

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(Original Jurisdiction)

W.P. No. 15500 / 2013 (PIL)

Serial No. _____

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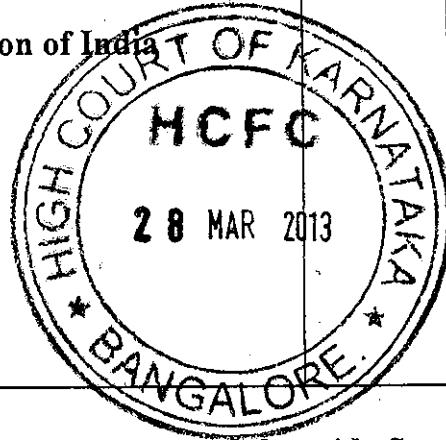
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Between
Namma Bengaluru Foundation

And

State of Karnataka & Another

Sl. No.	Description of Paper Presented	Court fees Affixed on the Paper
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**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

(Original Jurisdiction)

Writ Petition No. 15500/2013 (PIL)

BETWEEN

NAMMA BENGALURU FOUNDATION

...PETITIONER

AND

STATE OF KARNATAKA AND ANOTHER

...RESPONDENTS

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Bangalore
Date: 28.03.2013

Advocate for Petitioner

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

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Writ Petition No. _____/2013 (PIL)

BETWEEN

NAMMA BENGALURU FOUNDATION

...PETITIONER

AND

STATE OF KARNATAKA
AND ANOTHER

...RESPONDENTS

Synopsis and List of Dates

Dates	Event
21/03/2006	The matter of encroachment of Government Land was raised in Legislative Assembly
22/03/2006	The matter of encroachment of Government Land was raised in Legislative Council
17/06/2006	A Joint House Committee was constituted <i>vide</i> Publication 206.
28/06/2006 to 20/12/2006	The Committee had conducted 19 meetings and inspected the encroached government lands, and received information from various government departments. Based on all this the Joint House Committee verified and accepted Part -1 of the Interim Report on 20/12/2006
01/02/2007	Presented Part I of the Interim Report in Legislative Assembly
14/02/2007	Presented Part I of the Interim Report in Legislative

	Council
12/07/2007	The Joint Legislature Committee had prepared its Interim Report Part II and approved it.
26/07/2007	The Interim Report Part II was submitted before the Legislative Assembly and Legislative Council
December 2008	The Karnataka Public Lands Corporation was incorporated with Rs. 5 crores of paid up share capital with an objective to protect the government lands recovered from encroachment.
19/09/2009	The Task Force for Recovery of Public Land and its Protection was constituted <i>vide</i> G.O. No. RD 556 LGB 2009
04/01/2011	The Task Force for Recovery of Public Land and its Protection was ordered to be disbanded <i>vide</i> GO No. RD 897 LGB 2010
28/01/2011	The Hon'ble Supreme Court in <i>Jagpal Singh & Ors. v. State of Punjab and Ors.</i> Issues direction the chief secretaries of all the States to prepare schemes for speedy eviction of illegal/ unauthorised occupants of common lands.
30/06/2011	The Chairman of the Task Force for Recovery of Public Land and its Protection prepared the Chairman's Report detailing the task force's activities and extent of encroachment.

04/07/2011	The Chairman's Report/ Task Force Report was submitted to Respondent No.1, However the Respondent No.1 refused to accept the report.
13/09/2011	The Governor of Karnataka took serious note of the large scale encroachment of public land and addressed a letter to the Hon'ble Chief Minister of Karnataka inquiring into the steps taken by Respondent No.1 State of Karnataka towards implementation of the Task Force Report.
25/07/2012	Letter issued by the Petitioner to the Chief Secretary, Government of Karnataka, (VidhanaSoudha) to take urgent and effective implementation of the Report dated 30.06.2011 i.e. the "Report of the Task Force for Recovery of Public Land and its Protection".
27/08/2012	Since no response was received by the Petitioner with respect to the letter dated 25/07/2012 another reminder was issued to the office of the Chief Secretary, however, no response till date has been received by the Petitioner.
	Writ Petition (Civil) No. 67/2013 filed before the Hon'ble Supreme Court.
15/02/2013	The Hon'ble Supreme Court observed that, the issues raised in Writ Petition (Civil) No. 67/2013 were indeed grave and directed that, the issues be raised before this Hon'ble Court first. Petition withdrawn.
	Hence the Present Petition

BRIEF FACTS

- A. The Petitioner is filing this writ petition in public interest, being aggrieved by the extensive and unbridled encroachment of public lands *inter alia* within the State of Karnataka and especially in the vicinity of Bangalore, as indicated in the reports submitted by the Joint Legislative Committee of the Legislature of Karnataka and the subsequent report of the Task Force for Recovery of Public Land and its Protection and for strict compliance of laws for protection of public land from encroachment. Approximately 11 lakh acres of public land, especially 1,65,796 (One Lakh Sixty Five Thousand Seven Hundred and Ninety Six) acres of forest land, of which 1,04,497 (One Lakh Four Thousand Four Hundred and Ninety Seven) acres in ecologically sensitive Western Ghats, in three districts alone is under encroachment, the value of which has been estimated by the Task Force for Recovery of Public Land and Protection to be Rs.1,95,000 Crores (Rupees One Lakh Ninety Five Thousand Crores Only), which is far greater than the estimated value of loss caused to the public exchequer in the Telecommunication 2G spectrum scam and the illegal mining scam in Karnataka and Andhra Pradesh, cumulatively.
- B. The Petitioner is also filing this petition praying for strict compliance with the significant orders passed by the Hon'ble Supreme Court in W.P. No. 202 of 1995, i.e. *T.N. Godavarman Thirumalpad v. Union of India* and the order dated 28.01.2011 passed in Civil Appeal No. 1132/2011 i.e., *Jagpal Singh and others*

v. State of Punjab and others AIR 2011 SC 1123. It is submitted that, the orders passed by the Hon'ble Supreme Court have led to the protection of the forest lands and the Public Commons which have played a vital role in sustaining the biodiversity and the livelihood needs of the rural poor. It is a matter of deep concern that the State of Karnataka has not only failed to implement effectively the said orders of the Hon'ble Supreme Court but also in many instances colluded with the powerful and the mighty who have encroached the forest and the Public Commons and continue to be illegally in possession of the same causing great adverse impact on the environment and livelihoods of the poor and heavy pollution of the water bodies that includes important lakes, tanks, ponds which have been sources of drinking water for the population. Though the GOK (Government of Karnataka) had constituted a Task Force at the instance of the legislature in September 2009, the same was disbanded hastily in June 2011 when the Task Force was in the process of identifying and removing the encroachments.

- C. On 17.06.2006, the Legislature of Karnataka had appointed a Joint Legislature Committee comprising of 14 MLAs and 6 MLCs to enquire into and submit a detailed report on encroachment of government lands in Bangalore and adjoining areas. In the year 2007, the JLC published two reports (hereinafter collectively referred to as the "**JLC Reports**"), whereunder it was concluded that the State and its instrumentalities have failed in their duty to protect government and public land and have become helpless, tolerant

witnesses and in many cases, active participants, abettors and promoters in land grabbing crimes.

- D. Karnataka Legislative Assembly was dissolved in the year 2007. Thereafter, the new government set up a Task Force for Recovery of Public Land and its Protection to reinforce implementation of various laws for preventing encroachment and recovering encroached public land.
- E. During the course of its functioning, the Task Force encountered Herculean difficulties such as lack of administrative will and coordination, for recovering encroached public land. The attempts of the Task Force were also, at times, foiled by passing of Government Orders, which were apparently without authority and illegal. It is respectfully submitted that although the Task Force was undertaking tremendous efforts for recovering encroached public land, the then Minister of Revenue Department of the State of Karnataka, with *mala fide* intention, disbanded the Task Force with effect from July 04, 2011. At this juncture, it is pertinent to submit that the Respondent No. 1 had set up sixteen (16) Task Forces, in or about the year 2009. However, except for the Task Force for Recovery of Public Land and its Protection, the rest of the Task Forces continue to remain in existence till this date.
- F. Since the Task Force was to be disbanded with effect from July 04, 2011, a report dated 30/06/2011 (hereinafter referred to as the “**Task Force Report**”) was prepared and submitted by the Task Force (the JLC Reports and the Task Force Report are collectively referred to


as "the Reports"). From newspaper reports, it appears that the said report has not been accepted by the State, on account of certain alleged procedural irregularity.

- G. The JLC Reports and the Task Force Report indicate that around 27,336 acres of land has been usurped within and in the vicinity of Bangalore. The Reports state that the estimated value of such encroachments in the Bangalore Urban District alone is Rs. 40,000 Crores.
- H. The adjoining taluks of Bangalore Urban district such as Hoskote, Nelamangala, Doddaballpur, Devanahalli, etc. are only nominally classified as Bangalore Rural District whereas they are as urban as the taluks in Bangalore Urban District. The encroachment in the Bangalore Rural District is nearly 50,000 acres valued conservatively under the Guidance Value at over Rs.23,000crores.
- I. The Petitioner respectfully submits that the Respondent No. 1 has failed to effectively comply with order dated 28/01/2011 passed by the Hon'ble Supreme Court in Civil Appeal No. 1132/2011 i.e., *Jagpal Singh and others v. State of Punjab and others* AIR 2011 SC 1123. It is respectfully submitted that by the aforesaid order, the Hon'ble Supreme Court had directed that effective steps be taken for protection of public land from encroachment, by all States.
- J. It is most respectfully submitted that the JLC Reports and the Report of Task Force clearly demonstrate the inability of the State to take effective measures for protection of public land from encroachment

and recovery, thereby necessitating immediate intervention of this Hon'ble Court.

K. It is respectfully submitted that public land/government land constitutes a shared heritage of not only the current citizenry but also for posterity. The State is the trustee of such land and is bound to ensure that such land is applied for the common benefit of all current and future citizens. Moreover, it is trite law that Right to Life includes Right to Life with dignity and access to State resources. Moreover, every citizen is equally entitled to benefit out of the State's property and the acts and/or omissions of the State result in inequality and discrimination to the common citizens of India as against the high and the mighty. Therefore, the inaction of the State is tantamount to violation of the fundamental and the legal rights of the citizens. The continued inaction of the State to take effective steps to combat encroachment of public land has left the Petitioner with no other option but to approach this Hon'ble Court, under Article 226 of the Constitution of India.

Bangalore
Date:


Advocate for Petitioner
(Nalina Mayegowda)

Nalina Mayegowda
Advocate
The Estate, Level One
No. 121, Dickenson Road
Bangalore - 560.042

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

(Original Jurisdiction)

Writ Petition No. _____/2013 (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,
Bangalore – 560 034,
Represented by Mr.Suresh N.R.

...Petitioner

AND

1. State of Karnataka
Through its Chief Secretary
VidhanaSoudha
Bangalore -560001
2. Karnataka Public Lands Corporation Limited
2nd Floor, Deputy Commissioner's Office Building,
K.G. Road, Bangalore - 560009
Represented by its Managing Director

...Respondents

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA**

The Petitioner above named most respectfully submits as follows:

ADDRESS FOR SERVICE

1. The addresses of the Petitioner for service is as mentioned in the cause title above and the Petitioner may also be served through its counsel Nalina Mayegowda, Advocates and Solicitors, 1st Floor, The Estate, 121 Dickenson Road, Bangalore – 560 042.

Nalina Mayegowda

2. The Petitioner is filing this writ petition in public interest, being aggrieved by the extensive and unbridled encroachment of public lands in the State of Karnataka, as indicated in the Reports submitted by the Joint Legislative Committee of the Legislature of Karnataka and the subsequent Report of the Task Force for Recovery of Public Land and its protection and for strict compliance of laws for protection of public land from encroachment. Approximately 11 lakh acres of public land, especially 1,65,796 (One Lakh Sixty Five Thousand Seven Hundred and Ninety Six) acres of forest lands of which 1,04,497 (One Lakh Four Thousand Four Hundred and Ninety Seven) acres in ecologically sensitive Western Ghats in three districts alone, has been encroached in the state of Karnataka. The value of the land has been estimated by the Task Force for Recovery of Public Land and Protection to be Rs.1,95,000 Crores (Rupees One Lakh Ninety Five Thousand Crores Only), which is far greater than the estimated value of loss caused to the public exchequer in the Telecommunication 2G spectrum scam and the illegal mining scam in Karnataka and Andhra Pradesh, cumulatively. The Reports record various instances of blatantly illegal regularization of unauthorized occupation of government land to an extent of 20,000 acres falling within the 18 km limit of Bruhat Bangalore Mahanagara Palike. The Petitioner is also filing this petition praying for strict compliance with order dated 28/01/2011 passed by the Hon'ble Supreme Court in Civil Appeal No. 1132/2011 i.e., *Jagpal Singh and others v. State of Punjab and others* AIR 2011 SC 1123 and in W.P. No. 202 of 1995, i.e. *Godavarman Thirumulpad v. Union of India*. It is submitted that, vide the said order, the Hon'ble Supreme Court had

directed that effective steps be taken for protection of public land from encroachment, by all States. Despite the aforesaid order, the State of Karnataka not only failed to take effective steps for compliance with the said order but also disbanded the Task Force for Recovery of Public Land and its Protection.

3. This Petitioner, in Writ petition (Civil) No. 67/2013, had approached the Hon'ble Supreme Court seeking the similar reliefs as sought in this petition. The Hon'ble Supreme Court observed that, the issues raised in this petition were indeed grave and directed that, the issues be raised before this Hon'ble Court first. Copy of the order dated February 15, 2013 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 67/2013 as obtained from the website of the Hon'ble Supreme Court is produced as Annexure "A".

Facts of the Case:

4. The Petitioner is a public charitable trust settled by Mr.Sanjay Prabhu *inter alia* with the objectives of assisting and participating in developmental activities for the general public of Bengaluru. The true copy of the original of Trust Deed as well as the authorisation for filing the present petition is being filed with the vakalatnama. The Petitioner aims to serve the people by proactively participating in and addressing various problems faced by Bengaluru and its citizens, through advocacy, partnership and activism. Petitioner is actively involved in hosting various public awareness programmes such as fire safety awareness, water

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conservation awareness, garbage segregation and waste management etc. to promote civic awareness amongst general public.

5. Respondent No.1, State of Karnataka is the guardian of the common lands, which are a common and shared heritage not only for the current citizenry of the state, but also for posterity. It is the solemn duty of the State to ensure that such common lands are preserved intact and not usurped illegally. Respondent No.1 is also duty bound to ensure strict and effective implementation of all laws for protection and preservation of public land.
6. Respondent No.2 Karnataka Public Lands Corporation Limited was incorporated by the State of Karnataka to *inter alia* to protect government lands recovered from encroachment.
7. On 17.06.2006, the Legislature of Karnataka had appointed a Joint Legislature Committee ("JLC") comprising of 14 MLAs and 6 MLCs under the chairmanship of Sri A.T.Ramaswamy to inquire into and submit a detailed Report on encroachment of government land in Bangalore and the adjoining areas. The JLC, during its tenure of 18 months, received 1,101 complaints, conducted 40 meetings, visited 90 sites of encroachments on 20 days and conducted over 200 internal review meetings. All the complaints received by the JLC were registered and enquired into by the JLC. Twenty eight (28) departments and statutory bodies were summoned before the JLC,

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who explained the implementation process in respect of cases referred to them by the JLC.

8. After the aforesaid detailed enquiry, the JLC submitted two reports on 01.02.2007 and 26.07.2007, to the Legislature ("JLC Reports"). Original versions of the JLC reports dated 01.02.2007 and 26.07.2007 are produced as Annexure "B and "C" respectively.
9. The JLC reports conclude that various State instrumentalities such as the Bruhat Bangalore MahanagaraPalike ('BBMP') and Bangalore Development Authority ('BDA'), City and Town Municipal Councils etc., have failed in their duty to protect Government and public land, and have become helpless, tolerant witnesses, and in many cases, active participants, abettors and promoters in land grabbing crimes in tandem with the land mafia.
10. Further, the Adviser to the JLC, the former Additional Chief Secretary, Mr.V.Balasubramanian, IAS (Retd.); the Secretary for Parliamentary Affairs and Legislation; and the Principal Secretary to the Revenue Department visited Hyderabad to study the functioning of the Special Courts established under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1984 and the mechanisms adopted by the Hyderabad Urban Development Authority and the Municipal Corporation of Hyderabad for preventing encroachments. Pursuant to the aforesaid study and the JLC report, the Karnataka Land Grabbing (Prohibition) Bill, 2007 was passed by both the

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houses of the Karnataka legislature, unanimously. Moreover, the Revenue Department also piloted a legislation for incorporating an amendment to the Karnataka Land Revenue Act, 1964 ("KLR Act") to make land grabbing and abettors of land grabbers liable for imprisonment and fine under Section 192-A of the KLR Act.

11. Although the JLC submitted detailed reports, the Karnataka Legislative Assembly was dissolved in 2007 and the JLC also came to be defunct consequent to the imposition of President's rule. Upon formation of the new Government, immediate action was not taken to implement the recommendations of the JLC.
12. The JLC reports state that an area of 1099 acres of forest land is encroached by 312 persons in Bangalore Urban District Forest Division, besides 313 acres of tank bed land by 553 persons. The Bannerghatta National Park which spans over 7374 acres have been encroached by 813 persons for an extent of 767 acres.
13. The JLC reports further state that, in Uttarahalli Manavarathe Kaval Minor Forest in Turahalli Village in Bangalore, certain real estate agents including some builders from Hyderabad have created bogus records for sale of forest land and in turn have grabbed 344 acres of pristine forest land. Out of this area, the Bangalore Development Authority has proceeded to acquire 42 acres as Banashankari VI Stage and also passed an award for Rs.3.6 Crore in favour of persons claiming to be unauthorized cultivators. The report *inter alia* states that this land lies within 15 kilometres from the Bruhat Bangalore

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Mahanagara Palike limits and therefore is prohibited under the Karnataka Land Revenue Act to regularize any such unauthorized occupation of land. Even after being aware of the fact that this land lies within the 15 kilometre limit, and above all it is a forest land, the Bangalore Development Authority and Land Tribunal have disregarded this and have passed award in respect of forest land in favour of private persons.

14. In December 2008, the Karnataka Public Lands Corporation Limited, Respondent No.5 was incorporated with Rupees Five (5) Crores of paid up capital *inter alia* to protect government lands recovered from encroachment.
15. In order to effectively implement the recommendations of the JLC, a Task Force for Recovery of Public Land and its Protection was constituted under the chairmanship of former Additional Chief Secretary, Mr.V.Balasubramanian, IAS (Retd.) *vide* G.O. No.RD 556/LGB/2009 dated 19.09.2009 ("Task Force"). As per G.O. No.RD 556/LGB/2009 dated 19.09.2009, the Task Force was required to issue directions to government departments and statutory bodies to take appropriate actions to remove encroachments, i.e., the Task Force was effectively set up to reinforce the implementation of various laws for recovering encroached public land. Unlike the JLC report, which confines itself to encroachment of public lands in Bangalore and surrounding areas, the jurisdiction of the Task Force extended to the entire State of Karnataka including all Government lands and lands belonging to statutory and local bodies.

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16. The Task Force undertook enormous efforts to identify encroached public land throughout the state of Karnataka and took various steps including conducting spot inspections, verification of property documents and issuing numerous instructions to concerned authorities to take immediate steps for recovery of public land. The Petitioner respectfully states that the Task Force not only issued a final report but also issued / ensured issuance of numerous reports in respect of certain glaring instances of encroachment. The report of the Task Force records that its efforts to recover encroached public land were defeated *inter alia* on account of lack of administrative will. A few such instances are set out hereinbelow.

17. The Task Force *inter alia* conducted a detailed investigation in respect of encroachments in Gollahalli village, Anekal Taluk, Bangalore Urban District. The Task Force report *inter alia* states that a road was formed in the middle of lake land encroaching approximately 2 acres and 11 guntas of lake land. At the penultimate moment, when the entire machinery of the Taluk office and Deputy Commissioner's office along with members of the Special Task Force were on the spot to carry on demolition of encroachments, the persons in occupation of such land obtained an order of injunction / stay from the Chief Minister of Karnataka that no action be taken to remove the encroachments (road) and that *statusquo* be continued.

The Petitioner respectfully submits that the aforesaid stay order was issued for vested interests and not for public good and this in fact

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resulted in obstruction of public servants carrying on their public duties. Consequently, the Managing Director of Karnataka Public Land Corporation, issued a letter dated 19.12.2009 to the Chief Secretary of the State of Karnataka requesting for vacation of the stay order/ withdrawal of the directions given on 16.12.2009, but to no avail. Copy of the stay order issued by the Hon'ble Chief Minister bearing No.MuMu/203/grutha/2009 dated 16.12.2009 is produced as Annexure "D". Copy of the letter dated 19.12.2009 addressed by the Managing Director of Karnataka Public Lands Corporation Limited to the Chief Secretary of the State of Karnataka is produced as Annexure "E".

18. The Task Force inquired into and ascertained multiple instances of encroachment of forest land by plantation owners and consequently addressed various letters to the concerned departments to take necessary action. To the utter shock and dismay of the Task Force, the Secretary to the Chief Minister issued a note dated 19.11.2010, whereby it was ordered that *inter alia* no precipitative action be taken without considering the submissions of the alleged encroachers and without a final decision being taken by the Government. The Petitioner respectfully submits that the aforesaid note had been issued with vested interests and private gains and had the effect of scuttling the efforts of the task force. Copy of the aforesaid note bearing reference No.PSCM/3495/2010 dated 19.11.2010 issued by the Secretary to the Hon'ble Chief Minister is produced as Annexure "F".

19. Thus, the Petitioner respectfully states that, the efforts of the Task Force were time and again foiled by the acts and/or omissions of the Respondents.
20. At this juncture, it is pertinent to submit that, the Respondent No. 1 set up 16 task forces such as the Knowledge Commission, Vision Group of Karnataka 2020, etc. and including the Task Force for Recovery of Public Land and its Protection. For reasons best known to Respondent No.1, it was communicated to the Task Force that the Task Force shall be disbanded with effect from July 04, 2011 vide GO No. RD 897 LGB 2010. Copy of the order issued by Respondent No. 1 bearing number GO No. RD 897LGB 2010 dated January 04, 2011 is produced as Annexure "G". The reasons denoted for disbanding the Task Force were factually incorrect and the decision was taken in haste. However, the other 15 task forces continued to remain in operation after disbanding the Task Force for Recovery of Public Land. The action of the Respondent No. 1 in singularly targeting and disbanding the Task Force smacks of *malafide* intention on the part of Respondent No. 1 encouraging land grabbers. A tabular chart indicating the various task forces / commissions set up by the Government of Karnataka is produced as Annexure "H".
21. The Task Force issued its Report dated 30.06.2011 titled 'Greed and Connivance', which was submitted to Respondent No.1 the State of Karnataka on 04.07.2011 (the report is hereinafter referred to as the "Task Force Report"). However, Respondent No.1 appears to have declined to accept the Task Force Report on account of alleged

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procedural irregularities. Copy of the Task Force Report dated 30.06.2011 issued by the Task Force is produced as Annexure "J".

22. Subsequent to the submission of the Task Force Report, His Excellency the Governor of Karnataka took serious note of the large scale encroachment of public land and addressed a letter dated September 13, 2011 to the Hon'ble Chief Minister of Karnataka inquiring into the steps taken by Respondent No.1 State of Karnataka towards implementation of the Task Force Report. It was noted in the said letter that the loss to the public exchequer on account of the encroachment of public land is in the amount of approximately Rs.1,95,000 Crores (Rupees One Lakh Ninety Five Thousand Crores Only). Copy of the said letter dated September 13, 2009 addressed by His Excellency the Governor of Karnataka to the Hon'ble Chief Minister of Karnataka is produced as Annexure "K".
23. The Petitioner has reliably learnt that His Excellency the Governor of Karnataka inquired and also instructed the Respondents to act upon the Report and take action for recovering encroached public land. The Petitioner has further reliably learnt that the following three committees have been constituted by Respondent No.1:
- (i) Committee - Revenue Department, headed by Secretary to the Revenue Depart. The Petitioner has learnt that, whilst a meeting or two has been conducted, no concrete steps have been taken thus far.

Noted

(ii) Committee – Forest Department, headed by the Principal Secretary, Forests, Environment and Ecology. The Petitioner has learnt that no meetings have been conducted by the Committee and that the Forest Department is not even aware of the constitution of such a Committee in respect of land grabbing.

(iii) Committee – Urban Development, headed by the Secretary, Urban Development Department. The Petitioner has learnt that no meetings have been conducted thus far, by this Committee.

24. The Task Force Report and JLC Reports (both these report are hereinafter collectively referred as “**Reports**”) opine that, despite various legal provisions for protection against encroachment and for removal of encroachment of public land, blatant encroachments of public land have become the rule than the exception due to the refusal to act or incompetence of various ‘Competent Authorities’ which is due to ignorance of legal powers, lethargy, fear of taking action, interference by powerful persons and, last but not the least, collusion with encroachers. The Task Force quotes JLC and proceeds to state that powers vested in various officers are in fact wasted on them.

25. The Task Force Report states that, of about One Lakh Thirty Thousand (1,30,000) acres of government land, about Twenty Seven Thousand Three Hundred and Thirty Six (27,336) acres, i.e. Twenty

27-12-18

One percentage (21%) of the land, has been illegally usurped around and within the vicinity of Bangalore. The Reports state that the estimated value of the encroachments in the Bangalore urban District consisting of the five taluks of Bangalore North, Bangalore North Additional, Bangalore East, Bangalore South and Anekal Taluks, on a conservative estimate of Rupees One and half (1.5) Crore per acre, on average, is Rupees Forty Thousand (40,000) crores.

26. The JLC Report enumerates the details of encroachment, which is extracted hereinbelow:

Sl.	Name of the Department	Encroachment in acres	Approximate value in crores
1.	Revenue Department	9294.00	18,588.00
2.	Bangalore Development Authority	2,878.20	5,236.25
3.	Mujrai	38.09	165.55
4.	a) Forest b) Tank bed	719.34 219.20	1,877.08
5.	Karnataka Industrial Area Development Board	33.22	66.44
6.	Town Municipal Councils/ City Municipal Councils	8.08	32.32
7.	Bangalore Mahanagara Palike	7.08	46.00
8.	Karnataka Housing Board	34.08	152.00
9.	Wakf Board	259.33	780.00
10.	Housing Co-operative Societies	86.19	170.00
11.	Bangalore University	11.22	96.11
12.	Transport Department	3.31	18.00
13.	Health Department (NIMHANS)	3.20	25.00
14.	Animal Husbandry	45.00	100.00

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	Department		
15.	Slum Clearance Board	12.19	25.00
	Total	13,614.37	27,377.75

27. The Task Force Report observes that Bangalore's rapid development and the consequent scramble for land has resulted in encroachments on Government and Public lands, land grabbing by powerful builders and land mafia with active involvement of persons in power and in politics within and in the vicinity of Bangalore. The extensive growth in Bangalore Urban and Bangalore Rural districts fuelled by the high value of lands and availability of large area of Government lands like gomal, gunduthope, tank-beds, parks and civic amenities sites have led to their extensive encroachments. The Reports states that the extensive growth of Bangalore in the last 20 years has resulted in an exponential increase in the value of land, consequently resulting in extensive encroachments of government land.
28. The JLC report observes that Bangalore Urban District contains a large extent of erstwhile Inam lands which became government land after the abolition of Inams. However, such erstwhile Inam lands which have not been validly regranted, such as Community Lands, have also been encroached. Another observation made by the Task Force was the illegal use of agricultural lands for non-agricultural purposes, chiefly residential development. For instance, Epsilon Ventures Pvt. Ltd. has facilitated construction of Villas in Bangalore without due regard to land laws. The Petitioner states that the said project was touted as Beverly Hills of Bangalore. The Task Force

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addressed a letter dated 29.12.2010 to the Deputy Commissioner, Bangalore Urban District, requiring the Deputy Commissioner to enquire as to whether the project has been undertaken without proper non-agricultural permission being granted under the (Karnataka Land Revenue Act, and the) Karnataka Land Reforms Act, 1964. Thereafter, the Tahsildar, *vide* detailed (letter) dated 05.08.2011 addressed to the Deputy Commissioner intimated that, after calling for responses from Epsilon, the Tahsildar personally inspected the premises and undertook measurement. The report of the Tahsildar indicates that public land admeasuring 2 Acres and 16.5 Guntas has been encroached. The report further states that structures have been constructed on an area of approximately 12 acres and 4.14 Guntas, without requisite land/non-agricultural conversion. The Petitioner submits that, despite the aforesaid report of the Tahsildar, no action has been taken by the Respondents in that regard. The Petitioner most respectfully submits that the aforesaid amply demonstrates not only lack of administrative will in taking prompt and effective action for recovery of encroached public land but also the fact that there are vested private interests which are working against public interest. Copy of the said report dated 05.08.2011 is annexed herewith and marked as Annexure "L".

29. The Task Force, in its report, makes a finding that the auction procedure by the Revenue Department of even the meagre lands recovered from encroachment was irregular. Advertisements about the auction were given only in Bangalore based newspapers with local/state circulation and also holders of General Powers of

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Attorney and agents representing more than one principal were allowed to take part in auctions. The aforesaid practice has led to collusion, rigging and cartelisation. For instance, the case of the bidder Mr. Yousuff Shariff. The total extent of lands auctioned by Deputy Commissioner, Bangalore Urban district from 2005 to 2009 and confirmed by Government is 643 acres for Rs. 540 Crores. Of this, 283 acres have been confirmed in the favour of Yousuff Shariff, making him the single biggest beneficiary of the auctioned lands. The Task Force Report also makes the observation that most of the auctions appear to be rigged as, Yousuff Sherrif who is the general power of attorney holder of companies such as Umrah Brothers, Afnan Developers, Hill Land Properties, MVR Securities and TopNotch Infrastructure appeared in auctions where the aforesaid companies themselves were participating. As stated in the Report, the Task Force had brought this irregularity to the notice of the Principal Secretary of Revenue Department and Chief Secretary of State of Karnataka vide letters dated 04.10.2010 and 05.10.2010, to no avail.

30. The Petitioner states that lack of administrative will for taking swift and prompt action in respect of land grabbing is further demonstrated by the following acts.
31. The Reports state that BDA does not have an updated Property Register and therefore, is not in a position to accurately ascertain the total extent of encroachment. However, by BDA's estimate a shocking Two Thousand Seven Hundred and Thirty Nine (2,739) acres have been encroached and BDA has been only able to recover

a meagre Twelve (12%) Percent or Three Hundred and Thirty Three (333) acres of land since the formation of Joint Legislature Committee in 2006. A conservative market value evaluation of the encroached land has been estimated by the Task Force at a staggering amount of Rupees Eleven thousand (Rs.11,000) crores. The Report records *inter alia* the following inadequacies and failures of BDA to act in accordance with its statutory duties and employ its statutory powers to perform such duties:

- (i) BDA, like so many other departments and local bodies, does not even have an updated Property Register in the absence of which, it is not even possible for BDA to ascertain the complete extent of the encroachment of its land;
- (ii) BDA *inter alia* has not been able to discharge its statutory duty of ensuring Forty five percent (45%) of layout area is demarcated as 15% for parks, 10% for Civic Amenities site and 20% for Roads. BDA, disregarding its statutory obligations, is neither taking a firm stand on relinquishment of these sites by (layout developers) through a registered deed nor does it insist upon the private layouts to fence and handover public purpose lands to BDA, before approving the distribution of sites;
- (iii) The Reports further opine that the functioning of BDA has been hampered by ineffective legal services availed by it;
- (iv) The Reports state that de-notification of acquired land has also added to the woes of BDA. The Reports record myriad instances of de-notification of Civic Amenities sites. The Task Force Report

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indicates that about Two thousand eight hundred and thirteen (2,813) acres have been de-notified and that in almost all cases of de-notification, the Government has violated the law; and

- (v) The Task Force Report also records the inefficiency of the Revenue Department in auctioning reclaimed Government land.

Forest Land

32. The Task Force Report states that the total geographical area of Karnataka State is One lakh ninety thousand four hundred and ninety eight (1,90,498) square kilometres, out of which Thirty thousand seven hundred and eighteen (30,718) square kilometres is classified as forests. This is equal to about Seventy Six (76) lakh acres of forest land in the state. According to the details furnished by the Forest Department, an area of one lakh sixty five thousand seven hundred and ninety six (1, 65, 796) acres are under encroachment. This shows a colossal failure on the part of the Central and State Governments in the enforcement of the Indian Forest Act, 1927, Forest Conservation Act, 1980, the Karnataka Forest Act, 1963 and the significant orders of the Hon'ble Supreme Court in the Forest case, WP (C) No. 202 of 1995. This is a very crucial matter as it involves the encroachment of more than 60% of the Forest lands in the ecologically sensitive Western Ghats, one of the 18 ecological hotspots in the world.
33. The JLC Reports indicates the extent of forest area and its encroachment within Bangalore:

not part

- (i) An area of 597A 19G of *Gomal* land was notified as Turahalli Minor Forest in Notification No.G.1746 FT-65-34-2 on 24-8-1934 by the then Government of Maharaja of Mysore in the villages of Turahalli and Uttarahalli Manavarathe Kaval.
 - (ii) The Bannerghatta National Park was established in 1974 under section 35 of the National Wildlife Act, 1972, it has a total area of about 26,681 acres (102 square kilometres) and it comes under both the Bangalore Urban District (18,198 acres) and the balance (8,484 acres) in Bangalore Rural District.
34. The Task Force Report has reported the helplessness expressed by the concerned officials in their inability to remove encroachments by influential persons, for e.g. the encroachment of about 60 acres of forest land in the border area between Karnataka and Andhra Pradesh in Janagalkunte forest by a former Speaker of the Legislative Assembly. Despite an order dated 30.03.2007 for removal of encroachment by the Assistant Conservator, the matter could not proceed any further as the order was appealed against, before the Conservator. Thereafter, the Conservator ordered for joint measurement of the encroachment by a team of officials from the Forest and Revenue Departments *vide* his order dated 16.07.2008. However, the joint inspection was obstructed by the encroacher and the team was not allowed to enter the area. The Task Force found out upon inspection with a police posse, of the encroachment that the forest land had been surveyed in detail by Forest surveyors for which clear maps are available. In the latest turn of events, the encroacher

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had approached this Hon'ble Court misrepresenting the relevant facts and successfully secured an order on 16.12.2010 for yet another survey of the land. The exhaustive survey confirmed the encroachment, and the matter stands before this Hon'ble Court for adjudication.

35. The Reports outline the following reasons for the extensive encroachments and the inability of the forest department to effectively deal with such encroachment:

(i) Although 7,846 forest offence cases have been booked under the Karnataka Forest Act, 1963 (hereinafter referred to as "Forest Act"), only in 1,193 cases, the Assistant Conservators of Forests have issued orders, despite such cases being registered for over four years ago. Moreover, most such orders have been challenged before the Conservator of Forests and not yet disposed of;

(ii) The JLC Report records instances of encroachment in Turahalli Minor forest, Bannerghatta National Park and Bangalore Urban Forest Division. JLC Report further recommends action impugning criminal negligence against concerned Forest Department Officials.

36. The Petitioner states that there are instances galore of encroachment by large landholders and such encroachments are in respect of large areas. The Copies indicating encroachment, with each above 10 acres in the Chikmagalur division; and Bhadra Wildlife division are annexed herewith as Annexure "M".

Noted

37. The Petitioner further states that a large number of such encroachments are caused by powerful persons. The Petitioner, therefore, verily believes that such illegal encroachment continues to occur with impunity on account of an illegal nexus between ~~land~~ land encroachers and law enforcers. Copy of a news report indicating encroachment by former speaker of the Karnataka Legislative Assembly Mr. K. R. Ramesh Kumar is annexed herewith as Annexure "N".

Lakes, Water Bodies and Storm Water Drains

38. The Task Force Report states that there are about thirty eight thousand (38,000) lakes in Karnataka. In Bangalore Urban District alone there are about Six hundred (600) lakes. As some lakes fall under two adjoining survey numbers belonging to two villages, in the revenue records, the number of lakes in Bangalore Urban District has been shown as nine hundred and thirty seven (937) though there is only one water body in many cases. The JLC report states that, in 1961 there were 262 water bodies in Bangalore City area. Due to formation of layouts, sanction to various departments of State and Central Government, and also because of trespass and encroachment, their number has come down. The reasons for encroachment are stated in the Report as follows:
- (i) Lakes and tank beds have also been encroached by builders, shopkeepers, hoteliers, layout-making and sites-selling realtors, timber merchants, educational institutions, instant overnight temple

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builders, political personalities, industrialists and sometimes even by the BDA;

- (ii) The Task Force Report further affirms that there are about 840 kilometres of Raja *Kaluves* and storm water drains which have been mostly encroached upon and used as sewage channels. The JLC reports states that Karnataka Pollution Control Board has not exercised its powers to initiate prosecution against those who pollute the tank bed by encroachment and further that the Pollution Control Board shirks its responsibilities by shifting the onus on Central Pollution Control Board;
- (iii) The Lake Development Authority ('LDA') is a society registered under the provisions of the Societies Registration Act in July 2002, with the objective of protecting, maintaining and developing lakes in the state. The Reports state that LDA is a high powered authority with the Chief Secretary to Government as its Chairman and other senior officers of the state and the BDA and BBMP as its members. The Task Force Report states that the LDA is not vested with sufficient powers to initiate action for removal of encroachments and *inter alia* for this reason, has not been successful in curbing encroachment or recover encroached lands;
- (iv) In 1985 an expert committee under the chairmanship of late Sri N.Lakshman Rau, IAS (Retd.), was formed for examining drawbacks and problems related to preservation and restoration of tanks in the then Bangalore Metropolitan Area and make suitable recommendations. The Government accepted all its

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recommendations and issued government order vide PWD 82 IMB 85 dated 11.02.1998. The said government order allocated the responsibility of maintaining tanks/ lakes as follows:

- (a) *The 46 disused tanks should be handed over to the Horticulture and Forest Department and Ornamental Parks and Tree Parks should be raised in these unused tank beds;*
- (b) *The 81 Live Tanks should not be breached but should be protected by foreshore planting and they should be used for irrigation or for recreation purposes to preserve environment;*
- (c) *The 262 tanks in the Green Belt should be protected and maintained as the 81 Live Tanks;*
- (d) *The Forest Department was handed over 90 tanks and lakes exclusively for preservation and 24 other lakes should be preserved jointly by the Forest Department and Karnataka State Tourism Development Corporation and Tourism Department (12), BDA (6), BWSSB (4), Minor Irrigation (1) and BBMP (1);*
- (e) *In addition to Cubbon Park and Lal Bagh, six to eight Regional Parks should be developed in disused tank beds, if necessary by acquiring additional adjoining lands;"*
- (v) The Reports assert that the aforesaid government bodies, to whom tanks have been allocated, have failed to protect lakes and tank beds from encroachment. The Task Force Report significantly states that the Lakshman Rau Committee recommendations were implemented

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in breach rather than in observance. The Reports thereafter, makes detailed recommendations for removal of encroachments as well as for controlling pollution of the lakes which have become sewage tanks posing serious health hazards and in flagrant violations of the environmental laws including Environment Protection Act (EPA), 1986 and the related rules and notifications. Here, we see a colossal failure of the State and the Central Pollution Control Boards as well as the Ministry of Environment and Forest, Government of India in the enforcement of Environment and Forest laws of the land like the EPA and Forest (Conservation) Act, 1980 and other related Acts and notifications.

Public, Religious and Charitable Institutions

39. The JLC Report finds that majority of the lands of Temples which lie within the limits of Bangalore City and Bangalore Urban District have been encroached. The JLC Report estimates that there are about One thousand and Sixteen (1,016) temples in Bangalore Urban District, of which Sixty Eight (68) are situated in important commercial areas within the city. In many cases, very valuable temple lands are sold on the basis of false documents. Competent authorities such as Muzrai Department and Religious and Endowment Department have not taken effective measures to protect temple property. The JLC Report also states that, if property belonging to 68 temples in the Bangalore city alone is properly handled and let out at prevailing market rates, the income generated

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can take care of renovation and development of all temples in the entire state.

Collusion of Government Officials in Land Grabbing

40. The Reports record various instances of blatantly illegal regularization of unauthorized construction of lands, in respect of some of which, proceedings by the Upalokayukta are pending. The Reports also record instances of flagrant breach of the KLR Act and the rules and regulations made thereunder, whilst regularising unauthorised cultivation. The Reports specifically record that regularisation of unauthorized cultivation of lands within 18 kilometres of BBMP's limits, although prohibited under the KLR Act, far from being scrupulously observed, is violated with impunity. The Reports observe that about 5,835 acres of land has been regularized in the vicinity of Bangalore, although, almost all such lands are situated within 18 kilometres from the BBMP's limits. The Task Force Report estimates that the value of about 20,000 acres of land, in respect of which, regularization applications have been either illegally allowed or are pending is in the tune of Rs.20,000 (Twenty Thousand) Crores.
41. The JLC Report notes that in majority of the cases, encroachers are able to get khatahs made in their names from the BBMP, BDA, City Municipal Councils (CMCs), Town Municipal Councils (TMCs), Gram Panchayats etc. through submission of false documents. The JLC Report *inter alia* takes note of the fact that the procedures

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prescribed for issuance of Khatha, No Objection Certificate, Construction License and similar permissions are not followed scrupulously by the officers.

Government Litigation

42. The Reports also observe that the Revenue Department has failed to effectively pursue litigation involving the Government. Clause 65-A of the Karnataka Government (Transaction of Business) Rules, 1977 requires the Department of Law to review pending government litigation, at least once in a month. In the Reports, it is observed that despite such review mechanism, in Bangalore Urban District alone, in over One thousand (1,000) cases before the City Civil Court and this Hon'ble Court, *ex parte* orders have been passed against BDA. The estimated loss caused to the Government on account of the *ex parte* orders alone, is over Rs.2,000/- crores. The JLC Report observes that the Law Department should computerize its records on the lines of computerisation of records by this Hon'ble Court to increase its efficiency in monitoring cases.

43. The JLC Report suggests that the present system of selection of government advocates is unsatisfactory and should be changed and also recommends creation of a High Level Committee with superintendence over the selection/termination of government advocates. The Reports set out elaborate recommendations for reinvigorating the prosecution and defence of litigations involving the government.

City Survey

44. The Reports state that Government is unable to effectively protect government land or Commons such as Gomal, Gunduthope, Tankbeds etc., primarily because of the absence of accurate or updated surveys made or records kept. The JLC Report urges the state to conduct a city survey using modern methods. The JLC Report makes a comparison between the traditional methods of survey which use cross staff, chains and theodolite which often results in drastic errors and modern methods of survey employing Total Station instrument and installation of Geographical control points and Total Stations which produces an accurate survey to the extent of five (5) mm accuracy.
45. The Report further recommends that the system of 'Registration of Titles' established under the Torrens System is preferable to 'Registration of Deeds', as the present system of Registration is susceptible to easy exploitation by encroachers. The crucial distinction between Registration of Deeds and that of (Registration of) titles is that in the former, properties are transferred upon execution of deeds, whereas in case of the latter, properties are transferred by Registration of Title in a public registration (after verifying the title by the claimants).
46. The Reports opine that an elaborate exercise of accurate survey and printing of land and property records by modern methods and a detailed City Survey Enquiry giving due public notice will result in property title documents which are certainly much more dependable

Noted

than the kinds of documents issued or registered at present. The Reports observe that a complete survey for the entire Bangalore Metropolitan Region will go a long way in reducing encroachment of government land.

De-notification of public land

47. The Task Force Report points out numerous irregularities in de-notification of public land. The Task Force in addition to providing some glaring examples opines that there can be no justification in deleting lands within a total layout on a selective "pick and choose" method. The Petitioner states that there are numerous instances of illegal de-notification of public land and therefore, it is just, necessary and proper that this Hon'ble Court issues detailed guidelines and directions that the State will have to follow, for de-notification of land previously acquired for public purposes. The Petitioner further submits that allocation of public land to private persons, be they individuals, companies, trusts, societies etc., is in violation of the principle that public land belongs to the 'commons' and has to be preserved as such. The Petitioner respectfully submits that public land cannot be diverted to the benefit of private persons and ought to be employed for public purposes such that, such land and facilities thereon remain accessible to the general public presently, and for posterity.

Noted

The Karnataka (Land Grabbing) Prohibition Bill, 2007

48. Pursuant to the recommendations of the JLC, the Karnataka Legislature passed the Karnataka (Land Grabbing) Prohibition Bill, 2007. Thereafter, the same was submitted to the Union Home Ministry for obtaining the President's assent in July, 2007. The Home Ministry has returned the bill to the government of Karnataka for specific inclusion of Wakf Board lands on 04.03.2011, i.e., after four years of submission of the Bill. The JLC Report states that, in the neighbouring state of Andhra Pradesh, the Andhra Pradesh Land Grabbing (Prohibition) Act, 1984, has successfully curbed large scale encroachment of public land *inter alia* by setting up of special courts to exclusively deal with cases of encroachment of public lands. The JLC Reports, therefore, recommended that the state should take immediate measures to carry out the necessary amendments and once again table the Karnataka (Land Grabbing) Prohibition Bill. Since the publication of the Task Force Report in July 2011, the new Bill has been passed but no steps have been taken to obtain the assent of the President expeditiously which only goes to show that there are vested interests.
49. The JLC Report *inter alia* recommends preparation of a Master Plan for the use of encroached lands after their successful recovery, keeping in mind the principles of sustainable development, future growth, requirements of infrastructure and the environment.

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50. From a perusal of various news reports, it appears that, the Task Force Report was submitted to the Government on or before July 04, 2011, i.e., the date set for submission of the final report. However, it further appears that, the Task Force Report has not been accepted on account of certain (alleged) procedural, frivolous reasons. It further appears that multiple copies of the Task Force Report have been printed and made available at the personal cost and expense of the Chairman of the Task Force. The Task Force Report does not spare the high and mighty and records specific instances of encroachments, without fear or favour. The Petitioner apprehends that such intrepid reporting is one of the reasons for the Task Force Report not being accepted. It is respectfully submitted that, in any event, in view of the aforesaid excuse, the implementation of the JLC Reports or the Task Force Report, which are of paramount public importance, is being sidetracked. Moreover, apart from setting up of the Task Force, the State has failed to take effective measures for curbing encroachment and recovery of public land. The efforts of the State Government and its various instrumentalities have at best been lackadaisical and consequently, the State has failed to perform its constitutional and/or statutory duties. It is, therefore, and even otherwise submitted that the Petitioner has no other effective alternate remedy to redress the aforesaid grievances, except to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution on the following among other grounds.

Noted

I. Grounds

The grounds are urged without prejudice to one another. The Petitioner craves leave of this Hon'ble Court to urge additional grounds at the time of hearing.

A. For that it is the duty of the executive, *i.e.*, the State Government and its instrumentalities to strictly and scrupulously implement laws enacted by the legislature. It is respectfully submitted that the alarming rate of violation of various laws resulting in extensive encroachment of public land is a direct consequence of the failure of the state to perform its constitutional and statutory duties, *i.e.*, scrupulous implementation of laws. It is respectfully submitted that the state machinery, although equipped with numerous legislations, has failed to tackle the burgeoning problem of land grabbing. The 'Task Force Reports' state that the failure is not merely attributable to apathy, but also active participation/connivance of various officials. There are many legal provisions in various enactments, including IPC and CrPC, for the prosecution of encroachers of public land. Instances of legislation dealing with encroachment in Karnataka, which the State has failed to implement and enforce, are enumerated as under:

- i) The BDA, despite being empowered by Section 33A of the Bangalore Development Authority Act, 1976, to evict and prosecute encroachers and abettors, has failed to effectively employ such provisions against encroachers.

33A
BDA Act

Noted

- ii) Section 5 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, provides ample powers for eviction of unauthorised occupants. However, the Respondents have failed to take strict action pursuant thereto.
- iii) The Karnataka Municipal Corporations Act, 1976 empowers the BBMP to take punitive action against encroachers, and the BBMP has failed to employ such provisions effectively.
- iv) The Forest Department despite being in a position to initiate action against the encroachers and its abettors under section 3A read with section 2 of Forest Conservation Act, 1980, has failed to take necessary action.
- v) Section 64A of Forest Act provides for penalty for unauthorisedly taking possession of land constituted as reserved forest [district forest, village forest, protected forest and any other land under the control of the Forest Department].
- vi) The Revenue Department has acted in disregard to the provisions of the Karnataka Land Revenue Act, 1964 such as, Section 94A which specifies the instances where regularisation may be considered and Section 94B which prescribes the conditions under which land can be granted. Further, the Revenue department has failed to prosecute land grabbers and abettors under aforesaid sections of KLR Act, 1964.

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- vii) Section 436 A of Prevention of Dangerous Activities Act, 1985 (Goonda Act) provides for penal consequence for unauthorized use or occupation of land belonging to a Corporation and aiding and abetting such occupation by any person.
- viii) Section 74 of Karnataka Urban Development Authorities Act, 1987 provides for penal consequences and prohibition of unauthorized occupation of land.
- ix) Section 72 of Panchayati Raj Act, 1993 provides against obstructions and encroachments upon public streets and open sites.
- x) Section 54 of Hindu Religious Institution and Charitable Endowments provides against encroachment upon lands and buildings.

B. Despite the orders passed by the Hon'ble Supreme Court in Civil Appeal No.1132/2011 i.e., *Jagpal Singh & Ors. vs. State of Punjab and Ors.*, the Respondents have disbanded the Task Force which was set up for taking effective steps for protection of public land from encroachment. It is most respectfully submitted that the Task Force, through wide public notice and publicity through the media, had received during its functioning from September 2009 to June 2011 (when it was disbanded) by petitions, personal appearances, reference from Lok Ayukta, telephone calls, emails, newspaper reports and even anonymously, 1,597 complaints of encroachments

7/10/2011

in public lands, of which 398 were finally disposed off to the satisfaction of the complainants through detailed enquiry by Deputy Commissioners, Conservator of Forests and various other district level department heads; the balance 1,199 complaints of encroachments were under different stages of enquiry when the Task Force was disbanded by the then Revenue Minister, hailing from Bellary district, without reference and concurrence of the cabinet since the encroachments involved more than one Department. Also, the Task Force was receiving every week about 15 to 20 complaints when it was disbanded. Besides, the Deputy Commissioners of districts and various other departments including the Forest Department were still in the process of continuing to identify the encroachments under instructions from the Task Force when the Task Force was disbanded. It is respectfully further submitted that even of the 11 lakhs acres or so of encroachments identified, only 47,309 acres of encroachment was removed by the empowered officers of various departments, which is a mere 4.3% when the work was stopped by the Government. It is further submitted that this is indicative of the government's rejection of public interest of protecting public land and forests and even support of encroachers when it disbanded the Task Force when it was proceeding with the task entrusted to it. The aforesaid action of the Respondents in disbanding the Task Force instead of providing necessary assistance to the Task Force to comply with the mandates of the order dated 28.01.2011 passed by this Hon'ble Court clearly amounts to a failure of the Respondents in complying with the mandates of the order dated 28.01.2011.

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- C. For that the Respondents have arbitrarily disbanded the Task Force which was set up for protection of public land from encroachment. The reasons denoted for disbanding the Task Force were factually incorrect and the decision was taken in haste and without application of mind. The action of the Respondent No. 1 in singularly targeting and disbanding the Task Force smacks of *malafide* intention on the part of Respondent No. 1. It is most respectfully submitted that this is indicative of the government's rejection of public interest of protecting public land and forests and even support to encroachers by disbanding the Task Force when it was proceeding with the task entrusted to it.
- D. For that the Respondents have failed and neglected to take immediate steps even after the publication of the JLC Report. The Petitioner submits that the recommendations of the Reports deserve to be accepted and implemented within a fixed and short span of time. It is apparent from a perusal of the Reports that extensive research has been conducted at the ground level and on the basis of findings at the ground level, elaborate recommendations have been made. The JLC Report clearly brought out the rampant irregularities plaguing the state with respect to public land.
- E. For that Respondent No.1 is yet to effectively comply with orders passed by the Hon'ble Supreme Court in Civil Appeal No.1132/2011 i.e., *Jagpal Singh & Ors. vs. State of Punjab and Ors.* AIR 2011 SC 1123. It is most respectfully submitted that the Hon'ble Supreme

Jagpal Singh

Court has passed an order dated 28.01.2011 *inter alia* directing the State of Karnataka, i.e., Respondent No.1 to take effective steps for protection of public land from encroachment. It is respectfully submitted that despite the aforesaid order, the Respondents have disbanded the Task Force which was set up for the very same purpose. It is most respectfully submitted that the Task Force, through wide public notice and publicity through the media had received during its functioning from September 2009 to June 2011 (when it was disbanded) by petitions, personal appearances, reference from Lokayukta, telephone calls, emails, newspaper reports and even anonymously 1597 complaints of encroachments in public lands of which 398 were finally disposed off to the satisfaction of the complainants through detailed enquiry by Deputy Commissioners, Conservator of Forests and various other district level department heads; the balance 1199 complaints of encroachments were under different stages of enquiry when the Task Force was disbanded by the then Revenue Minister, hailing from the Bellary District, without reference and concurrence of the cabinet since the encroachments involved more than one Department. Also, the Task Force was receiving every week about 15 to 20 complaints when it was disbanded. It is most respectfully submitted that even of the 11 lakh acres or so of encroachments identified, only 47,309 acres of encroachment was removed by the empowered officers of various departments, which is a mere 4.3% when the work was stopped by the Government. It is further submitted that this is indicative of the government's rejection of public interest of protecting public land and forests and even the support of encroachers

Noted

when it disbanded the Task Force when it was proceeding with the task entrusted to it. The aforesaid action of the Respondents in disbanding the Task Force instead of providing necessary assistance to the Task Force to comply with the mandates of the order dated 28.01.2011 passed by the Hon'ble Supreme Court amounts to a failure of Respondents in complying with the mandates of the order dated 28.01.2011.

F. For that the sudden deforestation which is taking place at a fast pace due to encroachment of Forest land, causing extinction of animal and plant species on an alarming scale, which is incompatibly greater than their extinction over the course of millions of years. Such an environmental degradation due to inaction/ omission by State is violation of Article 21 of Constitution.

G. For that State's inability to prevent encroachment of public land violation of 'Public Trust'. Public land is a shared heritage of human kind and has to be preserved for posterity. It is submitted that, it is now a recognized principle that human beings owe a duty not only to their compatriots but to also the future generations to preserve and protect common heritage. This very principle has found acceptance in international law and is mentioned in United Nations Convention on the Law of Seas (UNCLOS) and the UNESCO Declaration on the Responsibilities of the Present Generations towards Future Generations dated 12.11.1997. The Hon'ble Supreme Court in the case of *Karnataka Industrial Areas Development Board v. Sri. C.*

noted

Kenchappa and Ors., AIR 2006 SC 2038 observed that “*The public trust is more than an affirmation of State's power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage*”. The Hon'ble Supreme Court in the case of *M.C. Mehta Vs. Kamal Nath*, (1997) 1 SCC 388, has recognized the public trust doctrine and held as follows “*Our legal system – based on English common law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment...The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the public trust doctrine is a part of the law of the land.*” The Petitioner, therefore, respectfully submits that, the State is bound to retain control of and utilize public resources for public good.

H. For that by allowing illegal usurpers to encroach public land, the State is in fact, an abettor to gross violation of rule of law, right to equality and equal protection of laws, enshrined in Article 14 of the Constitution. It is respectfully submitted that public land earmarked for parks, playgrounds, lakes/lake developments, schools cannot and ought not to be permitted to be illegally used for the benefit of a powerful few.

I. For that the Task Force report indicates numerous illegalities in de-notification of public land. It is most respectfully submitted that, once private land is notified for public purposes in accordance with

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law, such land ought to be treated as public land for all purposes and de-notification ought to be allowed, only in accordance with law. The concept of public purpose indicates that such land has to be put to such uses that make the land and any structures thereon accessible to and for the benefit of the public at large. It is respectfully submitted that rampant and arbitrary de-notification of public land in fact, amounts to improper, illegal and may at times denote *mala fide* alienation of public land. Such selective de-notification of acquired public land is clearly discriminatory and in violation of Article 14 of the Constitution of India. It is, therefore, respectfully submitted that, it is just, necessary and proper that this Hon'ble Court lays down detailed guidelines and directions for de-notification of public land, in order to curb illegal, *mala fide*, unreasonable and discriminatory deletions/ de-notifications and issue further directions restraining the Respondents from de-notifying any lands, in violation of such guidelines/directions.

- J. For that the rampant encroachment of public land necessitates a court monitored mechanism for strict implementation of laws. It is respectfully submitted that the state executive has failed in performing its constitutional and statutory duties. Moreover, as noticed in the Reports, a large number of encroachments are caused with the knowledge of, if not the connivance of the state administration and such illegal co-operation is procured at the instance and behest of powerful persons. It is respectfully submitted that the nexus of powerful persons and perhaps, officials makes the task of implementation herculean. Such peculiar circumstances

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necessitate intervention and continuous monitoring by this Hon'ble Court.

K. For that the duty of administration is to uphold the rule of law, it is therefore necessary to proscribe and prosecute public servants whenever they are involved in land grabbing. The designated officials of Respondents such as Deputy Commissioners, Heads of Department and Chief Executive Officers have, as per the Reports, failed to perform their statutory duties. The Petitioner, therefore, respectfully submits that this Hon'ble Court ought to initiate action against erring officials to ensure that they perform their statutory duties scrupulously, which is instrumental in protection and recovery of encroached lands.

L. For that the entire purpose behind such a public initiative purpose would be frustrated, if the directions of the Hon'ble Court are not strictly followed and implemented. For ensuring the same, it is most respectfully submitted that it is just and necessary to have a Court appointed Monitoring Committee, answerable to this Hon'ble Court, which shall ensure strict compliance of the orders of this Hon'ble Court.

M. For that it is necessary to carry out a survey of and protect public lands and prepare a Master Plan for future public purposes. The Government should initiate and implement a city survey of Bangalore Metropolitan Area under the Urban Property Ownership Records (UPOR) Project. In addition to this, the services of the E-

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Governance Department should be availed to develop more reliable methods to keep the Property Registers updated and aid the process of city survey. It is submitted that, if the aforesaid is accomplished, the state will be able to better defend public land from encroachment and also initiate effective action for recovery of encroached land.

N. For that the Lake Development Authority, although comprising of high ranking officials, does not possess requisite powers to implement various laws. It is respectfully submitted that Lake Development Authority should be empowered with sufficient powers of superintendence for the protection and restoration of lakes as the multifarious agencies are incapable of acting in a unified manner and their efforts will be fissiparous. It is, therefore, respectfully submitted that an empowered LDA can take effective action for removal and prevention of encroachment.

GROUND IN SUPPORT OF INTERIM RELIEF

A. For that the State machinery has failed to comply with the multiple directions issued by the Hon'ble Supreme Court in *T N Godavarman Thirumulpad Vs. Union of India*. It is most respectfully submitted that, not only has the State failed in its duty of implement law, but the State has further failed to comply with the directions passed by the Hon'ble Supreme Court. It is most respectfully submitted that the state machinery has failed to check illegal encroachment and deforestation and has thereby failed to take necessary remedial measures which have resulted in huge ecological imbalance. The

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State is duty bound to prevent illegal encroachment and deforestation to maintain ecological balance and hygienic environment. It is submitted with utmost respect that the State's continued failure to comply with the directions passed by the Hon'ble Supreme Court clearly necessitates intervention of this Hon'ble Court by constitution of a Monitoring Committee, not only to ensure compliance with law, but also to ensure that the Hon'ble Supreme Court's orders are complied with in letter and spirit.

PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased to:

- (a) Issue a writ of mandamus or any other appropriate writ or order, setting aside the Government Order No. RD 897 LGB 2010 dated 4th January, 2011 produced as (Annexure "G") disbanding the Task Force with effect from 4th July, 2011;
- (b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent No. 1 to recover the land illegally grabbed by the private persons/institutions/trusts/societies/non-governmental associations and organizations;
- (c) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent No. 1 to prosecute the government officials/servants and private

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persons/institutions/trusts/societies/non-governmental
associations and organizations who connived and conspired
with each other in grabbing the Public Land illegally;

- (d) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondents No.1 to 3 to implement all the recommendations made in the report dated 30/06/2011, submitted by the Task Force for Recovery of Public Land and its Protection at (Annexure "J") and reports dated 14/02/20007 and 26/06/2007 at (Annexures "B" and "C") submitted by the Joint Legislature Committee of the Karnataka Legislature, on Encroachments in Bangalore Urban District i.e., the Ramaswamy Committee Report;
- (e) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondents from, in any manner, alienating public land to private individuals/institutions/trusts/societies/non-governmental associations and organizations, without following the due process of law;
- (f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.

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INTERIM PRAYER

Pending consideration of this writ petition, this Hon'ble Court be pleased to:

Pass an order constituting a Specially Empowered Task Force to carry out all the discontinued functions and responsibilities of the Task Force which was constituted *vide* G.O. No.RD 556/LGB/2009 dated 19.09.2009 under the supervision and control of this Hon'ble Court.

Bangalore
Date:


Advocate for Petitioner
(Nalina Mayegowda)

Nalina Mayegowda
Advocate
The Estate, Level One
No. 121, Dickenson Road
Bangalore - 560.042

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

WRIT PETITION NO. _____/2013

Between

Namma Bengaluru Foundation

Petitioner

And

State of Karnataka and Another

Respondents

AFFIDAVIT

I, Suresh NR, son of Mr N.S. Ranganath, aged about 38 years, residing at # 63/169, 4th Cross, 9th Main, Hrishikeshnagar, Hosakerehalli, BSK 3rd Stage, Bangalore – 560 085, Karnataka do hereby solemnly affirm and state as under:-

1. That I am the authorized signatory of the Petitioner and I am well acquainted with all the facts and circumstances of the case and as such I am competent to swear to this affidavit.
2. I state that the contents of the Writ Petition in paragraphs nos. 1 to 50 are true to my knowledge derived from the records of the case and last paragraph is prayer to this Hon'ble Court.
3. I state that the Annexures "A" to "N" annexed to the Writ Petition are true copies of their respective originals.

VERIFICATION:

I, the above named Deponent, do hereby verify that this is my true name and signature and that the contents of the above Affidavit are true and correct to my knowledge; no part of it is false; and nothing material has been concealed therefrom.

Verified at Bangalore on this the 28th day of March, 2013.

Bangalore
Date:28/03/2013

Deponent

Identified by me

Advocate