

CJ & HTNPJ
18.06.2019

W.P.No.38401/2014
C/w. W.P.No.11044/2018

ORDER

In W.P.No.38401/2014, several issues of public importance have been raised. The first issue is about the maintenance of storm water drains in the city of Bengaluru. The second issue is regarding the illegal constructions and encroachments made on the storm water drains and creating alternate sewage lines. The other issue is regarding the discharge of sewerage and mixing of other materials into the storm water drains. There is an issue of discharge of effluents and other polluted water into lakes. There are several other incidental issues raised in the petition. The orders passed in the writ petition by the successive benches will show that this Court has expanded the scope of the writ petition and now the writ petition touches the issue of restoration and rejuvenation of large number of lakes within the limits of Bruhat Bengaluru Mahanagara Palike (for short 'the BBMP'), which is the fourth respondent in W.P.No.38401/2014.

2. In W.P.No.11044/2018, the prayer made is regarding taking action against those residential houses/apartments and

commercial establishments which are letting their untreated effluent into the storm water drain in the fourth phase J.P.Nagar, Bengaluru.

3. Considering the fact that a wider issue is involved regarding all the lakes in the city, we issue rule nisi in the petitions. The concerned Advocates representing various respondents waive service. Interim directions will have to be issued from time to time. We have heard the learned counsel appearing for the parties as well as the learned counsel who is appointed as amicus curiae on the nature of interim directions which can be issued in these two writ petitions.

4. Firstly, we deal with the issue of encroachments on the storm water drains. As far as drains are concerned, the same are defined under sub-section (9) of Section 2 of the Karnataka Municipal Corporations Act, 1976 (for short 'the said Act of 1976'). The definition of a 'drain' is very wide, which not only includes house drain, sewer, tunnel, pipe, ditch, gutter or channel and any cistern, flush-tank, septic tank or other device for carrying off or treating sewage, offensive mater, polluted water, sullage, waste water, rainwater, but more importantly, it includes sewage as defined in sub-section (38) of Section 2.

Sewage is defined as night soil and other contents of latrines, urinals, cesspools or drains and polluted water from sinks, bathrooms, stables, cattle sheds and other like places. Section 58 of the said Act of 1976 incorporates the obligatory functions and duties of the Municipal Corporations. One of the obligatory functions is under sub-section (4) thereof, which is the construction, maintenance and cleaning of drains and drainage works. Section 234 of the said Act of 1976 mandates that without written permission of the Commissioner, no building, wall, fence or other structure shall be erected on any Corporation sewer constructed or maintained by, or vested in, the Corporation. There is one more important relevant provision which is Section 230 which empowers the Commissioner to require that there shall be one drain for filth and polluted water and an entirely distinct drain for rainwater and unpolluted sub-soil water or both rainwater and unpolluted sub-soil water each emptying into a separate corporation sewer or corporation drain or other suitable places. It is the mandatory obligation of the Municipal Corporation to not only construct drains but to properly maintain it. Considering the mandate of law, the Municipal Corporation is under an obligation to provide separate drains for carrying sewerage and

rainwater. If any illegal construction is carried out on or abutting the drains without obtaining permission under the provisions of the said Act of 1976, there are abundant powers vesting in the Commissioner under Section 321 of the said Act of 1976 to demolish the illegal structures. It is obvious that if Municipal Corporation allows illegal structures to stand on the drains or around the drains, it will be committing a breach of its mandatory obligations under sub-section (4) of Section 58 of the said Act of 1976.

5. The failure to properly repair and maintain drains and sewage creates pollution and drastically affects ecology and environment. If illegal structures in and around the drains and sewer as defined under sub-sections (9) and (38) respectively of Section 2 of the said Act of 1976 are allowed to be maintained without taking any action of demolition, it will not be possible for the Municipal Corporation to maintain the drains. The Apex Court has repeatedly held that the right to live in a pollution free atmosphere is a right which is guaranteed under Article 21 of the Constitution of India. The failure to maintain and clean the drains as a result of allowing the illegal constructions to stand thereon adversely affects the

environment which will ultimately infringe the rights of citizens under Article 21 of the Constitution of India. The citizens' right to live in a pollution free atmosphere is an integral part of the rights guaranteed under the Article 21 of the Constitution of India. Contrary to the affidavits filed on record by the Municipal Corporation, if the latest reports and the affidavits are perused, it depicts a very sorry state of affairs as far as the illegal constructions on drains and sewage are concerned. Along with the memo dated 4th June 2019, the learned counsel appearing for the Municipal Corporation has tendered the details of encroachments on storm water drains as on 31st May 2019. Though there is no elaboration by the Municipal Corporation, we take it that the encroachments are on drains within the meaning of the definition under sub-section (9) of Section 2. As on 31st May 2019, the total encroachments in 9 zones were 2550, out of which, only 620 encroachments were removed as on 31st May 2019. To say the least, the figures given of encroachments of storm water drains are very shocking. In the memo and the affidavits, the Municipal Corporation has not come out with the case that any preventive measures are being taken by the Municipal Corporation for preventing further encroachments on the storm water drain.

6. Today, there is an affidavit filed by the Commissioner of Survey, Settlement and Land Records. It is recorded that the Municipal Corporation has planned demolition of encroachments in 250 survey numbers in June. In paragraph 2 of the said affidavit the Commissioner has stated thus:

“2. In this regard BBMP planned demolition of encroachments in 250 Survey Nos. in June and the survey and marking will be completed within June-2019. Further, it is committed that each month, as per target of BBMP to do demolition, the requisite survey and marking will be completed. The BBMP plans to complete demolition in ten months and survey will be, accordingly completed and there will not be any delay in conducting survey from my department.”

7. We accept the statement made by the Commissioner of Survey as the undertaking of the State Government. The learned counsel appearing for the Municipal Corporation states that as soon as the survey maps are received, the Municipal Corporation will commence immediate action of demolition in accordance with law.

8. Apart from taking action against the existing encroachments, the Municipal Corporation will have to come out with an action plan for preventive encroachments. We may note here that the figures of encroachments which are quoted above are as of 31st May 2019. Therefore, needless to add that even in future also the State Government is bound to carry out the survey as and when demanded by the Municipal Corporation for ascertaining encroachments on or near the drains. In terms of the above, we propose to issue interim directions.

9. Now, we turn to the issue of lakes within the limits of the Municipal Corporation. As pointed out in I.A.No.1/2019, perhaps a perusal of the records will show that this Court has spent considerable time earlier in dealing with the issue of restoration and rejuvenation of the lakes. In fact, our attention was invited to the judgment and order of this Court dated 11th April 2012 in the case of ***ENVIRONMENT SUPPORT GROUP (TRUST REGISTERED UNDER THE INDIAN TRUST ACT) vs. STATE OF KARNATAKA AND OTHERS*** in W.P.No.817/2008 and other connected matters. In the said writ petitions, various directions were issued in respect of the

lakes. For the sake of convenience, we are reproducing the operative part of the said judgment and order, which reads thus:

“1. It is just and necessary that survey of lakes and tanks in Kamataka have to be undertaken by demarcating the boundaries and to make proper fencing.

2. The unauthorised construction within the 30 mtrs of peripheral lake area have to be removed.

3. Removal of silt as also, scientific dc-weeding for the rejuvenation of some of the tanks and proper embankments have to be done periodically.

4. Flow of sewerage water into lakes and tanks have to be stopped. The channels, which feed the lakes, have to be properly protected and maintained.

5. The forest department shall undertake to plant the trees and saplings in the buffer area of the lake.

6. The Commissioner of BBMP shall be responsible for the proper maintenance and

development of the lakes within the BBMP area,

7. For the Bangalore Metropolitan Area, the Commissioner, Bangalore Development Authority, the Chief Executive Officer, Lake Development Authority and Deputy Conservator of Forest shall be the Committee for proper maintenance and development of lakes in Bangalore Metropolitan area.

8. In respect of City Municipal Corporation, the Deputy Commissioner of District, the Commissioner of City Municipal Corporation and Commissioner of Urban Development Authority shall be the Committee responsible for proper maintenance and development of lakes within the City Municipal Corporation area.

9. In respect of municipal areas, the Deputy Commissioner of District, Commissioner of Municipality and District Water Resources Officer shall be the members of Committee and they shall be responsible for proper maintenance and development of lakes situate in for municipal and taluka areas.

10. There shall be an Apex Committee consisting of Principal Secretary, Department of Revenue, Chief Executive Officer. Lake Development

Authority and Member Secretary of State Legal Services Authority who shall oversee and supervise the maintenance of lakes by above stated committees. The above stated Committees shall send quarterly report about the maintenance and development of lakes to the Apex Committee, which shall supervise the development and maintenance of lakes. The Apex Committee can also entertain complaints and give proper directions to concerned committees for proper maintenance and development of lakes.

11. The first respondent is directed to comply the above said directions by passing necessary orders in accordance with law for ensuring proper preservation, maintenance and development of lakes.”

10. Prima-facie, it appears to us that there is non-implementation of the directions issued in the said judgment in its true letter and spirit. In fact, the said judgment is based on a report submitted by a Judge of this Court Justice N.K.Patil, the then Chairman of the High Court Legal Services Committee. The report has been submitted in terms of the order dated 26th November 2010 passed in the said writ petitions. The report contains several suggestions and factual aspects. We must note here that the report records that Bengaluru city is

considered as a co-terminus with BDA (Bangalore Development Authority) area of 1300 sq. kms which includes 800 sq. kms municipal area and 91 sq kms of BMICPA (Bangalore-Mysore Infrastructure Corridor Area Planning Authority). It is stated in the report that total 386 lakes situated in BDA area of about 1300 sq. km were considered for restoration. It also records that the ground position of 121 lakes is yet to be verified. We must note that one of the orders passed in W.P.No.38401/2014 based on the status report submitted records that there are about 183 lakes in Bengaluru. Across the Bar, a list was handed over which was earlier prepared by the Lake Development Authority which shows that there were more than 400 lakes in the same area. I.A.No.1/2019 again shows the position which is totally different. The affidavit filed by the Municipal Corporation deals with only 168 lakes which according to the Municipal Corporation were entrusted to the Corporation for maintenance. Thus, the scenario which emerges today is that even after a detailed exercise was undertaken by this Court, nobody is sure about the exact number of lakes which were in existence within the limits of BBMP or BDA. As none of the parties are sure about the total number of lakes which were in

existence, obviously there is no account of the lakes which have disappeared with the passage of time. In fact, in the affidavit filed by the Municipal Corporation, it is brazenly mentioned that 19 lakes disappeared because of the constructions having been carried out thereon. In fact, some of the constructions carried out thereon are by the public authorities. There is nothing on record to show that the directions we have quoted above have not been implemented at all. That is the reason why if the scope of these petitions is not expanded for dealing with the issue of the restoration, rejuvenation and maintenance of all the lakes, we will be failing in our duty.

11. We have perused the earlier judgment, the operative part of which is quoted above. Thereafter, a lot of water has flown in terms of the development of the law relating environment. The scope of Article 21 of the Constitution of India has been considerably widened. Therefore, it is our duty to remind all the concerned authorities about the legal position and their legal as well as the constitutional obligations.

12. We must note here that the State of Karnataka cannot be absolved of its obligations in respect of lakes though

it may have entrusted the job of maintenance of the lakes and tanks to the concerned authorities. It is not necessary to record detailed reasons for holding that it is the primary responsibility of the State to maintain lakes and tanks. We must record here that all the authorities have completely ignored the law. There is a Doctrine of Public Trust. There is a Precautionary Principle. There are directive of principles of state policy. There are fundamental duties of the citizens incorporated under Article 51A of the Constitution of India. There are orders passed by the Apex Court to protect the wetlands which include lakes, tanks and various categories of water bodies. The Apex Court while protecting the wetlands has heavily relied upon the International Convention, known as Ramsar Convention. Considering the fact that the earlier judicial orders have not helped for restoration and for rejuvenation of the lakes, it is necessary for us to restate the well settled principles which are laid down by the Apex Court and the directions issued by the Apex Court. Before we do that, we must note that the State Government and all the concerned authorities will have to come before the Court and establish the compliance made with the directions issued in the earlier petition which are quoted above.

13. In the case of ***HINCH LAL TIWARI vs. KAMALA DEVI AND OTHERS***¹, in paragraph 13 of the decision, the Apex Court held thus:

“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

(Emphasis added)

¹ (2001) 6 SCC 496

14. Hence, in no uncertain terms, the Apex court has held that the material resources like tanks, ponds which are nature's bounty, have to be protected for proper and healthy environment to enable the people to enjoy quality and meaningful life, which is a right guaranteed under Article 21 of the Constitution of India. The lakes in the city enable the citizens to enjoy quality life. Thus, it no longer remains merely a legal obligation of the State and other concerned authorities to protect tanks, ponds, etc. It is their constitutional obligation as the preservation of tanks and lakes is needed for proper and healthy environment, which ultimately enables citizens to enjoy a quality life guaranteed by Article 21.

15. As far as the lakes and other water bodies are concerned, Article 48A of the Constitution of India is relevant. It lays down that "48A.The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". In this context, Clause (g) of Article 51A of the Constitution of India is also material. It provides that it shall be the duty of every citizen to protect and improve natural environment including forests, lakes, rivers etc. It

becomes a collective responsibility of the society at large which consists of the citizens to protect and improve the lakes. In one of the decisions of the Apex Court in **JAGPAL SINGH vs. STATE OF PUNJAB AND OTHERS**², the Apex Court has noted that over the last few decades, most of the ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. In fact the Apex Court has observed that this has contributed water shortages in the country.

16. The Doctrine of Public Trust is now an integral part of the legal system in India. The Apex Court held that the Doctrine of Public Trust which is a part of English common law is very much part of our legal system and our jurisprudence. That is done in the case of **M.C.MEHTA vs. KAMAL NATH AND OTHERS**³. The law is reiterated by the Apex Court in the case of **ASSOCIATION FOR ENVIRONMENT PROTECTION vs. STATE OF KERALA AND OTHERS**⁴. In fact, the first paragraph of the said decision notes that the people across the world have made efforts to preserve environment and natural

² (2011) 3 SCC 694

³ (1997) 1 SCC 388

⁴ (2013) 7 SCC 226

resources like air, water, plants etc. Sages of many religions always preached and taught the people to worship earth, sky, rivers, sea, plants, trees, etc. The Apex Court has reiterated the applicability of Doctrine of Public Trust in paragraphs 5 of the said decision, which reads thus:

“5. The judgment in M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 is an important milestone in the development of new jurisprudence by the Courts in this country for protection of environment. In that judgment, the Court considered the question whether a private company running tourists resort in Kullu-Manali valley could block the flow of Beas river and create a new channel to divert the river to at least one kilometre down stream. After adverting to the theoretical and philosophical basis of the public trust doctrine and judgments in Illinois Central Railroad Co. v. Illinois, 146 US 387; Gould v. Greylock Reservation Commission, Sacco v. Deptt. of Public Works, Robbins v. Deptt. of Public Works and National Audubon Society v. Superior Court, this Court observed (M.C. Mehta case SCC p.413, paras 34-35):

*“34. 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. Public at large is the beneficiary of the sea-shore, running***

waters, airs, forests and ecologically fragile lands. 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.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing need of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. **The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”**

(Emphasis added)

17. In the case of **INTELLECTUALS FORUM -- STATE OF A.P.**⁵ on doctrine of public trust, the Apex Court in paragraph 76 held thus:

“76. The Supreme Court of California in National Audubon Society vs. Superior Court of Alpine Country (33 Cali419) also known as Mono Lake case summed up the substance of the doctrine. The Court said:

‘Thus the public trust is more than an affirmation of State 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 of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.’

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with

⁵ (2006) 3 SCC 549

the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources.[Joseph L. Sax "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol.68, No.3 (Jan.1970) pp.471-556]. According to Prof.Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine]:

1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

2. the property may not be sold, even for fair cash equivalent;

3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of references."

18. Thus, the natural resources including the lakes, tanks and water bodies have to be protected. Apart from the constitutional obligation, it becomes the obligation of the State to protect the said natural resources in view of the applicability of the doctrine of public trust. The State is the owner of the lakes in view of the legal fiction created by Section 67 of the Karnataka Land Revenue Act, 1994. The State is under an obligation to maintain lakes as the same constitute public property. Considering the manner in which the lakes in the city have been dealt with, it is obvious that the State Government and all the public authorities have given a complete go-by to the Doctrine of Public Trust and the well settled concept of Precautionary Principle. The concept of Precautionary Principle is laid down by the Apex Court in the case of ***M.C.MEHTA vs. UNION OF INDIA AND OTHERS***⁶ . Paragraph 10 of the said decision is relating to construction of precautionary principle. It reads thus:

“10. In M.C.Mehta vs. Union of India ((1987) 4 SCC 463, this Court held as under:

⁶ (1997) 3 SCC 715

“The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public.

Life, public health and ecology have priority over unemployment and loss of revenue problem”.

The “Precautionary Principle” has been accepted as a part of the law of the land. Articles 21, 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The “Precautionary Principle” makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to

limit the construction activity in the close vicinity of the lakes.”

(Emphasis added)

19. The Precautionary Principle has been accepted as a part of the law of the land as held by the Apex Court under which it becomes a duty of the State to anticipate and prevent the lakes from getting polluted. It must be held that Articles 21, 48A and 51A (g) of the Constitution of India give a clear mandate to the State of Karnataka as well to its agencies to prevent damage to the environment and to improve the environment. That is how the State Government and its agencies and instrumentalities or other public authorities are under an obligation to protect the lakes, water bodies and wetlands. Natural resources play a very important role in our eco- system.

20. Then comes the concept of wetlands. The concept came to limelight as a result of Ramsar Convention held in the year 1971. It is an Intergovernmental Treaty that provides the framework for the conservation and wise use of wetlands and

their resources. India has become a party to the Ramsar Convention.

21. There are Wetlands (Conservation and Management) Rules of the year 2010 and 2017 which were framed subsequent to Ramsar Convention. Wetlands (Conservation and Management) Rules of 2017 (for short, 'the Rules of 2017') have been framed in exercise of the powers conferred under Section 25 of the Environment (Protection) Act, 1986. The recitals in the preamble to the Rules make it clear that the conservation and wise use of wetlands provides substantial direct and indirect economic benefits to the state and national economy. The definition of Wetland in Clause (g) of Rule 2 of Rules of 2017 is very wide. For the sake of convenience, we extract clause (g) of Rule 2 of the Rules of 2017:

“(g) “wetland” means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include river channels, paddy fields, human-made water

bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes;

22. The definition is very wide. It includes all lakes/tanks, whether natural or artificial. The exclusion from the definition is of human made water bodies/tanks specifically constructed for drinking water purposes. There are restrictions on the activities in wetlands as provided under Rule 4 of the Rules of 2010 and 2017. We may note that this issue came up for consideration before the Apex Court in W.P.(Civil) No.230/2001. By order dated 4th October 2017, the Apex Court has directed that wetlands that have been mapped by the Government of India should continue to remain protected on the same principles as were formulated in Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. The project of National Wetland Inventory and Assessment was undertaken with the help of the Space Application Centre. This inventory is made of the wetlands in the country by using a scale of 1: 50000. In the earlier order dated 8th February 2017

in the same case⁷, the Apex Court has referred to the said National Wetland Inventory and Assessment. Paragraph 23 of the said order is material which reads thus:

“23. Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India will identify and inventorise all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, that is to say:

“4.(1) (i) reclamation of wetlands;

(ii) setting up of new industries and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified vide S.O. No. 966(E), dated the 27th November, 1989 or the

⁷[(2017) 7 SCC 805

Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms /Genetically Engineered Organisms or Cells notified vide GSR No. 1037(E), dated the 5th December, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 notified vide S.O. No. 2265(E), dated the 24thSeptember, 2008;

(iv) solid waste dumping:

Provided that the existing practices, if any, existed before the commencement of these Rules shall be phased out within a period not exceeding six months from the date of commencement of these rules.;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements:

Provided that the practices, if any ,existed before the commencement of these Rules shall be phased out within a period not exceeding one year from the date of commencement of these Rules;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these Rules;

(vii) any other activity likely to have an adverse impact on the ecosystem of the wetland to be specified in writing by the Authority constituted in accordance with these Rules.”

(Emphasis added)

23. What are quoted by the Apex Court in Rule 4 are the activities which are completely prohibited. This order makes it clear that there will be a ban the aforesaid activities on the wetlands identified under the National Wetlands Inventory. The said ban imposed by the Apex Court continues to operate even today notwithstanding the applicability of the said Rules of 2017. The State Government must identify the wetlands in the State which have been recorded in the National Wetlands Inventory and protect the same. The tanks and lakes with which we are concerned are the wetlands within the meaning of both 2010 and 2017 Rules and therefore, need to be protected.

24. Thus, there is no manner of doubt that apart from applicability of the Public Trust Doctrine, Precautionary Principle and directions of the Apex Court in the case of wetland, it is not only legal but also a constitutional obligation of the State Government and its agencies including BBMP to

protect the tanks and lakes. Thus, it is the legal and constitutional obligation of all the agencies to ensure that there is clean water in the lakes and the lakes are free of pollution. Moreover, the State must ensure that nothing should be done which results in discharge of waste water, sewer or polluted water in the lakes. As noted earlier, allowing the lakes to get destructed or polluted will be a violation of fundamental rights of the citizens under Article 21 of the Constitution of India. Therefore, it can be said that it is the constitutional obligation of the State Government and its authorities to maintain lakes, to restore the lakes which have disappeared with the passage of time and to rejuvenate the existing lakes. We may note here that mere beautification of the surrounding areas of the lakes may not necessarily amount to restoration or rejuvenation of the lakes. The work of restoration and rejuvenation has to be done in a scientific manner guided by an expert authority. It involves various things such as stopping entry of dirty and polluted water, restoring the sources of water supply to lakes etc.

25. Perhaps the State legislature after considering the rights conferred on the citizens under Article 21 of the

Constitution and the duty of the State to conserve the lakes, enacted the Karnataka Lake Conservation and Development Authority Act, 2014 (for short, 'the said Act of 2014). The preamble of the said Act refers to the right to water being a part of right to life under Article 21 of the Constitution of India. Clause (h) of Section 2 of the said Act of 2014 contains a very wide definition of lakes. Under Section 14 of the said Act of 2014, various acts have been prohibited in lakes.

26. Today, we are at a stage when none of the authorities has any precise answer to the question of number of lakes which were in existence in the city. It is accepted in the affidavit filed by BBMP that 19 lakes have disappeared. Perhaps the location of the lakes which have disappeared is also known to BBMP as it is stated in the affidavit the kind of structures which have been erected on the disappeared lakes.

27. To conclude, we must record a prima-facie finding that as far as the city of Bengaluru is concerned, there has been a failure on the part of all the authorities of the State Government to protect the lakes, tanks and other water bodies in the city.

28. The earlier orders of this Court have not worked as the reminders to the authorities of their legal and constitutional obligations. Considering all these aspects, this Court made a suggestion to the learned AGA representing the State Government whether any expert agency can be appointed to do exhaustive studies concerning the lakes, tanks and water bodies including disappeared lakes in the city and to suggest short term and long term measures for restoration, maintenance and rejuvenation thereof. As noted earlier, mere beautification made around the lakes does not necessarily amount to rejuvenation of the lakes. The State Government has agreed to the suggestion of the Court to appoint CSIR-National Environmental Engineering Research Institute (for short, 'NEERI').

29. Therefore, we propose to direct the State Government to immediately appoint NEERI as an expert agency to make a study on all aspects of restoration, maintenance and rejuvenation of the lakes and tanks in the city. NEERI will have to do the exercise identifying disappeared lakes. NEERI will have to suggest short term and long term measures for restoration, rejuvenation and

maintenance of the lakes. Needless to add that if there are constructions carried out by any State Government or public authorities on the sites of the lakes, the State Government will have to necessarily take action of removal of the said structures in a phased manner and for restoration of the lakes.

30. At this stage, an argument is canvassed by the learned AGA that the State cannot be expected to demolish the buildings which came to be erected on the sites of the lakes. It is pointed out that some of the buildings have been erected as part of the development of the city. It appears that the idea of the State seems to be that in the name of development, lakes can be destroyed. This concept is unheard of and not recognized by law. If the State was conscious of its obligations, it could have created man made lakes in the city to compensate for the loss to the environment on account of the loss of lakes due to construction. It is claimed that the development work of various kinds is carried out to make the city a 'smart city'. We fail to understand as to how a city can become a smart city without the lakes being restored and maintained. After NEERI completes the exercise of ascertaining the location of disappeared lakes, the State will

have to come out with a scheme for restoration and taking care of the enormous damage caused to the environment by the destruction of lakes.

31. Now, we come to the issue of providing Grievance Redressal Mechanism to the citizens. The said Act of 1976 contains several provisions to take action of demolition of illegal structures. Unfortunately, due to the failure of the concerned authorities to perform their duties, the citizens are forced to take recourse to writ jurisdiction under Article 226 of the Constitution of India by seeking a writ of mandamus. As BBMP has allowed large number of encroachments on the lakes and drains, the petitioners are forced to approach the Courts. The citizens have a right to compel the Municipal and other State Government authorities to perform their duties which are enjoined under the provisions of the Constitution of India and the laws. They have a right to invite attention of the authorities to the illegalities and the failure to protect the lakes and water bodies. The Municipal Corporation has tendered certain documents on record to show how a Grievance Redressal Mechanism has been provided to the citizens. It is pointed out that one toll free number has been provided. The

learned counsel for one of the petitioners pointed out that the toll free number is not working. We, therefore, propose to direct the Municipal Corporation to make available a Grievance Redress Mechanism by use of which the citizens can make complaints about the illegal constructions and encroachments on the lakes, discharge of dirty water into the lakes, the damage caused to the lakes and other illegalities which are required to be dealt with by the Municipal Corporation. The Grievance Redressal Mechanism must enable the citizens to lodge complaints in writing as well as by email or via social media like Whatsapp etc,. Facilities shall be made available to enable the citizens to upload the photographs of the illegalities so that immediate steps can be taken by the Municipal authorities. The essential part of the Grievance Redressal Mechanism is that the complaint must be dealt with in a specific time limit and the citizens must be communicated the action taken thereon.

32. There are directions issued by the State Pollution Control Board dealing with immersion of idols in water. There are guidelines issued by the Central Pollution Control Board. The immersion of idols made up of plaster of paris and other

artificial materials can lead to the destruction of lakes. Necessary directions will have to be issued for implementation of the said directions.

33. Hence, we issue the following interim directions:

(i) We direct the State Government to appoint CISR National Environmental Engineering Research Institute (NEERI) as an expert agency to make in-depth study of causes of pollution of lakes in the city of Bengaluru within the limits of BBMP area, to ascertain the location of lakes which have disappeared with the passage of time, to study the existing lakes and to suggest the measures for restoration of all the lakes which have disappeared with the passage of time. NEERI shall suggest short term and long term measures for protection and rejuvenation of the existing lakes as well as for the restoration of lakes. NEERI shall be empowered to make general and specific suggestions and recommendations to the State Government, BBMP and other public bodies in relation to maintenance and rejuvenation of the lakes. Needless to add that necessary charges shall be paid by the State Government from time to time to NEERI as may be demanded by it;

(ii) The terms of reference of appointment of NEERI and the document of appointment shall be placed on record by the State Government within a period of two weeks from the date on which a copy of this order is provided to the State Government;

(iii) Needless to add that the State Government and all other authorities including BBMP shall be under an obligation to implement the short term and long term measures as may be suggested by the NEERI by submitting the reports from time to time. The NEERI shall submit its first report within a period of three months from the date on which the order of appointment is served to NEERI by the State Government;

(iv) We must make it clear that pending the recommendations which may be made by the NEERI, it is the duty of the State Government as well as the BBMP and the other authorities to ensure that the lakes and tanks are protected in all respects;

(v) The present exercise undertaken by all the authorities for preventing damage or destruction of lakes and rejuvenation

thereof shall continue pending the recommendations of the NEERI;

(vi) We direct the State Government and all the concerned authorities to file status reports indicating compliance with the directions issued by this Court in the judgment and order dated 11th April 2012 in W.P.No.817/2008 and other connected matters. The extensive status report shall be filed by the State Government and BBMP within a period of two months from the date on which a copy of this order is provided to them;

(vii) The status reports shall include the details about the action taken by the Apex Committee and the State Level Committee constituted by the State Government by order dated 9th December 2013 in terms of the directions issued by this Court. The status reports shall contain the details not only of the steps taken by the Apex Committee but also the other committees constituted under the Government Order dated 18th September 2013 namely the Committee for proper maintenance and development of lakes and tanks in Bangalore Urban area and the committees in respect of the other Municipal Corporations. The status reports will indicate the

action taken by the Committee and number of meetings held of the said committees;

(viii) Needless to add that a copy of the report of survey of lakes and tanks in Karnataka ordered to be undertaken under the aforesaid judgment shall also be placed on record along with the status report;

(ix) We direct the BBMP to create a Grievance Redressal Mechanism as indicated in this order. The Grievance Redressal Mechanism will provide for lodging of complaints by traditional mode of written complaints, complaints through e-mail, WhatsApp as well as through a toll free number. Arrangements shall be made to enable the citizens to upload photographs showing illegality while filing complaints via WhatsApp and e-mail. The Grievance Redressal Mechanism shall provide for maintenance of register of complaints received through various modes and the action taken on the complaint. The complainants will be entitled to seek an action taken report from the authorities of BBMP, as a matter of right, after expiry of a specified period from the date of lodging the complaints. If the complainants so desire, their identity shall be kept confidential by the Municipal Corporation;

(x) We direct the State Government to create a similar Grievance Redressal Mechanism for receiving complaints as regards destruction, damage or encroachments on the lakes in the city;

(xi) We grant time of six weeks to both BBMP and State Government to create the Grievance Redressal Mechanism as observed earlier. Wide publicity shall be given by the State and BBMP to the availability of the mechanism in newspapers, on official web sites, by display of Boards in its offices, etc.;

(xii) We direct the State Government to ensure that survey of storm water drains is carried out as per the requisitions of BBMP. As noted earlier, the statements made in the affidavit of Sri. Munish Moudgil, the Commissioner of Survey Settlement and Land Records are accepted as the undertaking of the State Government. The survey shall be carried out in 250 survey numbers every month as per the schedule provided by the BBMP;

(xiii) We direct the BBMP to complete the action of removal of encroachments on the drains within a period of six weeks from the date on which the survey report along with the

map, is received from the surveyor. We direct the State Government to provide inspection of survey reports to the counsel for the petitioner as well as to the learned Amicus Curiae;

(xiv) We direct the BBMP to come out with a comprehensive scheme containing preventive measures for preventing encroachments on the drains including the storm water drains in the city. Necessary details of the comprehensive scheme shall be placed on record in the form of status report within a period of six weeks from today;

(xv) We also direct the BBMP to come out with a comprehensive scheme for preventing damage to or destruction in any manner of any of the existing lakes in the city. The BBMP shall consider of installing CCTV cameras around the lakes so that an effective vigil can be kept for preventing miscreants from damaging the lakes in any manner. The BBMP shall ensure that litter and garbage around the lakes is lifted and cleared everyday;

(xvi) The BBMP shall consider of displaying boards around the lakes for making an appeal to the citizens not to throw any articles in the lakes. The BBMP shall also consider

of conducting various awareness programmes for reminding the citizens about their fundamental duty under Clause (g) of Article 51A of the Constitution of India of protecting lakes, tanks and water bodies. The Municipal Corporation shall consider of taking help of colleges and other educational institutions in the city;

(xvii) As regards immersion of idols and other pooja material, the BBMP shall take necessary steps by following the general guidelines laid down for idol immersion issued by Central Pollution Control Board in June 2010. The BBMP shall ensure that wide publicity is given to the guidelines issued by the Central Pollution Control Board;

(xviii) We direct the Karnataka State Pollution Control Board to ensure that a wide publicity is given to the directions issued on 20th July 2016 under Section 33 of the Water (Prevention and Control of Pollution) Act, 1974;

(xix) We direct the State Pollution Control Board to ensure that in case of violations of the said directions, criminal law is set in motion by invoking Section 41 of the said Act of 1974;

(xx) The BBMP and the State Government shall consider of creating artificial ponds on the occasion of religious festivals which involve immersion of idols to avoid any pollution of the lakes. The BBMP shall make an appeal to the members of the public to use the artificial ponds created specially for immersion of idols. The BBMP shall also consider of setting up centers for receiving idols for immersion so that BBMP can make arrangements for immersion of idols without compromising on the environmental issues;

(xxi) If idols are immersed in some of the lakes in the city, the BBMP shall ensure that the same does not cause pollution:

(xxii) As the issue of implementation of the Solid Waste Management Rules 2016 has direct nexus with the maintenance of the lakes in the city, we direct the BBMP to file an affidavit setting out the schedule for compliance with various duties and responsibilities under Rule 15 with special reference to Clause (e) requiring framing of bye-laws. Such affidavit shall be filed within a period of one month from today which will set out the reasons as to why exercise of framing bye-laws was not

done within a period of one year from the date of the notification of the said Rules of 2016;

(xxiii) We hope and trust that none of the respondents will take these litigations as adversarial litigations. We make it clear that petitioners are free to seek further directions by making appropriate application to the court. If the contesting respondents desire to seek certain directions from the court for effective implementation of directions which we have issued, they are free to make an application to the court;

The above directions are issued at this stage. The parties are put to notice that the court proposes to issue further interim directions from time to time;

For considering compliance with the directions issued regarding appointment of NEERI, these petitions shall be listed under the caption of 'orders' on 5th August 2019. We make it clear that the court will consider the question of issuing further directions of 5th August 2019;

Copies of this order shall be provided to the advocates appearing for the parties;

Orders on I.A.Nos.1/2019 and 2/2019
In W.P.No.38401/2014

The applications are allowed to the extent of prayer for impleading the applicants as parties-respondents.

Necessary amendment shall be carried out and amended petition shall be filed within a period of four weeks from today.

Sd/-

**(ABHAY S. OKA)
CHIEF JUSTICE**

Sd/-

**(H.T.NARENDRA PRASAD)
JUDGE**

Cm/RD