

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY 2022

PRESENT

THE HON'BLE MR. ALOK ARADHE
ACTING CHIEF JUSTICE

AND

THE HON'BLE MS.JUSTICE J.M. KHAZI

W.P.NO.45466 OF 2018 (LB-BMP-PIL)

BETWEEN:

1 . SRI J SRINIVAS

2 . SRI R LAKSHMINARAYAN

3 . SRI B S PRAVEEN KUMAR

4 . SRI B K HARISH KUMAR

... PETITIONERS

(BY SRI. G.R.MOHAN, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
URBAN DEVELOPMENT DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU-560001.
BY ITS PRINCIPAL SECRETARY.
- 2 . THE COMMISSIONER
BRUHATH BENGALURU MAHANGARA FALIKE,
BENGALURU-560001.
- 3 . THE EXECUTIVE ENGINEER
RAJAJINAGAR DIVISION,
BENGALURU-560010

... RESPONDENTS

(BY SRI. PAWAN KUMAR, ADVOCATE FOR
SRI. H.DEVENDRAPPA, ADVOCATE FOR R2 & R3;
SRI. VIJAY KUMAR A PATIL, AGA FOR R1)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO a) ISSUE A WRIT OF MANDAMUS OR DIRECTION THE RESPONDENTS TO CONSIDER THEIR REPRESENTATION AS PER ANNEXURE-D DATED 17.07.2018 AND ANNEXURE-E DATED 18.07.2018 BY NOT GOING AHEAD WITH THE CONSTRUCTIONS b) PASS SUCH OTHER ORDER OR ORDERS AS THIS HON'BLE COURT MAY DEEM FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WP COMING ON FOR FINAL HEARING THIS DAY, **ACTING CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

This petition has been filed as Public Interest Litigation, in which the petitioners *inter-alia* seeking for

Writ of Mandamus or direction to the respondents to consider the representations dated 17.07.2018 and 18.07.2018 and not to go ahead with the construction of building at Park called Gayathri Devi park (Mariappanapalaya Park) which is situated at Ward No.98, Prakashnagar, Rajajinagar Assembly Constituency, Bengaluru (hereinafter referred to as 'the park' for short).

2. The petitioner who claim themselves to be social activists assert that they used to take care of welfare measures for people of Prakashnagar in Rajajinagar, Bengaluru. In the Prakashnagar Ward of Rajajinagar Assembly Constituency, a Park namely Gayatridevi Park was set up about more than 30 years ago, which has been included in the list of approved parks, within the meaning of Karnataka Parks, Play Fields and Open Spaces (Preservation and Regulation) Act, 1985 (hereinafter referred to as 'the Act'). The grievance of the petitioners is that aforesaid park is sought to be turned into concrete Jungle in violation of

the provisions of the Act and the rules framed thereunder.

3. Learned counsel for the petitioner submits that the respondent No.2 has proposed to raise construction of swimming pool, multi-gym inside the park. It is submitted that Section 8 of the Act prohibits construction of any building or putting up of any structure, which is likely to affect the utility of the park, play field or open space. It is submitted that the proposed construction by the respondent No.2 - BBMP shall affect the utility of the park and the said construction is in contravention of Section 8(1) of the Act as well as Rule 6 of the Karnataka Parks, Play Fields and Open Spaces (Preservation and Regulation) Rules, 1985 (hereinafter referred to as 'the Rules' for short).

4. On the other hand, learned counsel for respondent No.2 has fairly submitted that the proposed construction is prohibited under Section 8(1) of the Act.

5. We have considered the submissions made on both sides and have perused the record.

6. We may also take note of relevant statutory provisions. The open spaces for parks protect the resident of the locality from ill effects of urbanization. The Act has been enacted with an object to provide residents of the locality a quiet place free of pollution where children can play and adults can rest and breathe fresh air.

7. The Act which is *inter-alia* enacted to provide necessary space for recreation to residents of the locality and with a view to preserve parks, play fields and open spaces and to put an end to the practice of converting such lands into other uses, Section 8(1) of the Act reads as under:

"8 (1) No person shall construct any building or put up any structure likely to affect the utility of the park, play-field or open space or make any encroachment in or over any park, play-field or open space specified in the list published under Section 4 or Section 5."

Thus, Section 8(1) of the Act mandates that no person shall construct any building or put up any structure likely to affect the utility of the park, play-field

or open space or make any encroachment in or over any park, play-field or open space.

In exercise of powers conferred under the Act, Rules namely, Rule 6 of the Rules provides as under:

"6. Construction of other structures in the Parks, Play-fields and Open Spaces:-

(1) The executive authority may permit construction of a well, pump house, benches for the visiting public to sit and quarters for the watchman in any park, play-fields or open space

(2) Notwithstanding anything in sub-rule (1) -

(a) no permission to construct quarters for the watchmen shall be granted where the total area of the park, play field or open space is less than two hectares;

(b) in other cases, not more than two quarters may be permitted to be constructed and the area of any such quarters shall not exceed thirty square metres."

Thus, the aforesaid Rule permits construction of a well, pump house, benches for the visiting public to sit and quarters for the watchmen in the park, play-field or open space.

8. A conjoint reading of Section 8(1) as well as Rule 6 of the Rules makes it clear that a well, pump house and benches may be constructed inside the park.

However, no person is permitted to construct any building or put up any structure likely to affect the utility of the park. The proposed construction which is sought to be raised by the respondent No.2 - BBMP viz., i.e., construction of swimming pool and Gymnasium inside the park is not permitted under Section 8(1) of the Act and would affect the utility of the park, the same is therefore prohibited under Section 8(1) of the Act.

9. The respondent No.2 - BBMP is therefore prohibited from raising any construction in contravention of Section 8(1) of the Act read with Rule 6 of the Rules.

Accordingly, the writ petition is allowed.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**

RR