 th Main Road, 1 st Block, Koramanagala, Bengaluru – 560 034	Business: Serviced Apartments
Plot No. 329, 5 th Main, 1 st Block, Koramangala, Bengaluru – 560 034	Business: Red Baron International



Plot No. 154, 8th Main Road, Jakkasandra Block, Koramangala – 560 034	Business: Breakfast Club, Cilre Learning Centre
Plot No. 704, 6 th B Cross, Koramangala III Block, Koramangala, Bengaluru – 560 034	Under construction
Plot No. 736, 7 th Cross Road, Koramangala III Block, Bengaluru – 560 034.	Under construction

These commercial developments which are situated in areas demarcated as residential areas are illegal, since, they are contrary to the provisions of the RMP-2015 and the averments made in the Affidavit filed before the Hon'ble High Court of Karnataka. Repeated attempts have been made by the Residents' Welfare Associations of Koramangala, in writing, to bring these violations to the notice of the BBMP and ask for immediate action. The BBMP has not initiated meaningful action despite considerable time periods having elapsed.

As the chief executive of the BBMP, the BBMP Commissioner is responsible for the actions and inactions of all subordinate officers under his control. However, as per the copies of official records received pursuant to an application filed under the provisions of the Right to Information Act, 2005, it was found that Mr. Lakshminarayana as Commissioner of BBMP had personally intervened to obtain a trade license for the "Breakfast Club" establishment situated at Plot 154, 8th Main Road, Jakkasandra Block, Koramangala.

In fact, Mr. Lakshminarayana on 1st December 2014, made a note on the application submitted for the purpose of obtaining a trade license stating made stating "Please help in getting trade license". The trade license was sanctioned by the Health Officer (South) of the BBMP on December 5, 2014, with the note that the license was issued "as per direction from the BBMP Commissioner". These documents also reveal that the local Residents' Welfare Association (Koramangala 3rd Block Residents Welfare Association) had made representations against the grant of the aforesaid license on the basis that, inter alia, the establishment is located in a residential zone, and causes nuisance to the local residents. Copies of these documents are attached hereto as **Annexure 'D'**.

It is clear that the actions of the BBMP Commissioner in permitting, indeed encouraging, such illegal commercial establishments to be set up and continue functioning are against the interest of the residents of Bangalore, since this allows



commercial development in residential areas in direct contravention of the RMP 2015 and the Affidavit submitted by the BDA before the Hon'ble Karnataka High Court. In fact, the BBMP Commissioner has personally intervened and directed his officials to issue trade licenses to commercial establishments. It is clear that these actions have been undertaken with a view to benefit commercial and construction interests, and without any regard to the welfare of the citizens of Bangalore. This in turn raises questions as to Mr. Lakshminarayana's motivations behind showing favours to such commercial and construction interests.

The above-mentioned actions of, and failure to take action by Mr. Lakshminarayana, go squarely against the law of the land and the interests of the residents of Bangalore. These actions and selective inaction on the part of the BBMP, and the BBMP Commissioner in particular, have negated the efforts made by the citizens of Bangalore over a number of years to pursue better urban development and city planning.

In this background, it is imperative that Mr. Lakshminarayana be investigated for the commission of offences under the following sections of the IPC:

- a. Section 166 of the IPC: Public servant knowingly disobeying any direction of law as to the way in which he is to conduct himself as such public servant, intending to cause or knowing it to be likely that he will, by such disobedience, cause injury to any person.
- b. Section 167 of the IPC: Public servant being charged with preparation or translation of any document, framing or translating that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person.

It may be noted that although some of the aforementioned offences are cognizable, little or no action seems to have been taken against the concerned officials, including Mr. Lakshminarayana.

Mr. Lakshminarayana is a 'public servant' within the meaning of Section 21 of the IPC. The facts and circumstances of the present case indicate that it is of utmost public importance that this matter is investigated and examined thoroughly. The present letter therefore requests sanctions for the prosecution of Mr. Lakshminarayana, since the alleged offences committed by Mr. Lakshminarayana are attributable to the discharge of his public duty as a public servant. We emphasize that such sanction is necessary for ensuring transparency



in public administration, and further to protect the interests of the citizens of Bengaluru.

In these circumstances, we approached the Additional Chief Secretary, Urban Development Department, seeking sanction for prosecution of Mr. Lakshminarayana. The Additional Chief Secretary, Urban Development Department, after hearing parties passed an order dated June 29, 2016, which was without jurisdiction, was illegal and erroneous.

Hence, we were constrained to file a writ petition bearing W.P. No. 57920/2016 before the Hon'ble High Court of Karnataka, challenging the order passed by the Additional Chief Secretary, Urban Development Department. The Hon'ble High Court of Karnataka, after hearing the parties concerned, vide order dated May 29, 2019, disposed of the said petition granting liberty to us to approach the appropriate authority to grant sanction, i.e., the Department of Personnel and Administrative Reforms. Hence, we have approached your good offices, seeking sanction for prosecution of Mr. Lakshminarayana. It is due to the above circumstances that the present application could not be made earlier. A copy of the order dated May 29, 2019, passed by the Hon'ble High Court of Karnataka is attached hereto as **Annexure 'E'**.

We state that this is a fit case for grant of sanction for prosecution under Section 197 of the Code of Criminal Procedure, 1973, for offences under Section 166 and 167 of the IPC and request that sanction to prosecute be accorded. Further, we are ready and willing to assist the investigation in any manner and to provide any information or clarifications that may be necessary.

Should you require any further information or clarifications, please contact the undersigned.

Regards,

(Signature)
CSURESH H.N.R.
30/July/2019
Director - NSF



(Signature)
(NITIN SESHADRI)
760 8TH MAIN ROAD,
3RD BLOCK, KORAMANGALA
BANGALORE - 560034.
TEL: 98450 72902

(Signature)
(S.T. VIDYADHAR)
VVNSWA,
R.T. Nagar
Bangalore

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Citizens Action Forum vs State Of Karnataka on 19 February, 2014

Karnataka High Court

Citizens Action Forum vs State Of Karnataka on 19 February, 2014

Author: Chief Justice B.V.Nagarathna

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE MR.D.H.WAGHELA, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

WRIT PETITION NO. 3676/2008 &
WRIT PETITION NOS.43472-43474/2011 (GM-RES-PIL)

BETWEEN :

1. CITIZENS' ACTION FORUM
NO.31/1, I FLOOR
M K PUTTALINGAIAH ROAD
PADMANABHANAGARA
BANGALORE-560070
REPRESENTED BY ITS SECRETARY
LT. COL. MATHEW THOMAS (RETD)
2. LT. COL. MATHEW THOMAS (RETD)
S/O LATE SHRI T P JOHN
AGE: 70 YEARS, SECRETARY
CITIZENS' ACTION FORUM
NO.30/1, 1ST FLOOR
M K PUTTALINGAIAH ROAD
PADMANABHANAGARA
BANGALORE-560070
3. SADASHIVANAGAR RESIDENTS' WELFARE
ASSOCIATION, NO.457, 11TH MAIN ROAD
R M V EXTENSION, SADASHIVANAGAR
BANGALORE-560080
REP BY ITS HONORARY SECRETARY
MR B K JAGADISHCHANDRA, IFS (RETD)
4. MR B K JAGADISCHANDRA
SECRETARY, SRWA, AGE: 69 YEARS
S/O LATE SHRI B N KAPPANNA
438, 11TH MAIN ROAD, RMV EXTENSION

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SADASHIVANAGAR

BANGALORE-560080

5. MAJ. GEN. M K PAUL (RETD) AVSM
S/O LATE MR. NRIPENDRA KISHORE PAUL
AGED 74 YEARS, PAST PRESIDENT
DEFENCE COLONY RESIDENTS' ASSOCIATION
'DEVALAYA", 3RD MAIN ROAD
DEFENCE COLONY, BANGALORE-560038
6. MR XERXES DESAI S/O MR SAPUE DESAI
AGED 71 YEARS, RETD. CHIEF EXECUTIVE
TITAN GROUP OF COMPANIES &
PRESIDENT, DEFENCE COLONY
RESIDENTS' ASSOCIATION, 41, 4TH MAIN
3RD CROSS, DEFENCE COLONY
INDIRANAGAR, BANGALORE-560038
7. AIR VICE-MARSHAL (RETD)
S KRISHNASWAMY AVSM
S/O LATE MR K R SRINIVASAN
AGED 77 YEARS
RETIRED SENIOR IAF OFFICER
A1, "VIJAYASRINIVAS"
218, 3RD MAIN, DEFENCE COLONY
INDIRANAGAR, BANGALORE-560038
8. MR J R KAPUR S/O MR N D KAPUR
AGED 80 YEARS
FORMER GENERAL MANAGER, HAL
2973, 5TH CROSS, 13TH MAIN
HAL 2ND STAGE, BANGALORE-560008
9. GP. CAPT. K BHASKARAN
S/O LATE MR. KUNHAMBU, AGED 76 YEARS
RETIRED SENIOR AIR FORCE OFFICER
FORMER PRESIDENT, HAL 2ND STAGE
CIVIC AMENITIES & CULTURAL ASSOCIATION
3019, 12-B MAIN, HAL 2ND STAGE
BANGALORE-560008
10. MR. S SHYAM SUNDAR, IFS (RETD)
S/O MR. S VENKATA RAO, AGED 76 YEARS
FORMER PRINCIPAL CHIEF CONSERVATOR OF
FORESTS, GOVT. OF KARNATAKA &
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FORMER PRESIDENT, HAL 2ND STAGE
CIVIC AMENITIES & CULTURAL ASSOCIATION
2989/D, 12TH MAIN, HAL 2ND STAGE
BANGALORE-560008
11. MR P P R NAIR
S/O LATE MR K K R PANICKER

AGED 72 YEARS
FORMER SPECIAL SECRETARY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
3367/B, 13TH MAIN ROAD
HAL 2ND STAGE, BANGALORE-560008

12. MR S N S MURTHY, IPS (RETD)
S/O LATE MR S NARAYANA RAO
AGED 72 YEARS
FORMER DG & IGP, KARNATAKA STATE
AND FORMER PRESIDENT, HAL 2ND STAGE
CIVIC AMENITIES AND CULTURAL ASSOCIATION
NO. 3367/C, 13TH MAIN ROAD, HAL 2ND STAGE
BANGALORE-560008
13. DR B R PAI
S/O LATE MR RAMA BHASKAR PAI
AGED 63 YEARS, FORMER DIRECTOR
NATIONAL AEROSPACE LABORATORIES
1078, 12TH MAIN ROAD, HAL 2ND STAGE
BANGALORE-560008
14. DR R BALASUBRAMANIAM
S/O LATE DR. K RAMAKRISHNA IYER
AGED 64 YEARS
DIRECTOR AND SCIENTIFIC ADVISER
NATIONAL AEROSPACE LABORATORIES (RETD)
808, MAYURAPRIYA, 7TH MAIN, I CROSS
HAL 2ND STAGE, BANGALORE-560008
15. MR. KUMAR RANGANATHAN
S/O CDR T V RANGANATHAN
AGED 40 YEARS
SENIOR MANAGER, INTEL CORPN.,
15, DEFENCE COLONY, INDIRANAGAR
BANGALORE-560038
16. MR S JANARDHAN
S/O LATE MR SUBRAMANIAN SESHADRI
AGED 75 YEARS
FORMERLY SCIENTIST AT
NATIONAL AEROSPACE LABORATORIES
BANGALORE (1960 - 1991) AND
CHIEF MODERATOR FOR NATIONAL
COMPUTING CENTRE, UK (1991-1999)
1196, 13TH MAIN, HAL 2ND STAGE
BANGALORE-560008
17. MR. RAVINDRANATH GURU
S/O LATE MR. MAHESHCHANDER GURU
AGED 64 YEARS, 593, DUNDUBHI, 24TH CROSS

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BSK II STAGE, BANGALORE -560070

18. PANDURANGANAGAR RESIDENTS '
WELFARE ASSOCIATION (REGD.)
NEAR WATER TANK, 5TH MAIN ROAD
PANDURANGANAGAR, IIM POST
BANNERGHATTA ROAD, BANGALORE-560076
REP BY ITS SECRETARY SRI K.P. BHAT
19. SRI K.P. DINESH KUMAR
PRESIDENT, PANDURANGANAGAR RESIDENTS '
WELFARE ASSOCIATION (REGD.),
NEAR WATER TANK, 5TH MAIN ROAD
PANDURANGANAGAR, IIM POST
BANNERGHATTA ROAD, BANGALORE-560076
20. SRI K.P. BHAT, SECRETARY
PANDURANGANAGAR RESIDENTS '
WELFARE ASSOCIATION (REGD)
NEAR WATER TANK, 5TH MAIN ROAD
PANDURANGANAGAR, IIM POST
BANNERGHATTA ROAD
BANGALORE-560076
(PETITIONER NOS.18 TO 20 ARE
IMPLEADED V/O DATED 22.02.2010)

... PETITIONERS

(BY SRI ADITYA SONDHI, ADV., FOR P-1 TO P17;
SRI V.B. SHIVAKUMAR, ADV., FOR P-18 TO 20)

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AND :

1. STATE OF KARNATAKA
DEPARTMENT OF URBAN DEVELOPMENT
M S BUILDING, BANGALORE-560001
REP BY ITS SECRETARY
2. BANGALORE DEVELOPMENT AUTHORITY
T CHOWDAIAH ROAD, KUMARA PARK WEST
BANGALORE-560020
REPRESENTED BY ITS COMMISSIONER
3. BANGALORE METROPOLITAN REGIONAL
DEVELOPMENT AUTHORITY, NO.1
ALI ASKAR ROAD, BANGALORE-560052
REPRESENTED BY ITS COMMISSIONER
4. BRUHAT BANGALORE MAHANAGARA PALIKE
N R SQUARE, BANGALORE-560002
REPRESENTED BY ITS COMMISSIONER
(R-4 IMPLEADED V/O DATED 16.8.12)

... RESPONDENTS

(BY SMT. NILOUFER AKBAR, AGA FOR R-1;
SRI D N NANJUNDA REDDY, SENIOR COUNSEL FOR
SRI RAVI G SABHAHIT, ADV., FOR R-2;
SRI S.G. PANDIT, ADV., FOR R-3;
SRI SUBRAMANYA .R, ADV., FOR M/S.ASHOK
HARANAHALLI ASSOCIATES, ADVS., FOR R-4;
SRI A RAVISHANKAR, ADV., FOR IMPEADING
APPLICANT ON I.A.NO.II/13 & I.A.NO.IV/13;
SRIYUTHS SIDDAPPA, SUNIL & NITIN, ADVS., FOR
IMPEADING APPLICANT ON I.A.V/13;
SRI K.SHASHIKIRAN SHETTY, ADV., FOR M/S.SHETTY &
HEGDE ASSOCIATES, ADVS., FOR APPLICANTS IN
I.A.NO.X/13 & I.A.NO.XIII/13)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE REVISED MASTER PLAN 2015 FORMULATED BY
THE SECOND RESPONDENT INCLUDING THE ZONING
REGULATIONS FRAMED THEREUNDER AND ALL ILLEGAL
PERMISSIONS GRANTED SUBSEQUENT TO THE SAID PLAN
VIDE ANNEXURE-S AND ETC.,

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THESE WRIT PETITIONS COMING ON FOR FINAL
DISPOSAL THIS DAY, NAGARATHNA .J MADE THE
FOLLOWING:

ORDER

1. These writ petitions assail the Revised Master Plan 2015 formulated by the 2nd respondent -Bangalore Development Authority (BDA) and approved by the 1st respondent -State (a copy of the Master Plan is produced at Annexure-S). The State Government's order dated 25.06.2007 (Annexure-G), approving the Master Plan 2015 is also assailed. Consequential directions are also sought by the petitioners. Though the writ petitions were filed in the year 2008 and the matters were listed on several dates, on 25.01.2012, an interim order was passed by this Court.

The same reads as under:-

"We have heard the learned counsel for the parties. On 17.11.2011, we had permitted the objections to be filed on behalf of respondent no.1, within two weeks, subject to payment of costs. Objections are not on the record. Learned counsel for the petitioners has drawn our attention to the report of the Committee chaired by Dr.A.Ravindra. The first paragraph of the Highlights reads as follows;

"1. Change of land use has been curtailed for small properties on small roads. The notion of 7 ancillary use of a property has also been done away with. These two provisions have caused much pain to communities, by mixing up commercial development in what should be residential areas only."

It will be relevant to mention here that Dr.A.Ravindra Committee was constituted by the respondent -Government itself vide order dated 04.12.2009. Our attention has been drawn to Revised Master Plan 2015, Bangalore, Volume-III Chapter-II of the Revised Zoning of land use and Regulations deals with Regulations for classification of Different Land uses. As a first step, as partial acceptance of the report, we direct that in the following areas of the city i.e. Malleshwaram, Richmond Town, Vasanthanagar, Jayanagar, Vijayanagar, Visveshwarapura, Rajajinagar, R.T.Nagar etc., classified in the Zoning Regulations, which corresponds to areas wherein purely residential user is permitted, no further permission shall be granted for re-development and re-construction except for residential user.

So far as permissions granted in the interregnum, between the filing of the petitions and today is concerned, we are severely handicapped, because of the non-filing of the counter affidavit/objections. Further orders shall be passed on the next date of hearing. This order should not be construed in any 8 manner as conveying the approval of the Court for other users.

Learned counsel for the petitioners states that he has received an advance copy of the counter affidavit/objections, in which, significantly there is complete non-traverse, so far as Dr.A.Ravindra Committee report is concerned.

Sri.Basavaraj Kareddy, Principal Government Pleader prays for condonation of delay in filing the objections, which according to him were filed in the Registry, yesterday.

Ordered accordingly. Counsel for the petitioners states that there is no factual response a rejoinder would be called for.

List for further consideration on 03.02.2012."

It is also brought to our notice that when the interim order dated 25.01.2012 was passed by this Court, Bruhat Bangalore Mahanagara Palike (BBMP) was not arrayed as a respondent in these writ petitions. Thereafter, BBMP was brought on record. Thereafter, the matters were listed on several dates and submissions of learned senior counsel as well as learned counsel on both sides have been heard with regard to the challenge made to the Master Plan 2015 particularly, with regard to the residential areas and 9 residential mixed areas. The order dated 13.09.2012 reads as under:-

"Learned Senior Counsel for the Bruhath Bangalore Mahanagara Palike prays for an adjournment to file objections to I.A.No.5/2012 within two weeks from today.

Allowed.

The objections will also disclose whether plans for commercial user has been allowed in any of the eight areas specifically mentioned in the order dated 25.01.2012.

Renotify on 10.10.2012."

The order dated 08.11.2012 reads as under:-

"If plans have been sanctioned after passing of the order dated 25.1.2012, prima facie action may call for initiation of contempt of court proceedings. Even if permissions have been granted, we see no reason or justification for the B.B.M.P. not to take steps for recalling the permissions granted by them. The learned Standing Counsel for the B.B.M.P. states that he will advise the B.B.M.P. to take immediate action forthwith.

Renotify on 22.11.2012."

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The order dated 22.11.2012 reads as under:-

"Learned counsel appearing for BBMP states that Circular dated 08.11.2012 has been issued whereby plans which have already been sanctioned, but are contrary to order dated 25.01.2012, plans have been withdrawn. He states that an affidavit to this effect shall be filed within two weeks accompanied by details of plans which stand cancelled. It is further stated that even in areas which do not fall within those areas mentioned by us in our orders, wherever commercial user is directed in residential areas, plans have been withdrawn throughout the BBMP area.

List on 13.12.2012."

On 11.12.2012, an affidavit was filed by the Additional Director, Town Planning, BBMP. The relevant portion of the affidavit reads as follows:-

"3. This Hon'ble Court on 25/1/2012 has passed an interim order observing that there shall not be any commercial development in the area, which is predominantly residential such as Malleswaram, Richmond Town, Vasanthnagar, Jayanagar, Vijayanagar, Vishweshwarapura, Rajajinagar & RT Nagar.

The BBMP was subsequently arrayed as 11 party to the proceedings. In the interregnum, the BBMP had issued sanctioned plan in many of the residential areas as it was not a party to the proceedings. On coming to know about the interim order passed on 25/1/2012, the BBMP issued a circular on 11/6/2012 prohibiting the issue of sanction plan in respect of the areas mentioned in the interim order. The Town Planning Section of BBMP in respect of all the eight zones have stopped issuing the sanctioned plan in compliance to the direction issued by this Hon'ble Court.

4. The petitioner has alleged that the respondent -BBMP could not have issued the sanctioned plan subsequent to the interim order dated 25/1/2012. The respondent -BBMP has brought to the notice of this Hon'ble Court, the circumstances under which the plan was sanctioned and also with regard to the fact that the BBMP was not made party to the proceedings. This Hon'ble Court having heard the matter was of the view that the sanction plans run contrary to the interim order dated

25/1/2012. Accordingly, a submission was made on behalf of the BBMP that the plans issued subsequent to the interim order would be withdrawn.

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5. The Special Commissioner (Planning), BBMP on 8/11/2012 issued an office order instructing all the concerned to withdraw the sanctioned plans issued subsequent to the interim order dated 25/1/2012. A copy of the office order dated 8/11/2012 is produced herewith and marked as Annexure R-2. On 22/11/2012 when the matter came up before this Hon'ble Court, the respondent

-BBMP was directed to place on record, all the details regarding withdrawal of sanctioned plans, not only in respect of eight areas mentioned in the interim order dated 25/1/2012, but also in relation to the entire BBMP area. Accordingly, this affidavit is being filed.

6. The BBMP in all had issued 183 sanctioned plans pertaining to the 8 zones. The plans issued have now been withdrawn by issuing necessary communication and in respect of several plans, notices have been issued by the concerned authority for revocation. A copy of one such communication is produced herewith and marked as Annexure R-3. The details of the abstract showing the revocation of plan and issue of notice for revocation of plan sanctioned in all the eight zones pursuant to 13 the interim order dated 25/1/2012 along with the details of plans are produced herewith and marked as Annexure R-4. The details aforementioned clearly demonstrate that the BBMP has taken remedial action pursuant to the interim order dated 25/1/2012. The action initiated by the BBMP is in compliance with the interim order passed and there is no willful or deliberate disobedience of the interim order passed by this Hon'ble Court. It is therefore just and necessary to consider the aforesaid facts at the time of hearing the above writ petition, in the interest of justice."

2. Subsequently on 13.12.2012, another interim order was passed which was in fact an order clarifying the earlier interim order dated 25.01.2012. The same reads thus:

"We have heard the learned counsel for the parties. Although we find that there is no ambiguity in the order dated 25.1.2012, we think it expedient to make a further clarification. We direct that the B.B.M.P. shall not permit or grant any change of land user in the following areas i.e., Malleshwaram, Richmond Town, Vasanthanagar, Jayanagar, Vijayanagar, Vishweshwarapura, Rajajinagar and 14 R.T.Nagar. In addition thereto, the residential areas mentioned and shown in CDP 1995, regardless of whether they are subsequently depicted as residential main or residential mixed are also included. This order shall also apply to other residential areas regardless of the nomenclature used in the Revised Master Plan of 2015. Any building plans that have been sanctioned or trade licenses or change of land user that has been allowed subsequent to our order dated 25.1.2012 shall be recalled. Renotify on 6.2.2013."

3. On the last occasion, learned senior counsel appearing for the BDA stated that the BDA has considered the matter in detail and it has proposed certain amendments to the Master Plan particularly Zoning Regulations pertaining to residential and residential mixed areas. Today, an

affidavit has been filed by the Commissioner, BDA detailing the proposals to amend the Zoning Regulations. Paragraphs 2 and 3 of the said affidavit read as under:-

"2. I state that the BDA vide its resolution No.37/2014 dated 27.01.2014 has proposed to amend Zoning regulations providing for the following:

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i) That no commercial activity of whatsoever nature shall be allowed in

residential main and residential mixed zones in the three rings, namely Ring No.1, Ring No.2 and Ring No.3, if road width is less than 40 feet.

ii) That only ancillary usages mentioned in the resolution shall be permitted in residential main and residential mixed zones in Ring No.1 and Ring No.2 up to 20% of the built up area or 50 Sq.Mtrs. whichever is lower provided the width of the road is above 40 feet.

iii) In Ring No.3, the ancillary usages may be permitted as the main use in residential main and in residential mixed zones if the plot size is more than 1000 Mtrs. having frontage of 10 mtrs. or more and if the width of the road is more than 60 feet.

A copy of the resolution No.37/2014 dated 27-01-2014 along with its English translation is annexed to this affidavit.

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3. I submit that the amended regulations will be forwarded to the Government and once the Government carries out the proposed amendment, the BDA assures this Hon'ble Court that the resolution shall be implemented strictly in its letter and spirit."

4. Learned senior counsel appearing for the BDA submits that the resolution along with the proposals to amend the Zoning Regulations would be forwarded to the State Government which could consider the same and thereafter notify the Regulations which would be in effect and amendment to the Master Plan 2015.

5. Learned Additional Government Advocate appearing for the State submits that if the said proposals are sent to the State Government, the same would be considered and notified within a period of three months from date of submission of the proposals by the BDA to it having regard to Section 13E of the Karnataka Town and Country Planning Act, 1961.

6. During the course of submissions, learned counsel have also brought to our notice that the interim order dated 25.01.2012, which has been clarified by the interim order 17 dated 13.12.2012, has been operating till date and it is submitted that till the State Government notifies the proposed amendment to the Zoning Regulations, the said interim orders may be continued. Submission of

learned counsel on either side is placed on record.

7. Learned counsel appearing for the petitioners states that there are other grievances with regard to the Master Plan 2015 such as with respect to Mutation Corridors and also learned counsel appearing in the other writ petitions state that there are various other contentions which have been raised by the petitioners therein.

8. In the circumstances, we take the affidavit filed by the Commissioner, BDA on record. As stated in the affidavit, the BDA shall forward the amendment to the Zoning Regulations to the State Government for its approval. The State Government shall consider the same and notify the proposed amendment within a period of three months from the date BDA forwards the proposal to it. Till the proposed amendments are notified, the interim order dated 25.01.2012 as well as 13.12.2012 shall continue. BBMP shall also abide by the orders of this Court as well as the contents of its affidavit extracted supra. Having regard to 18 the contents of the affidavit filed on behalf of the BBMP and pending notification of the amendment to the Zoning Regulations, the interim orders dated 25.01.2012 and 13.012.2012 are continued. All other contentions which are raised in these writ petitions on both sides are left open to be agitated in any other appropriate matter.

9. We have also noticed that several impleading applications i.e., I.A.Nos.II/2013, IV/2013, V/2013, X/2013 and XIII/2013 have been filed by private parties ventilating their grievances with regard to the issues which have been raised in these writ petitions and particularly, with regard to the interim orders dated 25.01.2012 as well as 13.12.2012. We do not think that those applications which are in fact private interest litigations could be considered along with these public interest litigations.

Therefore, we dispose of all the applications seeking impleadment by permitting the impleading applicants to file their separate and independent petitions to be considered by the Bench having roster.

10. With the aforesaid directions and observations, these writ petitions stand disposed.

19

11. In view of disposal of the writ petitions, all other pending interlocutory applications also stand disposed.

Sd/-

CHIEF JUSTICE Sd/-

JUDGE bkv



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಬಿಲೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ- IV-A	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ದಿವಸಂಖ್ಯೆ ೧೧, ೨೦೧೪ (ಮಾರ್ಗಶಿರ ೨೦, ಶಕ ವರ್ಷ ೧೯೩೬)	ನಂ. ೭೮೩
Part- IV-A	Bangalore, Thursday, December 11, 2014 (Margashira 20, Shaka Varsha 1936)	No. 783

URBAN DEVELOPMENT SECRETARIAT

NOTIFICATION

No: UDD 105 MNJ 2008, Bangalore, Dated:11-12-2014.

Whereas the draft of the Zoning Regulations of Bangalore of the Revised Master Plan -2015 (Amendment) Regulations 2014 was published as required by section 13-E of the Karnataka Town and Country Planning Act 1961, (Karnataka Act 11 of 1963) vide notification No: UDD 105 MNJ 2008, dated: 14.10.2014 in part IV-A of the Karnataka Extraordinary Gazette dated: 14.10.2014, inviting objections and suggestions from all persons likely to be affected thereby within thirty days from the date of its publication in the Official Gazette.

And whereas the said Gazette was made available to the public on 14.10.2014.

And Whereas the objections and suggestions have been received and considered by the State Government.

Now, therefore, in exercise of powers conferred by section 13-E of the Karnataka Town and Country Planning Act, 1961 [Karnataka Act 11 of 1963], the Government of Karnataka hereby makes the following regulations, namely:-

REGULATIONS

- Title and Commencement:-** (1) These regulations may be called the 'Zoning Regulations of Bangalore of the Revised Master Plan-2015 (Amendment) Regulations 2014.
(2) They shall come into force from the date of their publication in the Official Gazette.
- Amendment of Technical Terms and Definitions:-** In the Zoning Regulation of Bangalore of the Revised Master Plan -2015 (herein after referred to as said regulations) under the heading "Technical Terms and Definitions", in item 25, for the figures and words "24 meters or more" the figures, letter and words "15.0 meters and more or G+4" shall be substituted.
- Amendment of Chapter-2 :-** In Chapter-2 of the said regulations, at the end of the table-5, the following note shall be inserted, namely:-
"Note: when filling stations and service stations are permitted, it shall be subject to fulfillment of conditions specified in any other law."
- Amendment of Chapter 3:-** In chapter 3, of the said regulations,-
(i) In regulation 3.1, in the table -9, for serial number 1, 2 and 3 and the entries relating thereto, the following shall be substituted, namely:-

1	Above 11.5m up to 15m or G+3	5.00
2	15m and above up to 18.0 m	6.00
3	18.0m and above up to 21.0 m	7.00

- (ii) In regulation 3.8 after clause (iv), the following shall be inserted, namely:-
"(v) the means of access to High Rise Buildings shall be from a thoroughfare of width 12 mts. and above, and this road shall have the approval of the authority, (BDA) and / or maintained by the Local Authority.

- (vi) the Cul-de-Sac roads less than 12 meters wide with a circle of turning radius less than 9 meters shall not be considered as thoroughfare for purposes of issuance of Permissions for High Rise Buildings.
- (vii) the High Rise Buildings shall have provision for Independent entry and exit to the vehicles, in addition to the ingress and egress, exclusively provided to the inhabitants."
- (iii) in regulation 3.12, in clause (ii), for the figures, letter and words "24.0m and above" the figures, letter, words and brackets "15m and more or G+4 (including stilt floor)" shall be substituted.

5. **Amendment of Chapter 4:-** In chapter 4 of the said regulations,

- (i) in regulation 4.1.2 for clause (i) except table 10, the following shall be substituted, namely:-

" (i) **Permissible Land Uses:**

a) **in Ring-I and II:-**

- Main land use category: R and T1
- Ancillary land use category: C2, I-2 and U3
- Ancillary use in allowable up to 20% of the total built up area or 50 sq.m whichever is lower, only in plots abutting to roads having width 12m or more
- In Ring -II, if the plot size is more than 1000 sq.m having a frontage of 10m or more and the abutting road is more than 18 m width, then ancillary uses can be used as main use.

b) **in Ring -III**

- Main land use category R and T1
- Ancillary land use category C2, I-2 and U3
- Ancillary land use is allowable up to 20% of total built up Area or 50 sq.m whichever is lower, only in plots abutting roads having width 12m or more.
- If the plot size is more than 1000 sq.m having a frontage of 10 m or more and abutting road is more than 18 m width, then ancillary uses can be used as main use.

Note: Space Standards as at table No: 7 are applicable."

- (ii) in regulation 4.2.2 for clause (i), except Table -12, the following shall be substituted, namely:-

" (i) **Permissible Land uses:**

a) **in Ring-I and II.**

- Main Land use category: R and T1
- Ancillary land use category: C2, I-2 and U3
- Ancillary land use is allowable up to 20% of the total built up Area or 50 sq.m whichever is lower, only in plots abutting roads having width 12m or more.
- In Ring-II if the plot size is more than 1000 sq.m having a frontage of 10m or more and the abutting road is more than 18 m width, then ancillary uses can be used as main use.

b) **in Ring -III**

- Main Land use category: R and T1
- Ancillary land use category: C3, I-2, T2 and U4
- Ancillary land use is allowable up to 30% of the total built up area only in plots abutting roads having a width 12m or more.
- If the plot size is more than 1000 sq.m having a frontage of 10 m or more and the abutting road is more than 18m width, then ancillary uses can be used as main use.

Note: Space Standards as at Table No: 7 are applicable."

By order and in the name of the
Governor of Karnataka

Ramachandra
Deputy Secretary to Government
Urban Development Department

Comparison of RMP 2015, UDD 105 MNJ 2008 dt 11/12/2014 and affidavits submitted to Court

	As a per RMP2015 before amendment	Notification UDD 105 MNJ 2008	Affidavit	Comments and analysis
Residential zone 4.1.2 a)	Main land use category and T1	In Ring 1 and Ring2 Main land use category: R and T1	Main land use category: R and specified items in T 1.	Items deleted in affidavit from T 1 have been added back namely i) <u>Multi level car parking</u> ii) <u>Filling stations, service stations.</u> The above 2 items were specifically left out in affidavit since they were deemed to attract commercial traffic into residential areas and that these were best located in nearest commercial zone. On multi-level parking affidavit mentions the following as allowable : <u>Multi level parking as part of residential apartments to cater to needs of residents only.</u> <u>Note: The amendments have left the original provisions for ring 1 and ring 2 unchanged.</u>
4.1.2 a)	Ancillary land use category: C2,I2,U 3	Ancillary land use category :C2,I2,U3	Only a specified list of activities allowed restricted to named activities in C1 category	C2, I2 and U3 have been left unchanged. I2 includes I,BT,BPO activities <u>Note: Amendments have left original provisions for ring 1 and ring 2 unchanged</u>
4.1.2 a)	Ancillary allowable upto 20%of total built up area or 50 Sq mtrs	Ancillary allowable up to 20%of total built up area or 50 Sq mtrs	Clearly states that ancillary use is for roads 40ft and more	12 metres is only 39.4ft, below 40 ft mentioned in affidavit. Most

	whichever is higher.	whichever is lower, only in plots abutting to roads having 12mtrs or more.		residential roads are in fact 40 feet. This aspect was specifically noted by the bench. Note: The usage of term “12 mtrs and above” renders practically all residential roads open to ancillary use.
4.1.2 a)	If plot size is more than 1000 sq mtrs, having a frontage of 10mtrs or more and abutting road is more than 18mtrs width, then ancillary use can be used as main use	In ring 2, if plot size is more than 1000 sq mtrs, having a frontage of 10mtrs or more and abutting road is more than 18mtrs width, then ancillary use can be used as main use	In ring 3, if plot size is more than 1000 sq mtrs, having a frontage of 10mtrs or more and abutting road is more than 18mtrs width, then ancillary use can be used as main use	The main use provision has been brought into ring 2 while the affidavit restricts it to only ring 3
4.1.2 b)		In ring 3. --Main land use category: R and T1 --Ancillary land use category: C2, I2, U3 ---Ancillary allowable up to 20%of total built up area or 50 Sq mtrs whichever is lower, only in plots abutting to roads having 12mtrs or more. --, if plot size is more than 1000 sq mtrs, having a frontage of 10mtrs or more and abutting road is more than 18mtrs width, then ancillary use can be used as main use	In ring 3. --Main land use category: R and T1 --Ancillary land use category: C2, I2, U3 ---Ancillary allowable up to 20%of total built up area or 50 Sq mtrs whichever is lower, only in plots abutting to roads having 12mtrs or more. --, if plot size is more than 1000 sq mtrs, having a frontage of 10mtrs or more and abutting road is more than 18mtrs width, then ancillary use can be used as main use	No difference between affidavit and amendments. Note: Essentially the amendments treat ring 1, 2 and 3 similarly while in affidavit ring 1 and ring 2 was treated differently to ensure residential nature. Ring 3 provisions in affidavit have been brought onto ring 1 and ring 2.
Mixed residential zone				The amendments are exactly the same as in residential zone ie 4.1.2. All comments relating to

4.2.2				<p>amendments being in variance to affidavits in para 4.1.2 (residential zone) apply Mixed residential zone (4.2.2) also, since the affidavit treated residential and mixed residential as the same.</p>
4.5 Mutation corridors		Does not mention. No change from RMP2015	<p>“The mutation corridor land use category is under review and on an overall basis within ring 1 and 2, with intention of protecting residential areas from excess commercial activities. Since mutation corridor land use category is part and parcel of land use proposals of the approved RMP2015, for any correction of partial deletion of this land use the procedure under 14A of KTPC act 1961 has to be followed. However, the hon’ble high court has issued an interim order of stay of any further proceeding relating to land use under section 14A of the KTPC act 1961, in relation to properties within the metropolitan area of Bangalore city on 9/01/2013 in WP 21436/2005’</p>	<p>WP 21426/2005 has since been settled and provisions of 14 A can be applied and used within the meaning of the KTPC act</p>

(D)

Koramangala

RESIDENTS WELFARE ASSOCIATION

127

Smt Bhagyalakshmi
BBMP Health Department
BTM Layout
Bangalore.

4th November 2014

SUBJ: Request to deny trade license to "Breakfast Club", opening at No. 154, 8th Main Road, Jakkasandra Block, Koramangala

Dear Madam

We have seen a board put up marked as "Breakfast Club" on Site No. 154, 8th Main Road, Koramangala located opposite to Sathya Bar and Restaurant.

This is a residential road as per CDP 2015 and the conversion to commercial will be in violation of High Court orders in WP 3676/2008. Further, the road is already very narrow at this particular location and the traffic at the point will make it a nuisance for neighbouring residents.

We request you to deny permission for operation of this facility. Any outlet serving eatables needs a BBMP trade license to operate. In case this unit starts to operate without a Trade license, we request your intervention to shut it down immediately.

Thanking You

Yours faithfully
for Koramangala Residents Welfare Association

AJAY REDDY
President



ADMS/131/2008

131

Director, Planning
Room - 4220
33M
BTM Layout, Bangalore

SUBJ: Request to deny trade license to "Breakfast Club" operating at 154, 8th Main Road, J Block

Dear Madam:

We are the residents of Jakkasandra Block, Koramangala

We have noticed that there is an establishment coming up at Site 154, 8th Main Road, Jakkasandra Block, called "Breakfast Club" and we request you to deny trade license to this establishment for the following reasons:

1. The site is zoned as "Residential Mixed" and issuance of Trade License to an establishment in this area will be against the orders passed by the Hon'ble High Court of Karnataka in WP 3676/2008
2. The area is already congested and the presence of another commercial establishment on the road will only add to the traffic on the stretch
3. There are many neighbouring houses who will be severely affected by this establishment

We request that no new trade licenses be given anywhere in Jakkasandra Block in all Residential Mixed zones

Yours faithfully

RESIDENTS OF JAKKASANDRA BLOCK, KORAMANGALA

S.No.	Name	Address
1	Mr. Pragna Kumar	# 55, J Block, Bangalore
2	Mr.
3	Mr.
4	Mr.
5	Mr.



APPROVED

Nett...
Main...
B&M...
BTM...

SUBJ: Request to deny trade license to "Breakfast Club" operating at 154, 8th Main Road, J Block

Dear Madam

We are all residents of Jakkasandra Block, Korramangala

We have noticed that there is an establishment coming up at Site 154, 8th Main Road, Jakkasandra Block, called "Breakfast Club" and we request you to deny trade license to this establishment for the following reasons

1. The site is zoned as "Residential Mixed" and issuance of Trade License to an establishment in this area will be against the orders passed by the Hon'ble High Court of Karnataka in WP 3676/2008
2. The area is already congested and the presence of another commercial establishment on the road will only add to the traffic on the stretch
3. There are many neighbouring houses who will be severely affected by this establishment

We request that no new trade license- be given anywhere in Jakkasandra Block in all Residential Mixed zones.

Yours faithfully

RESIDENTS OF JAKKASANDRA BLOCK (KORAMANGALA)

S No	Name	Address
1	[Handwritten Name]	# 55 [Handwritten Address]
2	[Handwritten Name]	[Handwritten Address]
3	[Handwritten Name]	[Handwritten Address]
4	[Handwritten Name]	[Handwritten Address]
5	[Handwritten Name]	[Handwritten Address]



1. [Name] No. 34, J Block sd/-
2. [Name] No. 44, J Block sd/
3. [Name] J Block sd/
4. [Name] No. 83 J Block sd/-
5. [Name] No. 81, J Block sd/
6. [Name] H. 19, Vaibhav, 8th Main. sd/
7. [Name] 8th Main 5th Cross. sd/
8. [Name] No. 17, J Block, Koramangala.
9. [Name] 5th Cross, 8th Main Bangalore. sd/
9. Dr. Leela Prabhu 158, Anushree 8th Main 3rd block Koramangala, sd/
10. [Name] 150/A J Block sd/
11. [Name] sd/
12. [Name] 112, Embassy Tr. sd/
13. [Name] 405, Embassy Transport sd/
14. [Name] 212, Embassy Transport sd/
15. [Name] 201, Embassy Transport sd/
16. [Name] sd/-
17. [Name] sd/

*This and Serial Sybil
Copy 3 Approved - M*

10. [Faint handwritten text]

[Faint handwritten text]

[Faint handwritten text]

21. Padma Anandakaram,
3305 Oakwood Apts.

Padma

22. Chitra Susannah
1306 Oakwood Apts

Chitra Susannah

23. [Faint handwritten text]
2203 Oakwood Apts

[Faint handwritten text]

24. Arun [Faint]
2202 Oakwood Apts

25. Harsha Iyer
1006 Oakwood Apts.

Harsha

1. [Name] No. 88, J Block sd/-
2. Sakalis No. 14, J Block sd/
3. D.A. Mathew J Block sd/
4. Prusti G. Pavati No. 83 J Block sd/-
5. V. Ramu No. 51, J Block sd/
6. S.H. Nigam H. 19, Vaibhava, 8th Main, sd/
7. C.S.A. 8th Main 5th Cross. sd/
8. No. 17, J Block, Koramangala.
9. S.T. Reddy 8th Cross, 8th Main Bangalore. sd/
10. Dr. Leela Prabhu 158, Anushree 8th Main 3rd Block Koramangala, sd/
11. Suresh 150/A J Block sd/
12. sd/
13. Ashish Petil 112, Embassy Tr. sd/
14. Vandana Nagar 405, Embassy Transport sd/
15. Pitu Bai 312, Embassy Transport sd/
16. Vijaya Ramachandran 201, Embassy Transquel
17. sd/-
18. Navi Joshi 117, Embassy Transport sd/

*True and correct copy
Copy of [unclear] 11*

19. Rajan, LIL. 1 111,
Empress Court A VII sd/
20. Sarmila Saradhan 33 3301,
OAKWOOD Apartments sd/
21. Palma Karunakaran, 3303, Oakwood Aptd. sd/
22. Shobha Subrahmanyam 1304, Oakwood Aptd. sd/
23. Harman Salur 2201, Oakwood Aptd. sd/
24. Aish Salu 2212, Oakwood Aptd. sd/
25. Harsha Daru 1004, Oakwood Aptd. sd/

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MAY, 2019

PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION NO.57920/2016 (LB-BMP) PIL

BETWEEN

NAMMA BENGALURU FOUNDATION
A REGISTERED PUBLIC CHARITABLE TRUST
HAVING ITS REGISTERED OFFICE AT
NO 3J, NA CHAMBERS, 7TH 'C' MAIN
3RD CROSS, 3RD BLOCK, KORAMANGALA
BENGALURU-560 034

REPRESENTED BY ITS AUTHORISED SIGNATORY
SHRI. SRIDHAR PABBISETTY

... PETITIONER

(BY SHRI. ADITYA SONDHI, SENIOR COUNSEL FOR
SHRI. MRINAL SHANKAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560 001
THROUGH ITS CHIEF SECRETARY
2. URBAN DEVELOPMENT DEPARTMENT
VIKASA SOUDHA
BANGALORE-560 001
THROUGH ITS ADDITIONAL CHIEF SECRETARY

3. BRUHAT BENGALURU MAHANAGARA PALIKE
N.R SQUARE BANGALORE-560 002
THROUGH ITS COMMISSIONER
4. SHRI. M. LAKSHMINARAYANA
AGED ABOUT 58 YEARS
PRESENTLY OFFICIATING AS THE
PRINCIPAL SECRETARY TO GOVERNMENT
PUBLIC WORKS, PORTS AND INLAND WATER
TRANSPORT DEPARTMENT, 3RD FLOOR
VIKASA SOUDHA, BENGALURU-560 001 ... RESPONDENTS

(BY SHRI. D. NAGARAJ, AGA FOR R1 & R2;
SHRI. PAVAN KUMAR FOR
SHRI. H.DEVENDRAPPA, ADVOCATES FOR R3;
SHRI. VIVKE HOLLA, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED SEPTEMBER 29, 2016 PASSED BY R-2 AT ANNEX-A.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING - 'B' GROUP THIS DAY, *THE CHIEF JUSTICE* MADE THE FOLLOWING:

ORDER

Heard learned Senior counsel appearing for the petitioner, the learned AGA for first and second respondents and we have also heard the learned counsel appearing for third and fourth respondents. By consent, the matter is taken up for final disposal.

2. The petitioner made a representation dated 27th February 2015 (Annexure-B1) to the Additional Chief Secretary to the Government of Karnataka, Urban Development Department. The prayer made in the representation was for grant of sanction for prosecution under Section 197 of Code of Criminal Procedure, 1973 and Section 19 of the Prevention of Corruption Act, 1988, for offences under Section 166 and 167 of the Indian Penal Code and Section 13(1)(d) of the Prevention of Corruption Act, 1988. By the order which is impugned in this writ petition, the Additional Chief Secretary to the Government, Urban Development Department, came to the conclusion that powers to grant sanction do not vest in him and the same vest in the Personnel Department of the Government.

3. We must note here that there is no dispute between the petitioner and the first and second respondents that the power to grant sanction does not vest in the Additional Chief Secretary to the Government of

Karnataka, Urban Development Department. In fact the learned counsel for the petitioner stated that he is not disputing the correctness of the aforesaid finding recorded in paragraph No.25 of the impugned order and the petitioner desires to make an application to the concerned authority which is competent to consider the prayer for grant of sanction. The submission of the learned Senior counsel for the petitioner is that out of the three issues framed in paragraph No.23 of the impugned order, the second and third issues are framed only with a view to decide whether a case was made out for grant of sanction. Therefore, after coming to the conclusion that he is not competent to consider the prayer for grant of sanction, the said officer ought not to have decided the second and third issues.

4. The learned AGA supported the finding recorded in paragraph No.25 which records that the Additional Chief Secretary to the Government of Karnataka, Urban

Development Department has no power to grant sanction as prayed by the petitioner.

5. The learned counsel for the fourth respondent firstly submitted that it was the petitioner who made a representation to the Additional Chief Secretary to the Government of Karnataka, Urban Development Department for grant of sanction and as the Additional Chief Secretary had no power, petitioner ought not to have approached him. His second contention is that the findings recorded on the last two issues in the impugned order are findings of fact. His submission is that the said issues were raised on the basis of allegations made by the petitioner in the representation in which the prayer for sanction was made. He would, therefore submit that no interference can be made with those findings recorded in the impugned order. He would submit that the findings recorded on the last two issues should not be disturbed by this Court.

6. We have given careful consideration to the submissions of the learned counsel and we have perused the representation made by the petitioner, a copy of which is produced as Annexure 'B1'. A careful perusal of the representation shows that the only prayer made therein is to grant sanction to prosecute the fourth respondent. The allegations made in the representation against the fourth respondent about acts and/or omissions, are in support of the plea of the petitioner that sanction deserves to be granted to prosecute the fourth respondent. In paragraph No.25 of the impugned order, the Additional Chief Secretary to the Government of Karnataka, Urban Development Department recorded a categorical finding that power to grant sanction to prosecute the fourth respondent does not vest in him. There is no dispute raised before us regarding the correctness of the said finding.

7. Perusal of the issues raised by the Additional Chief Secretary to the Government of Karnataka, Urban

Development Department in paragraph No. 23 shows that the last two issues were essentially framed with a view to come to a conclusion whether a sanction deserves to be granted or not. After having recorded a finding that he had no power to consider the prayer for grant of sanction, there was no occasion to decide the other two issues on merits, inasmuch as the consideration of the said issues was required only if the Additional Chief Secretary to the Government of Karnataka, Urban Development Department had power to consider the prayer for grant of sanction. Therefore, in our view, after holding that he was powerless to consider the prayer for grant of sanction, the Additional Chief Secretary to the Government of Karnataka, Urban Development Department exceeded the jurisdiction vested in him by recording findings on other two issues namely issues (b) and (c). Therefore, the said findings will have to be set-aside not on merits but on the ground that the Additional Chief Secretary to the Government of Karnataka, Urban Development Department was powerless to go into

adjudication of the said two issues for the purpose of considering the prayer for grant of sanction.

8. The argument of the fourth respondent is that as allegations were made by the petitioner against the fourth respondent, the Additional Chief Secretary to the Government of Karnataka, Urban Development Department was competent to go into the same. The said argument cannot be accepted as the representation ought to have been rejected only on the ground of lack of power.

9. Hence, the petition must succeed in part and we pass the following:

ORDER

- (a) The impugned order dated 29th September 2016 except to the extent of finding recorded in paragraph No.25 thereof, is hereby quashed and set-aside;
- (b) It is open for the petitioner to make an application to the appropriate Authority for grant of sanction

to prosecute the fourth respondent. If such application is made, the concerned Authority shall consider the same in accordance with law;

- (c) We clarify that findings on issues (b) and (c) formulated in paragraph No.23 of the impugned order are set-aside not on merits, but on the ground that the Additional Chief Secretary to the Government of Karnataka, Urban Development Department had no power or jurisdiction to record the said findings;
- (d) We make it clear that we have not adjudicated on the question whether sanction deserves to be granted to prosecute the fourth respondent. All contentions in that behalf are left open to be considered by the competent Authority.
- (e) There shall be no orders as to costs.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

SPS