

BEFORE THE HON’BLE HIGH COURT OF KARNATAKA, AT BENGALURU

Writ Petition No. \_\_\_\_\_/2018 (PIL)

BETWEEN:

Dattatraya T Devare and another ... Petitioners

AND:

State of Karnataka and others ... Respondents

SYNOPSIS

The Petitioners have approached this Hon’ble Court, being aggrieved by abject failure of the Respondents No. 1 to 4 to implement the provisions and objects of the Karnataka Preservation of Trees Act, 1976 (**‘the Tree Act’**), and the failure of the authorities thereunder to carry out their statutory duties and functions in accordance with the provisions of the Tree Act. The Petitioners submit that the Respondents No. 1 to 4 have acted in complete dereliction of their statutory duties and functions, in a manner that defeats the very object and purpose of the Tree Act. Further the Respondents No. 5 and 6 have arbitrarily made use of the non-implementation of the Tree Act by Respondents No. 1 to 4 to further contribute to the rapid erosion of tree cover in Bangalore, defeating the purpose of the legislation.

As a result, the city of Bengaluru is rapidly losing its tree cover, which has resulted in a severe reduction in the health of its citizens and a severe degradation of the environment of the city, violating the right to clean air, clean environment, and sustainable development of the residents of Bengaluru in violation of their rights to life and liberty under Article 21 of the Constitution of India.

Date	Particulars
17.07.1976	The Karnataka Preservation of Trees Act, 1976 came into force, with the object of making better provisions for the preservation of trees in the

	<p>State, by regulating the felling of trees and for the planting of adequate number of trees to restore ecological balance and for matters connected therewith.</p> <p>Under the Tree Act, the Tree Authority and the Tree Officer have been entrusted <i>inter alia</i>, with considering applications for felling of trees, ensuring adequate planting of trees, implementation of schemes to ensure the preservation of the tree cover in the State.</p>
03.10.2012	<p>In W.P. No. 7107 of 2008, this Hon’ble Court was pleased to observe that the public ought to be notified when trees are proposed to be felled for public projects such as road widening, and that objections ought to be invited from the public for any such proposed felling of trees for public projects. The same order also noted that the provision for an appeal from an order of the Tree Officer refusing or granting permission to fell a tree, would be futile and infructuous in instances where permission is granted, as such felling is usually executed almost immediately and overnight.</p>
07.08.2014	<p>In W.P. No. 7288 of 2011, initiated <i>suo-moto</i> by this Hon’ble Court (on the written representation of his Lordship, the Hon’ble Mr. Justice Shylendra Kumar (Retd.)), this Hon’ble Court was pleased to note the failure in the implementation of the Tree Act and observe that there was a need to take precautionary measures to ensure that the Green Cover of the city of Bangalore is protected and enhanced, keeping in mind, the intergenerational equity with a vision for the future. This Hon’ble Court also issued directions to the authorities, <i>inter alia</i>, that grant of permissions to fell trees be undertaken only as an exception, to protect the green cover of the city.</p>

13.01.2015	The Karnataka Preservation of Trees (Amendment) Act 2014, came into force, <i>inter alia</i> , amending Section 8 of the Tree Act regarding applications for felling of trees. The amended section provided that applications seeking felling of trees for a public purpose <i>shall not be refused</i> by the Tree Officer, where the number of trees was more than 50 trees and a public notice and a public notice has been issued inviting objections.
31.08.2015	On the basis of RTI responses received, it is noted that between 1 April 2012 and 31 August 2015, a total of 2243 applications were reported to have been received from private citizens/organisations for felling of trees, while 5952 were reported to have been received from government agencies. A total of 2185 of 2243 (97.41%) of the private applications were allowed, while 5936 of 5952 (99.73%) government applications were allowed. Therefore, out of a total of 8,195 applications received for felling of trees, only 74 (0.9%) were rejected.
18.08.2016	The Tree Authority was reconstituted <i>vide</i> notification bearing no. A/Pa/Ge 49 FAF 2016, but has held only <i>one</i> meeting between 18.08.2016 and May 2017, in contravention of Section 4 of the Tree Act mandating a meeting of the Tree Authority once every three months.

It is submitted that despite the specific objective of the legislature with the Tree Act being to preserve trees, the very authorities constituted under the Tree Act have, by way of their negligence and dereliction, actually facilitated the very damage to the tree cover that they were constituted to prevent. No discretion whatsoever is being used by them to conserve trees and prevent rampant felling, and nearly *all* applications to fell trees are allowed mechanically. It is humbly submitted that this rampant felling of trees has resulted in a rapid loss of green cover, water scarcity, increase in temperatures and pollution. It is submitted

that these acts have resulted in a severe deterioration of the quality of life of the citizens of Bengaluru, a severe reduction in the health of its citizens and a severe degradation of the environment of the city.

A study shows that the green cover of Bengaluru has been reduced by a drastic 78%, evidencing beyond doubt that the very object of the Tree Act is being defeated. It has also been studied that while on an average, there must be eight trees per person to offset human respiratory carbon and have adequate oxygen, presently in Bengaluru, there is just one tree for every seven persons – i.e. less than 1.8% of the optimum number of trees.

It is submitted that the proper implementation of the Tree Act and Tree Rules are essential to ensure preservation of tree cover in Bengaluru. Preservation of tree cover is vital to ensure that the residents of the city are able to exercise their fundamental rights to clean air and environment, and to ensure the health and wellbeing of the entire city. The dereliction of the Respondents and their refusal to comply with this legislative mandate is defeating the object of preservation of trees, and is resulting in a violation of the fundamental rights of the citizens of Bengaluru to life and liberty under Article 21 of the Constitution of India.

In the circumstances, left with no other recourse in the matter, the Petitioners are constrained to approach this Hon'ble Court for reliefs, under Article 226 of the Constitution of India, 1950 on the grounds set out herein.

**Place:** Bengaluru

**Date:** 23 April 2018

**Advocate for Petitioners**

██████████  
██████████

Address for service:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## BEFORE THE HON'BLE HIGH COURT OF KARNATAKA, AT BENGALURU

Writ Petition No. \_\_\_\_\_/2018 (PIL)

## BETWEEN:

1. **Dattatraya T Devare**

Son of T N Devare

Aged about 65 years

[REDACTED]

[REDACTED]

[REDACTED]

2. **Bangalore Environment Trust**

A registered trust, having its offices at:

No. 10, Sirur Park 'B' Street,

Seshadripuram,

Bengaluru – 560 020

Through its Trustee

...Petitioners

## AND:

1. **State of Karnataka**

Vikasa Soudha,

Bengaluru – 560 001

Through the Chief Secretary

2. **Karnataka Forest Department**

Aranya Bhavan,

18<sup>th</sup> Cross, Malleshwaram

Bengaluru – 560 003

Through the Principal Chief Conservator of Forests

3. **The Bangalore Urban District Tree Authority**

Karnataka Forest Department

Aranya Bhavan,

18<sup>th</sup> Cross, Malleshwaram

Bengaluru – 560 003

Through its Chairperson

4. **Bruhat Bengaluru Mahanagara Palike (BBMP)**

N R Square,

Bengaluru - 560 002

Through its Commissioner

5. **Bangalore Metro Rail Corporation Limited**

3<sup>rd</sup> Floor, BMTC Complex,

K H Road, Shantinagar

Bengaluru – 560 027

Through its Managing Director

6. **Bangalore Electricity Supply Company Limited**

K R Circle

Bengaluru – 560 001

Through its Managing Director

... Respondents

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

The Petitioners above-named most respectfully submit as follows:

1. The addresses of the parties for the purposes of service of summons and process from this Hon'ble Court are as stated in the cause title above. The Petitioners may also be served through their counsel, M/s Keystone Partners, Advocates and Solicitors, having their offices at [REDACTED].
2. The Petitioner No. 1 is an avid environmental activist and has tirelessly strived to protect trees in Bengaluru over the last several years. He is also a trustee of the Petitioner No. 2, Bangalore Environment Trust, and also a member of the oversight committee constituted to oversee the trees-related issues of the Bangalore Metro Rail

- project. The Petitioner No. 2 trust was constituted specifically to work towards the protection of the environment and has over the years brought multiple important issues concerning the environment to the forefront of public attention and consciousness. The trustees of the Petitioner No. 2 trust comprise of experts and activists in the field of environment, including a retired Principal Chief Conservator of Forests, Karnataka and Secretary, Government of Karnataka, Department of Ecology, Environment and Forests. The Petitioners' sole objectives are the protection and preservation of trees in the city for sustainable development for future generations. They have no private interest in the matter. Therefore, this petition, pertaining to egregious violations of fundamental rights of all citizens in Bengaluru by the Respondents, is in the public interest.
3. The Petitioners have approached this Hon'ble Court, being aggrieved by the Respondents No. 1 to 4 abject failure to implement the provisions and objects of the Karnataka Preservation of Trees Act, 1976 (**'the Tree Act'**), and the failure of the authorities thereunder to carry out their statutory duties and functions in accordance with the provisions of the Tree Act. The Petitioners submit that the Respondents No. 1 to 4 have acted in complete dereliction of their statutory duties and functions, in a manner that defeats the very object and purpose of the Tree Act. Further the Respondents No. 5 and 6 have arbitrarily made use of the non-implementation of the Tree Act by Respondents No. 1 to 4 to further contribute to the rapid erosion of tree cover in Bangalore, defeating the purpose of the legislation.
  4. The Petitioners are also aggrieved by Section 8(3)(vii) of the Tree Act, as amended by the Karnataka Preservation of Trees (Amendment) Act, 2014 (**'Amendment Act'**), and seek to assail the constitutionality of this section on the grounds that it is wholly



arbitrary in nature and essentially defeats the very object of the Tree Act by facilitating the rampant felling of trees.

5. A true copy of the Karnataka Preservation of Trees Act, 1976 is produced herewith as **Annexure A**, and a true copy of the Karnataka Preservation of Trees (Amendment) Act, 2014 is produced herewith as **Annexure B**.

## OVERVIEW

6. The Tree Act was passed in 1976 by the Respondent No. 1 State with the object of making better provision for the preservation of trees in the State of Karnataka, to regulate the felling of trees, and for the planting of adequate number of trees to restore ecological balance in the State. A perusal of the preamble of the Tree Act would make clear the overriding intent and object behind the enactment of the Tree Act, being the preservation of trees in rural and urban areas of Karnataka.
7. In furtherance of its preamble, the scheme of the Tree Act can broadly be divided into two critical spheres – the preservation of trees by way of restriction on the indiscriminate felling of trees; and the imposition of obligations on state authorities and private parties for maintenance of tree cover in urban and rural areas of the State of Karnataka. In that respect, the Tree Act envisages and constitutes two tiers of authorities in order to ensure the effective implementation of its provisions and the satisfaction of its object.
8. The authority at the first level, the Tree Officer, is entrusted with the following functions:
  - a. considering applications for felling of trees;
  - b. ensuring adequate planting of trees;
  - c. enforcing compliance with rules under the Tree Act;

- d. and levying penalties for offences committed under the Tree Act.
9. The authority at the next tier, the Tree Authority is tasked with the following obligations and functions:
- a. Monitoring the functioning of Tree Officers
  - b. Functioning as an appellate authority for decisions of the Tree Officer; and
  - c. Overall superintendence over the status of tree cover within its jurisdiction and implementation of schemes in that regard, as formulated by the State Government.
10. Chapter II of the Tree Act makes provisions for establishment of the Tree Authority. Chapter III of the Tree Act provides for the appointment of Tree Officers. Chapter IV lays down the duties of the Tree Authority. Chapter V stipulates the various restrictions on felling of trees and the liabilities imposed on various parties for preservation of trees, which are to be enforced by the Tree Officer. It also vests the Tree Authority with appellate jurisdiction over decisions of the Tree Officer. Chapter VI provides for penalties and procedures to enforce such penalties by the Tree Officer, including powers of arrest. Chapter VII is a miscellaneous chapter that delineates the entire extent of powers of the Tree Officer, the power of the State to make rules and certain narrow exemptions to the Tree Act.
11. The Tree Act is supplemented by the Karnataka Preservation of Tree Rules 1977 (**'Tree Rules'**) which were notified by the Government of Karnataka in exercise of its powers under Section 23 of the Tree Act. A true copy of the Tree Rules is produced herewith as **Annexure C**. The Tree Rules lay down procedure, *inter alia*, governing applications seeking permission for felling of trees, and the mode and manner in which the Tree Authority should convene meetings. The Tree Authority has been impleaded as Respondent No. 3 to the instant petition.

12. It is submitted that the Tree Act is not being implemented in the manner laid down by the legislation, and that the relevant authorities (the Respondents No. 1 to 4) have acted in utter dereliction of their duty in the implementation of the provisions of the Tree Act. It is submitted that the gross negligence and failure of the Respondents No. 1 to 4 in implementing the Tree Act are resulting in severe harm to the State of Karnataka and, especially, the city of Bengaluru, with Respondents No. 5 and 6 being major contributors to the erosion of tree cover in the city. As more fully detailed herein below, despite this Hon'ble Court taking cognizance of the non-implementation of the provisions of the Tree Act in another writ petition as set out in greater detail herein below, it is submitted that the authorities still continue to act in negligence and dereliction of their statutory duties under the Tree Act.
13. Despite the fact that the Tree Act has not been faithfully implemented by the Respondents and its provisions had been rendered virtually nugatory, the State of Karnataka has recently amended the Tree Act *vide* the Amendment Act, further diluting its provisions. Previously, Section 8(3)(vii) of the Tree Act provided that in the event a public project necessitated the felling of any trees, a prior public notice of such proposed felling would have to be published. As per Section 6 of the Amendment Act, Section 8(3)(viii) has been amended to provide for a minimum number of trees to be felled in order for there to be a requirement for the issuance of a public notice, at an arbitrary figure of 50 trees. This arbitrary provision without any legislative safeguards has allowed the provisions of the Tree Act to be completely side-lined and abused by various stakeholders to chop huge numbers of trees with no public notice and no permission – resulting in rampant loss of tree cover.
14. It is submitted that despite the specific objective of the legislature with the Tree Act being to preserve trees, the very authorities constituted under the Tree Act have, by

- way of their negligence and dereliction, actually facilitated the very damage to the tree cover that they were constituted to prevent. The authorities under the Tree Act have only rejected a mere 0.9% of applications received by them for felling of trees, indicating that no discretion whatsoever is being used by them to conserve trees and prevent rampant felling, and nearly *all* applications to fell trees are allowed mechanically. It is humbly submitted that this rampant felling of trees has resulted in a rapid loss of green cover, water scarcity, increase in temperatures and pollution. It is submitted that these acts have resulted in a severe deterioration of the quality of life of the citizens of Bengaluru, a severe reduction in the health of its citizens and a severe degradation of the environment of the city.
15. A study by the prestigious Indian Institute of Sciences shows that the green cover of Bengaluru has been reduced by a drastic 78%, evidencing beyond doubt that the very object of the Tree Act is being defeated. It has also been studied that while on an average, there must be eight trees per person to offset human respiratory carbon and have adequate oxygen, presently in Bengaluru, there is just one tree for every seven persons – i.e. less than 1.8% of the optimum number of trees.
  16. A series of articles in newspapers, scientific magazines, and online websites detailing the deleterious effects of loss of tree cover are attached herewith as **Annexure D1 to D5 series**. Only certain documents have been attached for illustrative purposes in the interests of brevity and the Petitioners crave leave to produce more documents and studies for the perusal of this Hon'ble Court during the course of hearing *including* but not limited to expert testimony.
  17. It is submitted that the aim and objects of the Tree Act must also be read in harmony with the catena of environmental legislation enacted in India currently such as the Air (Prevention and Control of Pollution), 1981, the Wildlife (Protection) Act, 1972 and

the Environment (Protection) Act, 1986. It is submitted that a proper implementation of the Tree Act and Tree Rules is essential for the furtherance of the aim and objects laid down in the aforesaid legislations as well. Further, it is submitted that the Union of India has *vide* Press Statement dated 2 October 2015, committed India to an Intended Nationally Determined Contribution (INDC) of (a) creating an additional carbon sink of 2.5 to 3 billion tonnes of CO<sub>2</sub> equivalent through additional forest and tree cover by 2030 and (b) reducing the emissions intensity of its GDP by 33 to 35 percent by 2030 from 2005 level towards fulfilment of the Paris climate accord that was entered into within the framework of the United Nations Framework Convention on Climate Change (UNFCCC) at the 21<sup>st</sup> Conference of Parties of the UNFCCC in Paris. A true copy of the Press Statement is produced herewith as **Annexure E**. It is submitted that the fulfilment of these contributions is absolutely essential, not just for Indian citizens, but also for the future sustainability of the planet for future generations around the world. The aims and objects of the Tree Act must necessarily also be seen in context of India's INDC commitments, which require a massive increase in tree cover in India.

18. It is submitted that the proper implementation of the Tree Act and Tree Rules are essential to ensure preservation of tree cover in Bengaluru. Preservation of tree cover is vital to ensure that the residents of the city are able to exercise their fundamental rights to clean air and environment, and to ensure the health and wellbeing of the entire city. The dereliction of the Respondents and their refusal to comply with this legislative mandate is defeating the object of preservation of trees and is resulting in a violation of the fundamental rights of the citizens of Bengaluru. The lack of implementation of the Tree Act and Rules also has a spill over impact on the implementation of other domestic environment protection legislations, and also on India's ability to meet its INDCs under the UNFCCC.

Prior efforts by activists, including the Petitioners at ensuring implementation of the Tree Act

19. It is submitted that the Petitioners themselves, and various other concerned citizens and organisations of the city of Bengaluru have made tireless efforts to work with the Respondents in ensuring effective implementation of the Tree Act. However, these efforts have been fruitless, and the Respondents have refused to cooperate with citizens to implement the provisions of the Tree Act. The Petitioner No. 2 had, in fact, even submitted several suggestions to the Respondent No. 2 for better implementation of the Tree Act and Rules *vide* letter dated 14 December 2015 which had enclosed recommendations arrived at in a seminar conducted by the Petitioner No. 2 on 07 November 2015. A copy of the letter dated 14 December 2015 along with the enclosed recommendations is attached herewith as **Annexure F**. Copies of newspaper clippings and a representation highlighting the many repeated efforts of citizens to save the tree cover in Bengaluru and how these efforts have been met with blatant apathy by the relevant authorities (Respondents) are attached herewith as **Annexure G1 to G4 series**.
20. In fact, it is submitted that the Forest Cell, which has been set up under the BBMP to expressly safeguard tree cover in the city of Bengaluru, has been approached by the Petitioner No. 1 to seek information about the implementation of the provisions of the Tree Act. However, the Forest Cell of the BBMP was wholly uncooperative and evasive in providing any information, showing that it had functioned in a wholly opaque manner. The Petitioners have produced herein below several documents to evidence the non-cooperation of the Respondents.

Prior rulings of the High Court of Karnataka

21. It is humbly submitted that, to the knowledge of the Petitioners, two prior petitions have been filed before this Hon'ble High Court in respect of the Respondents' failure

- to implement and carry out their statutory obligations and functions under the Tree Act, as well as the lacunae in the provisions of the Tree Act itself, in Writ Petition No. 7107 of 2008 and Writ Petition No. 7288 of 2011.
22. While W.P. No. 7107 of 2008 was dismissed on procedural reasons, several interim observations made therein found mention in the final order of this Hon'ble Court in W.P. 7288/2011. In particular, *vide* its order dated 03.10.2012 in W.P. No. 7107 of 2008, this Hon'ble Court was pleased to observe that the public ought to be notified when trees are proposed to be felled for public projects such as road widening, and that objections ought to be invited from the public for any such proposed felling of trees for public projects. The same order also noted that the provision for an appeal from an order of the Tree Officer refusing or granting permission to fell a tree, would be futile and infructuous in instances where permission is granted, as such felling is usually executed almost immediately and overnight. A true print of the order of this Hon'ble Court dated 03.10.2012 passed in W.P. No. 7107 of 2008, as available on the website of the Hon'ble High Court is produced herewith at **Annexure H**.
23. It is submitted that W.P. No. 7288 of 2011 was initiated *suo motu* by this Hon'ble Court upon the written representation of his Lordship, the Hon'ble Mr. Justice Shylendra Kumar (Retd.). An article dated 19 February 2011 published in the Bangalore Mirror, explaining the background and context behind the *suo motu* writ petition is attached herewith as **Annexure J**.
24. It is submitted that this Hon'ble Court disposed of Writ Petition No. 7288/2011 *vide* order dated 07.08.2014 with the following conclusions:
- a. There was a need to take precautionary measures to ensure that the Green Cover of the city of Bangalore is protected and enhanced, keeping in mind, the intergenerational equity with a vision for the future. This need was pressing on

account of the decline in environmental quality due to increasing pollution levels that accompanied the reduction of tree cover in the city.

- b. The report of the Amicus Curiae was taken on record, which recommended that the constitution of the Tree Authority under the Tree Act would have to be restructured, as officials from the Forest Department were sent on deputation to BBMP, and they constitute the Tree Authority. Citing the order of this Hon'ble Court dated 03.10.2012 in W.P 7107/2008, this Hon'ble Court noted that the present constitution of the Tree Authority appeared to violate principles of natural justice as it appeared to be subordinate to the BBMP, the primary authority responsible for felling trees in Bangalore. This Hon'ble Court refrained from issuing explicit directions in this regard but observed that the legislature must take appropriate decision with regard to reconstitution of the Tree Authority comprising of persons independent of the BBMP so that 'justice is not only done but is seen to be done'.
- c. The 'two tier committee' constituted by the BBMP – consisting of the Greening Committee and the Co-ordination Committee – were tasked with co-ordinating the plantation of seedlings of saplings and ensuring their survival seemed, *prima facie*, adequate to ensure transparency and effective implementation of planting of tree saplings.
- d. Felling of trees would be undertaken as an exception rather than as a rule. The Tree Officer and Tree Authority would have to fully satisfy themselves and certify that all other alternatives have been considered regarding the feasibility of the felling of trees. If any objections were received from the public, due consideration was to be given by assigning reasons. The Tree Officer and Tree Authority were also directed to consider the feasibility of transplantation of trees rather than felling of the same. Early action was to be taken on implementing a web-based



system wherein all applications for tree felling and the decisions taken thereon were to be made available to the public in a transparent manner.

25. With these directions, this Hon'ble Court disposed of the petition, reserving liberty to aggrieved parties to initiate fresh proceedings, in case of irregularities / violations of the provisions of the Trees Act, 1976 or the undertakings given on behalf of the BBMP. This Hon'ble Court also observed that *suo motu* proceedings could be instituted if any shortcomings or deficiencies in the functioning and implementation of the aforesaid objects were found. A true copy of the order dated 07.08.2014 passed by this Hon'ble Court in W.P. No. 7288 of 2011 is produced herewith at **Annexure K**.
26. Unfortunately, the Petitioners have learnt that, despite the above directions of this Hon'ble Court, the Respondents No. 1, 2, and 4 herein (who were also Respondents in W.P. No. 7288 of 2011 have utterly failed in complying with the above order of this Hon'ble Court in letter or in spirit and have completely failed to ensure the implementation of the Tree Act.
27. In fact, subsequent to this decision, the Petitioner No. 2 had organised a seminar with various stakeholders, including representatives from the Respondent No. 2 to discuss issues surrounding the felling and conservation of trees in Bengaluru. A true copy of the minutes of this seminar is produced herewith at **Annexure L**. It is pertinent to note that in this seminar, the then Chief Conservator of Forests, BBMP division, had stated that a new web-based system was being introduced wherein all permissions granted for the felling of trees would be uploaded, and a gap of 15 days would be enforced between the grant of an order permitting felling of a tree and the execution of the said order.
28. The Petitioners *bona-fide* believed that this system would be implemented by the Respondents No. 2 and 3, particularly in view of the observations made by this Hon'ble

High Court. However when no action was taken in this regard, for almost two years, the Petitioner No. 1 addressed an e-mail to the Chief Conservator of Forests who participated in the seminar enquiring about the status of the web-based system described at the seminar. Unfortunately, the Petitioner No. 1 has not received any response to his e-mail. A true copy of the e-mail dated 24.09.2017 addressed by the Petitioner No. 1 is produced herewith at **Annexure M**.

Constitution of the Tree Authority

29. This Hon'ble Court had in W.P. No. 7107/2008 observed that the Tree Authority had not been constituted in accordance with basic principles of justice. In its order, this Hon'ble Court had held that the existing constitution of the Tree Authority appeared to violate the principles of natural justice, as it primarily consisted of members under the purview of the BBMP, which authority was primarily responsible for felling of trees. The above findings were also affirmed with approval by this Hon'ble Court in W.P. No. 7288/2011 in its final order.
30. While this Hon'ble Court refrained from explicitly issuing directions reconstituting the Tree Authority, even its direction to the legislature to reconstitute the Tree Authority to ensure that 'justice is not only done but is seen to be done' has not been complied with. It is submitted that compliance with this order is essential to maintain the independence and efficacy of the Tree Authority as the BBMP is the primary government agency that places requests for felling trees with Tree Officers, whereas Tree Authority is the primary authority with the powers to either approve or reject a Tree Officer's sanction for felling of a tree
31. It is submitted that, in pursuance of the aforesaid order, the State Government has amended Section 3 of the Tree Act to change the composition of the Tree Authority.

As per the amended Section 3, the Tree Authority must now be constituted with the following members:

- a. A Forest Officer in charge of a territorial Forest Circle as Chairman;
- b. The Joint Director Horticultural, having Jurisdiction;
- c. The Superintending Engineer, Communication and Building having jurisdiction;
- d. In respect of Bruhat Bangalore Mahanagara Palike a representative of the Commissioner and in respect of other Corporations and Municipalities, the Commissioner of City Corporation or Municipality, as the case may be;
- e. An identified Botanist / Ecologist.

32. Subsequent to this amendment, the Tree Authority has been reconstituted *vide* notification bearing no. A/Pa/Ge 49 FAF 2016, Bengaluru, dated 18.08.2016, (produced herewith at **Annexure N** ) with the following persons:

- a. The Chief Conservator of Forest, Bangalore Circle as Chairman;
- b. The Jurisdictional Joint Director of Horticultural;
- c. The Jurisdictional Superintending Engineer, Communication and Building, Karnataka Public Works, Ports & Inland Water Transport Department;
- d. Representative of Commissioner, Bruhat Bangalore Mahanagara Palike
- e. Sri Harish Bhat, an environmentalist.

33. It is submitted that while the constitution of the Tree Authority ostensibly complies with the provisions of the Tree Act, there has still been an utter failure in the actual functioning of the Tree Authority in the manner intended by the Tree Act.

#### Meetings of the Tree Authority

34. The Petitioner No. 1 has obtained the minutes of the most recent meeting of the Tree Authority of the Bangalore Urban District (held on 28.09.2017) through an application

under the Right to Information ('RTI') Act, 2005. A true copy of the said minutes along with a translated copy thereof is produced herewith at **Annexure P**. As per the aforesaid minutes, the 5 persons present at the meeting were:

- a. Chairman: Smt. Shaswathi Misra, IFS, - Chief Conservator of Forest, Bangalore Regional Circle, Bangalore
- b. Invitee: Smt. Deepika Bajpai, IFS, Deputy Conservator of Forest, Bangalore Urban District, Bangalore
- c. Member: Sri Appurao, KFS, Deputy Conservator of Forest, Forest Cell, BBMP Representing Commissioner, BBMP
- d. Member: Sri Shantakumar, Asst. Conservator of Forest, Bangalore Mahanagara Palike
- e. Member Secretary: Sri K Lingappa, KFS, Deputy Conservator of Forest, Also Technical Assistant, Bangalore Circle, Bangalore.

35. It is submitted that though the persons at (d) and (e) are described in the minutes as 'members', they are not members of the Tree Authority under the Act and the notification. Therefore, it appears that though the Tree Authority appears on paper to have been constituted in accordance with the Tree Act, the actual functioning Tree Authority is entirely different, with persons who are not properly appointed members of the Tree Authority, attending these meetings.

36. It is further submitted that the aforesaid minutes do not record the absence of the key members of the Tree Authority as envisaged under the Act in the aforesaid meeting. This blatant lack of transparency in respect of the attendance of the 'duly constituted' Tree Authority makes it evident that the Tree Authority is not functioning in accordance with the Act.

37. It is submitted that the functions of the Tree Authority require scientific and domain expertise in the field of horticulture and ecology as the role of trees in the city's ecosystem can only be properly ascertained on the basis of natural science. The absence of the Joint Director – Horticultural and an Ecologist/Botanist in the Tree Authority, renders the Tree Authority contrary to the statute, and unable to exercise scientific and ecological expertise in discharge of its statutory functions.
38. Further, a perusal of the minutes of this meeting would show that no actual function of the Tree Authority was carried out, and that the members present at the meeting merely reiterated their functions under the Tree Act, with no concrete steps or measures discussed or taken towards these functions. Though the Tree Authority has vaguely considered and discussed various aspects of implementing the provisions and objects of the Tree Act, absolutely no information was shared or discussed about the manner in which the Tree Act was being implemented, or the status of the tree cover in Bangalore, or the manner in which permissions were being granted for felling of trees. As detailed in the present petition, since no concrete actions whatsoever have been taken by the Tree Authority in furtherance of these minutes, the Tree Authority has reduced its discussions to empty platitudes by its own failure to act.
39. It is further submitted that under Section 4(1) of the Tree Act, the Tree Authority is required to meet at least once in three months. The meetings of the Tree Authority are critical in ensuring its effective functioning to oversee and monitor the state of tree cover in Bangalore. The rapid pace of development and exponential mushrooming of construction projects in Bangalore make it essential for the Tree Authority to meet regularly so that it is able to keep up with the changing contours of the city and ensure that adequate green cover is maintained in accordance with law.

40. The Petitioner No. 1 filed an RTI application dated 09.11.2017 with the office of the Chief Conservator of Forests, Bengaluru (the present Chairman of the Tree Authority) asking, among other things, the following question:
- “The Tree Authority for Bangalore Urban was set up in August 2016. I have received minutes of the meeting held on 28.09.2017. Please provide minutes of meetings held from August 2016 to 28.09.2017”*
41. In response, the Petitioner No. 1 received a letter from the Tree Authority dated 04.12.2017 and bearing reference number A6/CCF/RTI/CR-87/2017-18 to his RTI application. A copy of the aforesaid reply is attached herewith as **Annexure Q**. In reply to the above question, the Office of the Chief Conservator of Forests, Bengaluru stated that *“No meetings have been conducted from Aug-2016 to 15-05-2017”*.
42. It is submitted that the above answer clearly shows that the Tree Authority has not been holding regular meetings in accordance with Section 4 of the Tree Act and has not been carrying out its functions in accordance with the Tree Act. The period of time between August 2016 and May 2017 constitutes a period of about 9 months, during which period the Tree Authority was mandated to hold at least **three** meeting as per Section 4 the Tree Act. However, as the above answer indicates, no meetings were held in this time. Further, the Office of the Chief Conservator of Forests failed to provide any information of minutes of meetings held between May 2017 and September 2017 (when the last meeting was admittedly held), indicating that no meetings were held in this time period as well.
43. In essence, by the admission of the Tree Authority itself, the Tree Authority has only met once since its constitution until September 2017. It is submitted that this failure to hold regular meetings is a brazen violation of the Tree Act and a direct contravention of the legislative intent behind the enactment of the Tree Act. This has

had a corrosive effect on the ability of the Tree Authority to discharge its functions in accordance with Tree Act, resulting in a rapid deterioration tree cover in Bengaluru and trampling over its citizens fundamental right to a clean environment. These actions also make it clear that the State of Karnataka and the Tree Authority have merely operated in name only. There has been no substantive *implementation* of the provisions of the Tree Act pertaining to the Tree Authority and only a *nominal* non-effective implementation.

44. A perusal of official documents, independent studies and wide-spread media reports would reveal that the Tree Authority has woefully failed in its statutory duty to perform the above two tasks and has devolved into a mere 'rubber stamp' that facilitates wide-spread felling of trees across the city of Bangalore.

#### Permissions for felling of Trees

45. Further, under Sections 8 to 10 of the Tree Act, the Tree Officer is empowered to grant permission for felling of trees, order planting of trees in the event of displacement, and also order planting of trees in the event they are destroyed or fallen. The Petitioner No. 1 made tireless efforts to obtain data of tree felling permissions granted by the Tree Officer. In that regard, the Petitioner No. 1 filed various RTI applications seeking data for permissions for felling of trees from 1 April 2012 to 31 August 2015. True copies of these responses are attached herewith as **Annexure R1 to R16 series**. A table prepared by the Petitioner No. 1 tabulating the data garnered through the aforesaid responses has also been attached herewith as **Annexure S** for convenience.
46. As seen in the table, a total of 2243 applications were reported to have been received from private citizens/organisations for felling of trees, while 5952 were reported to have been received from government agencies. A total of 2185 of 2243 (97.41%) of the private applications were allowed, while 5936 of 5952 (99.73%) government

applications were allowed. Therefore, out of a total of 8,195 applications received, only 74 (0.9%) were rejected.

47. The percentage of rejection being a mere 0.9 % goes to show that the consideration by the Tree Officer of applications for felling of trees has been reduced to a mere hollow formality. There is evidently no application of mind by the Tree Officers while evaluating applications, in stark contradiction to the Tree Officer's duty under the Tree Act, and virtually all applications have been allowed.
48. A perusal of the reasons recorded for the rejections reveals that a single stock answer has been given namely, *"Because Trees are healthy not in dangerous position or damaging human life or property"* implying that the applications were mechanically allowed by the Tree Officer for felling of trees without any consideration. Further, since no applications appear to have been rejected for any reason other than the above, it appears as though the Tree Officer has failed to apply mind to the applications received by him for felling of trees. This reflects the blatant non-application of mind with which the authorities have been functioning, defeating the very spirit and purpose of the legislation. It is submitted that such a statistic of nearly a 100% acceptance of applications for felling of trees is wholly absurd and renders the legislation completely meaningless.
49. This utter lack of functioning of the Tree Officers and the Tree Authority has also been the cause of, and the reason for, various demonstrations and protests by public minded citizens of Bengaluru against the felling of trees that have erupted in various parts of Bangalore over the last few years. A common thread throughout these expressions of public dissent has been the utter lack of action on the part of authorities constituted under the Tree Act to stop the felling of trees even after public outcry.



50. In fact, more egregiously, in some cases, citizens protesting against illegal felling have been victims of assault and threats to their life only to find that the Respondent No. 1 and the police are negligently turning a blind eye to these incidents. The above protests are the inevitable outcome of the current implementation of the Tree Act, as amended by the Amendment Act, which facilitates felling of trees rather than their preservation. News clippings evidencing the lack of proper oversight into illegal felling of trees are attached herewith as **Annexure T1 and T2 series**.
51. In fact, a further RTI Application preferred by the Petitioner No. 1 dated 16.01.2017, requesting for updated information regarding applications made for permission to fell trees, and orders either granting or rejecting such applications from 01.09.2015 till 31.12.2016 has not received any response. A true copy of the RTI Application is produced herewith at **Annexure V**.

*Orders permitting felling of trees*

52. It is submitted that a perusal of Section 8(5) of the Tree Act would make it evident that whenever permission to fell a tree is granted by the Tree Officer, such permission can only be granted subject to the condition that the applicant plants another tree or trees of the same or any other suitable species on the same site or other suitable place, within 30 days from the date that the tree(s) are felled.
53. It is humbly submitted that there is no evidence that the Tree Officer is implementing this statutory condition while granting permission to fell trees. It is submitted that the objective of the Tree Act in ensuring that new trees are planted in the place of trees proposed to be felled cannot be ignored or treated lightly by the Tree Officer of the Tree Authority. There is no data or information available publicly to show that permissions to fell trees granted by the Tree Officer are conditional on compliance of this requirement, but it is evident that this provision is not being enforced as the city

continues to rapidly lose its tree cover. It is submitted that this provision becomes doubly important in the context of granting of permission to fell trees for public projects and road-widening in a fast growing city like Bengaluru.

54. It is humbly submitted that the purpose of the provision would be truly served when there is enforcement of the condition, to ensure that the new tree planted in the place of the tree felled is properly nurtured and protected to enable its full growth. A deposit by the applicant, or a personal bond, would go a long way to ensure that the new tree is nurtured and cared for appropriately and that the object of the provision in the Act is met and complied with.

Appeals from orders permitting felling

55. It is further submitted Section 14 of the Tree Act (which provides for appeals from orders of the Tree Officer concerning felling of trees) is practically a dead letter and is rendered incapable of providing any relief to any person aggrieved by the order allowing the felling of trees. When a Tree Officer grants permission to fell a tree, such order is executed almost instantly, leaving no time for any meaningful appeal. The immediate and clandestine manner in which orders of the Tree Officer are executed have rendered the Tree Authority virtually redundant as an appellate authority. As a result, when it comes to appeals against orders permitting felling of trees, the trees have nearly in all cases likely been felled already, even before an appeal could be preferred. It is submitted that this situation is patently absurd and could not have been intended by the legislature when enacting the Tree Act, as was observed by this Hon'ble Court in W.P. No. 7107 of 2008.
56. It is well settled law that in the event of any absurdity arising out of a literal interpretation of any law, this Hon'ble Court is would rationalise and harmonise the reading of the law so that it operates in a reasonable manner as intended by the

legislature. It is submitted that the Tree Act was enacted with the overarching aim of preserving trees and the very fact that it gives scope for an 'appeal' from a decision of a Tree Officer, would necessarily imply that a reasonable time be given between an order of tree felling by a Tree Officer and the actual felling of the tree, to enable an aggrieved party to approach the appellate authority. Any other reading would render large portions of the Tree Act nugatory.

57. As discussed by this Hon'ble Court in its order passed in W.P. No. 7288 of 2011 (detailed above), it is humbly submitted that the Respondent No. 3 ought to create and implement a web-based system, wherein all permissions granted to fell trees are uploaded with the reasons for grant of permission. It is also submitted that, for optimal achievements of the objects of the Tree Act, such permissions should be kept in abeyance for a period of fifteen days, before the order can be executed by the applicant.
58. It is submitted that the Respondents No. 2 and 3 already appear to have issued a Circular directing that all applications seeking permission to fell trees ought to be submitted online on the website of the Respondent No. 2, where a form for filing an application has been provided. A true copy of the aforesaid Circular dated 04.10.2017 is attached herewith as **Annexure W**. Therefore, it is submitted that since the infrastructure already exists, the Respondent No. 2 ought to be directed to ensure that all permissions granted to fell trees (with reasons therefor) are uploaded on the website with public access and that such permissions be kept in abeyance for a period of 15 days before they are executed by the applicant, *i.e.* before the trees are actually felled. As observed by this Hon'ble Court in its order in W.P. No. 7107 of 2008, the public, *i.e.* citizens at large must be made aware of proposals to fell trees, as there is a public right to have trees preserved, enshrined in the Tree Act.

*Supervision and management of the overall tree cover within its jurisdiction*

59. The second critical function of the Tree Authority is the supervising and managing of tree cover within its jurisdiction. In order to ascertain the extent to which the Tree Authority had discharged the above function, the Petitioner No. 1 filed an RTI Application dated 2 September 2017 seeking minutes and proceedings of the meetings of the Tree Authority, and also details of work done by the Tree Authority in the last one year pertaining to the responsibilities imposed on it by the Act, with the Chief Conservator of Forest, Bangalore Circle, in her capacity as Chairman, Tree Authority. A copy of the RTI application dated 02 September 2017 is attached herewith as **Annexure X**. However, the Chairman, Tree Authority failed to provide the necessary information as sought for in the RTI within the stipulated period of time. In view of the same, the authorised representative of the Petitioner No. 1 lodged a 'First Appeal' under the RTI Act dated 04.10.2017 with Mr. Sugara K.S, IFS, Principal Chief Conservator of Forests, Karnataka Forest Department, seeking the necessary information sought for in the RTI application dated 02 September 2017. However, the Petitioner No. 1 has not received any response till date.
60. In view of the lack of information provided by the Chairman, Tree Authority Forest Department, the Petitioner No. 1 approached the Office of the Chief Conservator of Forests, Bangalore Regional Circle seeking information about the Tree Authority's discharge of statutory duties *vide* another RTI Application dated 09.11.2017 in which the Petitioner No. 1 sought information specifically about the activities undertaken by the Tree Authority in the discharge of its functions under the Tree Act. A true copy of the RTI Application dated 09.11.2017 is produced herewith at **Annexure Y**.

61. The Office of the Chief Conservator of Forests responded to the Petitioner No. 1's RTI application *vide* reply dated 04.12.2017 (produced at Annexure Q) bearing reference no. A6/CCF/RTI/CR-87/2017-18 stating merely that:

*"Tree Officers have been instructed to take action as per rules. Further the following documents are enclosed towards the species recommended for Planting/ planting technique and nursery practices.*

*For enumeration of trees species DCF, Urban Division and DCF, BBMP, Bangalore have instructed to submit the latest enumeration list"*

62. At the outset it is submitted that these responses do not, in any manner, elucidate the scope and extent to which the Tree Authority has discharged its duties as per Section 7 of the Tree Act. It is therefore evident that, other than the above two responses, the Tree Authority has failed to even attempt to discharge its duties under Section 7 of the Tree Act and has therefore functioned in violation of its statutory obligations and utterly contrary to the letter, spirit and intent of the Tree Act.

63. The fact that the Tree Authority has prescribed planting techniques for trees merely pertains to one of its responsibilities under the Tree Act, namely under Section 7(c) - specifying the standards regarding the number and kind of trees which each locality, type of land and premises shall have and which shall be planted subject to a minimum of five trees per hectare in the case of rural areas – and even with respect to this duty the response of the Office of the Chief Conservator of Forests fails to provide any information regarding enforcement of the aforesaid standards.

64. It is submitted that according to the Tree Authority's own recommendations (attached to its response dated 04.12.2017) in its solitary meeting dated 28.09.2017, a Bengaluru Urban District Planting Technique Model was recommended for Institutions, Schools, City Planting and Roadsides. However, this planting technique

has not been enforced by the Tree Authority or the Respondent No. 4. The Petitioner No. 1 found several violations of the aforesaid Planting Technique in the Domlur Area of Bangalore and brought this to the attention of the Respondent No. 4 vide letter dated 14.12.2017. Along with the letter the Petitioner No. 1 had attached pictures of the violations of the planting technique. The aforesaid letter and the pictures are attached herewith as **Annexure Z**.

65. In response to the above letter, the Petitioner No. 1 received a response dated 21.12.2017 bearing Reference No. DCF/PR-1176/17-18 in which the Respondent No. 4 expressly admitted that “there are some lapses” in the planting technique implemented. The Respondent No. 4 thereafter assured that ‘sincere efforts’ will be made. It is submitted that this admission by the Respondent No. 4 is ample evidence of their non-implementation of the Planting Technique as prescribed by the Tree Authority. A true copy of this response dated 21.12.2017 is produced herewith at **Annexure AA**.

66. The second response by the Office of the Chief Conservator of Forests – that the Respondent No. 4 has been instructed to submit an enumeration list also does not answer the Petitioner No. 1’s question regarding the discharge of the Tree Authority’s duties under Section 7 of the Tree Act. Nowhere does the Tree Act prescribe a duty of getting prepared an ‘enumeration list’. Indeed, the term ‘enumeration list’ is not defined under the Tree Act, Tree Rules, or any other notification of the Government of Karnataka. It appears that the ‘enumeration list’ appears to be the Tree Authority’s attempt to claim it is discharging its duties under Section 7 (b) of the Tree Act - *carrying out a census of the existing trees and obtaining, whenever considered necessary, declarations from all owners or occupants about the number of trees in their lands*. However, the answer provided by the Office of the Chief Conservator of

Forests does not disclose the discharge of this function. The Tree Authority is the sole authority vested with the duty of carrying out the census and the Act makes no stipulation as to delegation of carrying out the census by 'directing the Tree Officers' to prepare vague and undefined enumeration lists.

67. With regard to the obligation of the Respondent No. 3 under Section 7 of the Tree Act to carry out a tree census, it is submitted that no steps whatsoever have been taken or even contemplated by the Respondent No. 3 to carry out a comprehensive census of trees in Bengaluru. It is submitted that without census data, there would no basis to evaluate the loss of green cover in the city, or the scale of felling being carried out. Though the Respondent No. 4 appears to have notified its intention to carry out a census (despite the fact that it is the statutory duty of the Respondent No. 3 to do so), no such census has yet been conducted, as evidenced by news articles produced herewith at **Annexure AB 1 and AB 2 series**.
68. Further, as stated above, this Hon'ble Court had, in its final order dated 07.08.2014 in W.P. No. 7288/2011 noted that the Respondent No. 4 had proposed setting up of a Greening Committee and a Coordination Committee. This Hon'ble Court had noted that *prima facie* the two bodies seemed adequate for helping the Respondent No. 4 discharge functions under the Tree Act. However, subsequent to the final order in W.P. No. 7288/2014, the Respondent No. 4 has woefully failed in abiding by its own undertaking before this Hon'ble Court by not constituting the Greening Committee. The Petitioner No. 1 had filed an RTI Application seeking details with respect to the constitution of the Greening Committee dated 26.02.2018. A copy of the said RTI Application is attached herewith as **Annexure AC**. However, despite a lapse of thirty days from the filing of this RTI, the Petitioner No. 1 has received no response to this application.

69. It is further submitted that, despite the Hon'ble High Court's observations in its judgement in W.P. No. 7288/2014, the Respondents No. 2 and 3 have woefully failed to replant trees in the event of destruction, and to generally plant trees to maintain green cover, as they are obligated to do under Sections 9 and 10 of the Tree Act. It is submitted that several media reports have highlighted unscientific planting techniques being implemented by the Respondents No. 2 and 3 which have proven unproductive and unsuccessful. Copies of media reports highlighting the unscientific plantation of trees in the city of Bengaluru are produced herewith as **Annexure AD 1 and AD 2 series**. It is submitted that the Respondents are only attempting to show a cosmetic and superficial compliance with the provisions of the Tree Act, and violating as a result, the very object of the legislation.
70. The lacunae in the Tree Authority and the Tree Officers' functioning becomes evident when evaluating the effect their lack of oversight on tree felling for works projects. An egregious example of rampant, and unmanaged pruning of trees is evidenced by the actions of the Bangalore Electricity Supply Corporation ('**BESCOM**'), the Respondent No. 6 herein.
71. The Petitioner No. 1 has in the past found that the Respondent No. 6, under the garb of the powers vested in it by the Indian Electricity Rules, 1956 and various circulars, mismanages the pruning of trees when clearing ways for electricity lines. The Petitioner No. 1 had addressed several communications, including RTI applications to the Respondent No. 6, seeking an explanation for the same. A true copy of the RTI Application along with photographs evidencing the improper and unlawful manner of felling of trees by the Respondent No. 6 are attached herewith as **Annexure AE**. In response to the Petitioner No. 1's RTI Application, the Respondent No. 6 issued a reply dated 11.07.2013 bearing reference no. AEE/(EI)/C,O and M/SD3/AE(T)1975-79,



denying that any permission was required from the Tree Officer for it to prune/cut trees in view of provisions of the Indian Electricity Act. A true copy of the response dated 11.07.2013 issued by the Respondent No. 6 is produced herewith at **Annexure AF**. Further, the Respondent No. 6 expressly acknowledged that the temporary workers it engaged for pruning/cutting trees were not cutting/pruning trees in a proper manner. The manner in which the Respondent No. 6 prunes trees is in violation of best principles for maintenance and preservation of trees. By merely pruning the parts of branches that are towards the electricity lines, the Respondent No. 6 is causing an imbalance in the trees, resulting in the trees leaning towards one side only and eventually falling or crashing, leading to the complete destruction of the tree, and potential danger to life, limb, and property of citizens. Therefore, though they claim that they are only 'pruning branches', they are effectively destroying the trees. Despite this admission that the Respondent No. 6 was not pruning/cutting trees in the manner laid down by law, the Respondent No. 6 has failed to take any action to rectify the issue.

72. It is submitted that the Tree Act being a later and special legislation would prevail over and govern the exercise of the powers of the Respondent No. 6 to prune and fell trees under the Indian Electricity Rules, 1956 and various circulars. Therefore, the Respondent No. 6 and its officers are required by law to abide by the mandate of the Tree Act while exercising their powers. The Respondent No. 6's blatant mismanagement of trees is a clear example of the detrimental effects occasioned by the lack of proper oversight by the Tree Authority and Tree Officers in violation of the Tree Act.
73. Another instance of egregious violations of the Tree Act is with respect to the proposed 'Koramangala Elevated Road Project'. This project has been proposed by

Respondent No. 4 as a flyover in Koramangala between Ejipura Junction and Kendriya Sadan to ease traffic congestion woes. In furtherance of this project, 286 trees are proposed to be cut for construction of this flyover. A newspaper clipping from the 15.11.2016 edition of the Bangalore Mirror is attached herewith as **Annexure AG**. On 01.09.2017, the Petitioner No. 1 had filed an RTI Application (attached herewith as **Annexure AH**) with the Respondent No. 4 seeking, *inter alia*, mitigation measures being taken by Respondent No. 4 in respect of the trees proposed to be felled. It is reiterated that under the Tree Act it is mandatory that when trees are permitted to be felled, that such permission is subject to the express condition that new trees in the same site, or in any other suitable place are to be planted by the person felling the trees within a period of thirty days. However, the Petitioner No. 1 received no response to this RTI Application and preferred a first appeal (attached herewith as **Annexure AJ**). The Petitioner No. 1 received a reply dated 10.10.2017 whereby the Respondent No. 4 gave an evasive reply stating that the details for felling had not yet been finalised and would be provided when ready, provided herewith at **Annexure AK**. The Petitioner No. 1 thereafter filed another RTI Application seeking details of trees finalized to be felled. The Respondent No. 4, in a reply dated 06.12.2017 (attached herewith as **Annexure AL**), stated that finalization of trees to be felled had not yet been completed. In response to questions regarding mitigation measures, the Respondent No. 4 had no specific response and instead merely gave a vague response that "As per Clause 13.1.1 Green Cover planting of trees in the ratio 1:2, proactive afforestation for green cover and development of green ribbon in and around the project area, it will be abundantly compensating the green cover". This reply solely consists of vague assurances and an allusion to the project report. It does not, in any way, stipulate any of the mitigation measures specifically being undertaken.

74. It is therefore evident that, while the plan to fell trees and execute the flyover has been conceptualised, the plan for mitigation measures still exists in the realm of vague banalities and does not contain any concrete plan or measures as mandated by the Tree Act. However, giving the Respondent No. 4 the benefit of the doubt, the Petitioner No. 1 again filed an RTI Application dated 02.03.2018 (attached herewith as **Annexure AM**) seeking, *inter alia*, the details of the 286 trees to be felled in the hope that some mitigation measures had been conceptualised by this time. The Respondent No. 4 responded *vide* reply dated 26.03.2018 (attached herewith as **Annexure AN**). However, in this reply, the Respondent No. 4 merely stated that with respect to the 286 trees to be felled 'the available details are enclosed'. Much to the Petitioner No. 1's dismay, the only details enclosed with the reply were one page of the Detailed Project Report pertaining to the general policy regarding green cover for public projects. It is submitted that, while it is laudatory that a policy for green cover has been stipulated, mere restatement of the policy does not amount to a tangible plan or concrete action with respect to mitigation of tree loss. In fact, given that the construction works on the project has already commenced, the fact that no concrete plan of action with respect to mitigation of tree loss has been formulated is an indicator of the utter lack of seriousness and *bona fides* by the Respondent No.4 in discharging its obligations under law.
75. In fact it is submitted that in similar projects carried out by the Respondent No. 5, when trees were felled indiscriminately in the city for the constructions of the Metro, the substitute trees mandated under the Tree Act were planted not in the same site as the project, but all the way across the town in Nelamangala, defeating the object of the provision mandating the planting of new trees in the same site, to preserve tree cover. It is submitted that the very purpose of the provisions of the Tree Act

mandating that new trees ought to be planted in the same site is to ensure that the same cannot be subverted by claiming that any unrelated planting of trees in a different location would be sufficient compensation for the felling of trees.

76. Thus it is clear, from the aforesaid actions, that the Respondents have shown utter contempt towards the Tree Act and Tree Rules by blatantly disregarding statutory provisions and duties prescribed therein, resulting in a complete disregard for the law and erosion of the tree cover of Bengaluru at a rapid rate at the expense of the holistic and wholesome development of the city and the health and wellbeing of its citizens.

Arbitrariness of Section 8(3)(vii)

77. Without prejudice to the contention of the Petitioners that the Tree Act as a whole is a beneficial legislation, the Petitioners seek to question the constitutionality of a specific provision of the Tree Act, namely the amended Section 8(3) sub-clause (vii), which reads as follows:

*“(3) On receipt of the application, the Tree Officer may, after inspecting the tree and holding such inquiry as he deems necessary, either grant permission in whole or in part or refuse permission:*

*Provided that permission shall not be refused, if the tree*

*....*

*(vii) felling is more than 50 that are necessitated for any public purpose like road widening, construction of road, canal, tanks, buildings etc., subject to condition that permission is issued after issue of public notice to invite objections from the public and the same is considered by the Tree Officer*

78. The intent of the proviso appears to be to ensure that a public purpose exception is created wherein permission to fell trees cannot be refused if the felling is necessitated

for public purpose as long as the public is given notice of the proposed felling and an opportunity to submit objections to the same.

79. At the first instance it is submitted that a provision of the Tree Act mandating that permission for felling of trees for a public purpose '*cannot be refused*', defeats the very object of the Act, by mandatorily placing mechanical development at a higher pedestal than protection of the environment. Secondly even though the provision provides for public notice, it does not provide for a hearing, or for any decision to be taken by the Tree Officer refusing permission, and mandates that he must grant permission despite any objections being received from the public.
80. Further, by prescribing the arbitrary number of '50 trees', the above amendment to the Tree Act has completely subverted the very purpose of the Tree Act, and is arbitrary, ambiguous and consequently wholly unconstitutional. As per the amendment, no permission shall be refused for felling of more than 50 trees for a public purpose as long as notice is given to the public for inviting objections and the same are considered. This is problematic for several reasons.
81. Firstly, the amended proviso does not stipulate what the term 'public purpose' means other than mentioning a few types of public projects. This leaves the provision open to abuse, whereby any project could be classified as being for a 'public purpose' and therefore bypass the requirement for permission for felling from the Tree Officer.
82. Secondly, the proviso fails to provide any requirement of stipulation of the said 'public notice', whether it is to be carried out by way of advertisement in newspapers, BBMP website, affixing public notice *etc.* Nor does the proviso lay down any criterion to be considered by the Tree Officer in considering objections by the public. Further, the number of days given to the public to raise objections, the method in which the public can raise objections and other modalities are also not specified. Thus, the arbitrary

and vague nature of the Tree Officer's consideration of public objections, the lack of procedure and process by which the public can put forward these concerns, and the lack of any procedure or modalities for issuance of the notice, render the requirement of a public notice virtually cosmetic, irrelevant, and wholly ineffective.

83. Thirdly, the stipulated requirement of a public notice only in the event of felling 'more than 50' trees has been misused indiscriminately to imply that for public works projects where less than 50 trees need to be felled, no public notice is required and trees can be felled without the requirement of a public notice – thereby facilitating rampant felling of trees in complete contradiction with the very aim and objects of the Tree Act.
84. In fact, this provision has been abused on several instances by developers, builders and state authorities with projects being segregated into multiple smaller parcels, each requiring the felling of only 49 trees or less, in an unlawful attempt to avoid compliance with the provisions of the Tree Act. Each such parcel of the project is shown to be a project of its own, thereby bypassing any need for permission for felling of trees. A news article describing the abuse of this provision by the Respondent No. 4 in carrying out the tenderSURE works is produced herewith at **Annexure AP**.
85. This unlawful abuse of the Tree Act has been most evident in the implementation of the Bangalore Metro Rail Project ('**Metro Project**'). This Hon'ble Court, by way of its order dated 07.08.2014 in W.P. No. 7288/2014, had directed the constitution of a committee specifically to assess and mitigate the impact of metro works on the tree cover and environment in Bangalore City. The Petitioner No. 1 herein was also selected to be a member of this committee. A true copy of the proceedings of the Respondent No. 1 constituting this committee is produced herewith at **Annexure AQ**.

86. The committee had held its first meeting on 17.06.2016 at the Respondent No. 4's office in Jayanagar where it had made suggestions on geo-tagging of trees, translocation, species to be planted as compensation for cut trees, etc. in order to ensure a systematic approach to conserving trees in the city of Bengaluru while also striking a balance with several rising infrastructural needs. A true copy of the minutes of this meeting are produced herewith at **Annexure AR**. Despite these suggestions, the relevant authorities did not implement any of the recommendations except in an instance where a meagre two trees on Kanakapura Road were translocated.
87. Much to his shock and dismay, the Petitioner No. 1 learnt that in late 2016 the Respondent No. 5 had been granted permission to cut 44 trees for the Metro Project on Kanakapura Road without any impact assessment, feasibility study, or public notice and in contradiction to the suggestions proposed by the committee constituted to ensure that tree felling on account of the metro project was kept to a minimum. The suggestions of the committee were blatantly ignored with no cogent reasons provided. When the Petitioner No. 1 came to learn of this, he wrote to the Deputy Conservator of Forests, BBMP vide e-mail dated 02 November 2016. In the said e-mail, the Petitioner No. 1 sought for information and the order by which the Respondent No. 5 had been permitted the felling of the 44 trees. On the same day, one Dr.TV Ramachandra (a renowned ecologist) also wrote an e-mail to the Deputy Conservator of Forests, supporting the Petitioner No. 1's request and criticising the functioning of the Respondents. In the said e-mail, Dr. Ramachandra also made it clear that activists such as he and the Petitioner No. 1 were not opposed to works like the Metro Project but were merely interested in ensuring such projects are executed with minimal environmental damage. Copies of the aforesaid e-mails are attached herewith as **Annexure AS 1 and AS 2 series**.

88. Despite the issuance of these e-mails, the Respondents failed to provide any cogent response or explanation to the queries therein. In view of this unresponsiveness, the Petitioner No. 1 filed an RTI Application seeking more details regarding the permission granted by the Tree Officer for the felling of these 44 trees. A copy of the said RTI Application is attached herewith as **Annexure AT**. However, the Petitioner No. 1 received no response to this RTI Application, and has therefore preferred a first appeal. A copy of the first appeal is attached herewith as **Annexure AV**. The first appeal was also blatantly ignored, and the Petitioner No. 1 has till date, not received any information regarding the purportedly permitted felling of 44 trees. A news article published in The Hindu is produced herewith at **Annexure AW**, describing the absolute disregard of the Respondent No. 5 to the specific committee formed to oversee the impact of the Respondent No. 5's work on the effect of trees.
89. In view of this sheer lack of transparency shown by the Respondents, with information deliberately being suppressed and kept out of the purview of citizens, the Petitioner No. 2 issued a letter to the Respondent No. 5, the Respondent No. 3, one P, Shri Subhash Chandra, Chief Secretary, Shri P Ravikumar, ACS Forest and Shri Sugara, the Principle Chief Conservator of Forests stating *inter alia*:
- a. In October/November 2016 as many as 44 trees were permitted to be cut on Kanakapura Road Metro Alignment without any intimation to the Committee by abuse of the Amendment Act, and further that the Kanakapura Road extension of the Metro Project, which required the felling of over 300 trees was being sub-divided and the trees were being felled piece-meal without any public consultation, as required by law;
  - b. No copy of the order permitting the felling of trees along the Metro Project had been furnished, despite repeated requests, letters, and RTI Applications;



- c. A meeting of the Tree Committee scheduled on 15th July 2016 was postponed indefinitely. Again, a meeting which was convened on 25th Mach 2017, was also postponed. After the initial meeting on 17th June 2016, no meeting has been held till date, defeating the purpose and objective of this committee which is constituted as per the directions of this Hon'ble Court with the object and purpose of saving and preserving the depleting tree cover.

A true copy of the letter dated 11.07.2017 issued by the Petitioner No. 2 is produced herewith at **Annexure AX**.

90. However, no action was taken by the Respondents on the serious concerns raised by the Petitioners. In view of this blatant inaction in respect of this Metro Project alone, the Petitioner No. 2 has filed a complaint with the Hon'ble Lokayukta bearing reference no. COMPT/LOK/BCD/2179/2017 against Shri Pradeep Singh Kharola, MD, BMRCL, Shri Manjunath Prasad, Commissioner BBMP, Shri Subhash Chandra, Chief Secretary, Shri P Ravikumar, ACS Forest and Shri Sugara, the Principle Chief Conservator of Forests, alleging dereliction of duty on their part in failing to hold consultations with the Tree Committee and facilitating the surreptitious and unplanned felling of trees for the Kanakapura Road extension of the Bangalore Metro. The said complaint is still pending, and the Hon'ble Lokayukta is awaiting the response of the Respondents therein.
91. Therefore, it is evident that the Respondents are of the belief that the Amendment provides them with a loophole to fell trees without an *iota* of transparency or accountability in blatant contravention of the very aim and objects of the Tree Act. It is submitted that the aforesaid actions are an inevitable consequence of the specific wording of Section 8(3)(vii) of the Tree Act as amended by the Amendment Act, which actively facilitates abuse of this provision and rampant felling of trees.

92. It is submitted that the proviso, as it stands today, by placing public projects on a higher pedestal than tree cover and the environment violates the very legislative intent of the Tree Act which holds trees and tree cover as an essential and vital part of the development of any urban and rural space on par, if not greater, than any public project. The subordination of trees at the altar of unspecified 'public projects' with no objective criteria for evaluation of the merits of any public project renders the entire Tree Act virtually ineffectual in preserving tree cover in the city. It is submitted that the aforesaid proviso has empowered several state authorities to indulge in rampant felling of trees without any public notice, thereby defeating and violating the rights of citizens to be intimated of and having an opportunity to object to any proposed felling of trees, which right has been recognised by this Hon'ble Court.
93. It is further submitted that unless the offending section is read down to make it mandatory that all applications seeking to fell trees for public purposes are considered only after the issuance of a public notice, the object of the Tree Act shall stand defeated. Further, the Tree Officer must be directed to consider all objections and pass a reasoned order, after considering all possible alternatives to felling of the trees, and that such application should be rejected where the felling of trees can be prevented by any alternative means.

*Inapplicability of Section 8(7) to urban areas*

94. It is submitted that, as per Section 8(7) of the Tree Act, certain species of trees are exempt from the restrictions on felling otherwise imposed on trees under Section 8. It is submitted that species are often inserted in this section on grounds of safeguarding 'interests of farmers'. It is submitted that, while this reasoning is probably justifiable in rural areas, it bears no rational nexus with the reality of urban areas. In fact, the exemption of trees from restrictions on felling under Section 8(7) in

order to safeguard farmers interests results in detrimental impact to the populations of such trees in urban areas where there are no farmers interests to protect. In fact, it is submitted that the State of Maharashtra has specifically enacted separate tree protection legislations for urban areas and rural areas in order to avoid such a situation. In view of this absurdity, it is submitted that it is necessary to exclude the applicability of Section 8(7) of the Tree Act from the purview of urban areas in the State of Karnataka.

95. It is submitted that the violative actions by the state authorities – *i.e.* non-implementation of the Tree Act by state authorities and passing of an arbitrary amendment that destroys the very purpose of the Tree Act - have resulted in rampant felling of trees in Bengaluru without due consideration for safeguarding the environment and tree cover of Bengaluru. This state of affairs has resulted in rapidly deteriorating tree cover in Bengaluru which in turn is causing an increase in pollution levels, soil erosion, ecological disturbances, erratic rain fall and an increase in average temperature of the city. The consequences are an erosion of the right to clean air, clean environment and sustainable development of the residents of Bengaluru in violation of their rights to life and liberty under Article 21 of the Constitution of India. In view of the aforesaid, it is humbly submitted that the subject matter of this Petition is a matter of public interest and is maintainable before this Hon'ble Court.
96. It is submitted that the Hon'ble Bombay High Court recently had an opportunity to examine the provisions of an in *pari-materia* legislation - the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and the Maharashtra (Urban Areas) Protection and Preservation of Trees Rules, 2009. A similar public interest litigation was filed before the Hon'ble High Court of Judicature at Bombay in PIL No. 93 of 2009 (*Deepak Balkrishna Vahikar and another v. State of Maharashtra and*

- others*) in view of blatant non-implementation of the provisions of the Maharashtra Tree Act and Rules by the relevant authorities such as the State of Maharashtra and the Pune Municipal Corporation (PMC). More specifically, the said petition had impugned the constitution of the Tree Authority thereunder and also its discharge of its functions.
97. Over the course of proceedings, the Hon'ble Bombay High Court passed several interim orders regulating the felling of trees and devising a Court supervised procedure during pendency of proceedings for felling of trees in view of the violation of fundamental rights being occasioned by non-implementation of the Tree Act. Further, the Hon'ble Bombay High Court also solicited suggestions on a more clear and concrete procedure for felling of trees for development purposes with the grave urgency and need to preserve and, in fact, enhance the tree cover of Pune in line with the objectives of the Maharashtra Tree Act. Over the course of proceedings, several notable experts were also consulted for suggestions on how to effectively implement the Maharashtra Tree Act and safeguard the fundamental rights of citizens of Pune.
98. It is submitted that, the Hon'ble Bombay High Court was pleased to dispose of the petition with wide-ranging observations and orders directing implementation of the Maharashtra Tree Act in view of new guidelines proposed by the PMC which filled the lacunae in implementation of the Maharashtra Tree Act. The Hon'ble Bombay High Court also made specific orders directing the conduct of a census of trees using modern technology to ensure accuracy and precision. Finally, the Hon'ble Bombay High Court made a parting observation clarifying that the Tree Authority *"is not an authority for the destruction of trees but for the preservation of trees and enhancement of the fast depleting green cover in the urban areas of the State"*. A true

copy of the final order of the Hon'ble Bombay High Court dated 20.09.2013 is attached herewith as **Annexure AY**.

99. As set out above, the Petitioners are aggrieved by the abject failure and refusal of the Respondent authorities in carrying out their duties and functions under the Tree Act. The Respondents have failed to exercise their jurisdiction in law, resulting in a complete violation of the very aim and object of the statute. It is submitted that the immediate need of the hour is that a dedicated and responsive task force or committee be set up in Bengaluru, to ensure that the objectives of the Tree Act are being implemented and met with to preserve the fast-depleting tree cover of the city. It is humbly submitted that Hon'ble Bombay High Court's judgment dated 20.09.2013 in PIL 93 of 2009 would serve as a useful reference for guidelines, principles, and directions to be kept in mind by the authorities under the Tree Act while carrying out their functions, which would allow them to manage the tree cover in the State and ensure that the same is not depleted and is preserved in a sustainable manner. It is submitted that the said task force / committee may be directed to keep in mind these guidelines and principles.
100. In the circumstances, left with no other recourse in the matter, the Petitioners are constrained to approach this Hon'ble Court for reliefs, under Article 226 of the Constitution of India, 1950 on the grounds set out herein below, in addition to additional grounds that may be urged at the time of hearing of the petition (for which leave is expressly sought hereby).

## **GROUND**

101. It is well-established law that a statute must necessarily be implemented/followed *in toto* and cannot, in any manner, be derogated from except in expressly carved

exceptions. The chronic lack of implementation of the Tree Act by the Respondents is, therefore, a violation of the Tree Act itself and, therefore wholly illegal.

102. The Respondents' wilful failure to carry out statutory obligations and functions amounts to a refusal to exercise jurisdiction vested in them by law, and erosion of the rule of law.
103. For any lack of implementation of a law by state authorities, this Hon'ble Court has powers, under Article 226 of the Constitution of India, to issue a writ of *mandamus* to supervise and ensure implementation of any particular law.
104. As a result of the Respondents failure to perform their statutory obligations, there is a prevalent rampant felling of trees in the city of Bangalore resulting in the city losing its green cover at a rapid rate, defeating the very purpose of the Tree Act. Thus, the Respondents in failing to perform their statutory obligations have in fact, defeated the very legislative intent of the statute, which cannot be sustained.
105. The actions of the Respondents have resulted in a deterioration of the environment and climate of the city, violating the fundamental rights of the citizens/residents of Bangalore to a clean environment under Article 21 of the Constitution of India, 1950. Environmental concerns have been placed by Courts on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution.
106. It is submitted that such blatant non-implementation of the provisions of the Tree Act by the Respondents is illegal and unconstitutional. A perusal of the wording of the Tree Act would reveal the exact nature and extent of obligations that state authorities have to prevent unnecessary felling of trees and would show that these obligations are unambiguous and clear. The Respondents have failed to discharge these mandatory obligations stipulated under the Tree Act. In view of the same, it is

incumbent on this Hon'ble Court to exercise its writ jurisdiction and direct effective implementation of the Tree Act in order to safeguard the will of the legislature and protect the fundamental rights of all residents/citizens of Bangalore.

107. On an average, a tree produces nearly 260 pounds of oxygen per year. It is submitted that studies have shown that the overall value of a tree in terms of the benefits provided by it to the ecology under eight different heads, is a sum of nearly Rs. 3,55,13,000/-. The Respondents through their negligence and their dereliction, have permitted a rampant felling of trees resulting in loss of great value provided by each of these trees. It is submitted that therefore the Respondents ought to compensate the citizens for this loss of value.
108. With respect to the amended Section 8(3)(vii) of the Tree Act, it is submitted that it is settled law that any provision of a legislation cannot thwart or override the main objects behind that legislation. Any such provision is illegal, unconscionable is liable to be struck down by this Hon'ble Court in exercise of its writ jurisdiction.
109. The Tree Act was enacted with the aim of facilitating the preservation of trees, with clear and unambiguous provisions that seek to action this aim. It is submitted that the Tree Act seeks to recognize tree cover as an integral part of the development of the State that is essential for citizens' welfare and cannot be overlooked for the purpose of development. However, Section 8(v)(iii) as it stands contradicts this position by facilitating an opaque process that has been utilised by the Respondents to make it easier for the felling of without compliance of any requirement of public notice, nor permission from statutory authorities. Hence, the same ought to be struck down as being unconstitutional.
110. The arbitrary requirement of 50 trees having to be felled for a particular project in order for public notice to be issued has no particular basis in reason or law and has

merely led to rampant felling of trees in Bangalore. As such, the proviso also deserves to be struck down as being arbitrary and unconstitutional.

111. Moreover, it is submitted that the provision by facilitating felling of trees rather than encouraging their preservation, goes against the very aim and object of the Tree Act and is being used by the Respondents to rapidly erode the tree cover in the city of Bangalore, and as such deserves to be struck down as unconstitutional.
112. It is further submitted that the abuse facilitated by this provision is inherent to the wording of the provision and not a result of any oblique 'reading into' of the provision. Thus, the instant provisions must necessarily be struck down in its entirety and there is no scope for reading down the same.
113. It is submitted that the actions of the Respondents amount to a clear violation of the fundamental rights of the residents of the city of Bengaluru. It is well established that a critical aspect of the right to life under Article 21 of the Constitution of India includes the right to clean air and a clean environment. Indeed, the Hon'ble Supreme Court has held that without a hygienic, clean environment, it becomes impossible for an individual for to live a life of dignity. The derogation of the Tree Act and Rules by the Respondents and the deleterious impact of such derogation on tree cover on the city of Bengaluru is causing greater pollution and rising temperatures in the city of Bengaluru deteriorating the quality of life of its residents and also eroding the environment and air of the city. These effects are a clear violation of the fundamental right to life of the citizens of Bengaluru.
114. It is also well established that arbitrary implementation of laws amounts to a violation of the right to equality under Article 14 of the Constitution. More specifically, with respect to environmental laws, the Hon'ble Apex Court has held that government



decisions that erode the environment, if taken without considering the ecological impact would be arbitrary and violative of Article 14.

115. Finally, it is submitted that a conjoint reading of Article 14 and Article 21 would show that there also exists a right to intergenerational equity – whereby future unborn generations also have the right to a clean air and environment. The violations of the Tree Act – causing increase in pollution and rising temperatures are rendering the environment of Bengaluru unliveable and violating the right to intergenerational equity of future generations.
116. It is submitted that this Hon’ble Court is also empowered under Article 226 of the Constitution of India to take cognizance of non-implementation of the Tree Act and pass wide-ranging interim orders and final orders directing the Respondents to ensure and enhance compliance with the provisions of the Tree Act. It is submitted that the intervention of this Hon’ble Court in this regard is absolutely essential to safeguarding the fundamental rights of the residents of the city of Bengaluru. It is submitted that, in the absence of this Hon’ble Court’s intervention, the Respondents will continue their blatant violations of the letter and spirit of the Tree Act – resulting in irreversible and irreparable harm to the ecology and environment of the city of Bengaluru.

#### **GROUND FOR INTERIM RELIEF**

117. The Petitioner submits that it has made out an eminently fit case for interference by this Hon’ble Court and has a good case on merits and is of the belief that this Hon’ble Court will grant the reliefs prayed for in the present writ petition.
118. As stated above, the Respondents’ actions are entirely illegal and violate the fundamental rights of the citizens of the city of Bengaluru. More specifically, it is submitted that the failure in compliance with the Tree Act and Tree Rules by the

Respondent Nos. 1 to 3 has caused this situation. If the status quo were allowed to continue, and the Respondent Nos. 1 to 3 allowed to continue their flagrant violations of the Tree Act and Tree Rules, then it is highly likely that Bengaluru would continue to suffer an irreversible loss of green cover – a phenomenon which leads to deleterious impacts on the fundamental rights of the citizens of the city.

119. Therefore, it is submitted that if interim reliefs as prayed for are not granted, the city of Bengaluru would suffer immense, irreversible loss to its tree population, which in turn would cause severe impacts on the health and lifestyle of its citizens – in direct violation of the fundamental right to a clean and hygienic environment. It is submitted that once tree cover is lost, it would take years for it to recover. Therefore any damage to trees done now would be virtually irreversible for an entire generation of citizens at the very least.
120. In view of the same, it is submitted that it is necessary for this Hon'ble Court to pass interim orders as prayed for in order to monitor the compliance of the Respondent Nos. 1 to 3 with the bare text of the Tree Act and Tree Rules. It is necessary for this Hon'ble Court to oversee the functioning of the Respondent Nos. 1 to 3 in respect of the roles assigned to them under the Tree Act and Tree Rules in order to ensure that the fundamental rights of the citizens of Bengaluru are safeguarded pending disposal of the petition. Further, in view of the blatant abuse of the Tree Act and Tree Rules, it is necessary to constitute a court-monitored task force/committee to aid and assist the Court in stopping blatant violations of law and also to suggest improvements in the way in which trees are managed in the city of Bengaluru.
121. It is submitted that similar interim orders have been passed by the Bombay High Court in PIL 93/2009 in respect of similar issues that arose. Therefore, it is submitted that

this Hon'ble Court is empowered to pass the interim reliefs sought herein as prayed for herein below in the interests of justice and equity.

#### **LIMITATION / DELAY**

122. It is submitted that the acts of dereliction of duty of the Respondents are on-going acts, and hence there is no delay in the present petition. The Petitioners have *bona-fide* made all efforts to contact and correspond with the Respondent authorities and obtain information from them on the matters specified in the present petition.

#### **JURISDICTION**

123. It is submitted that all the Respondents are constituted and situated within Bengaluru, *i.e.* within the jurisdiction of this Hon'ble Court. Accordingly, it is submitted that this Hon'ble Court has jurisdiction to grant the reliefs sought in the instant petition, under Article 226 of the Constitution of India, 1950.
124. Further, the acts of dereliction committed by the Respondents have violated the statutory, fundamental and constitutional rights of the Petitioners who are the citizens of Bengaluru, and hence the instant case is a fit case for this Hon'ble Court to exercise its powers under Article 226 of the Constitution of India, 1950.

#### **NO ALTERNATIVE REMEDY / NO OTHER PROCEEDINGS**

125. It is submitted that no other alternative efficacious remedy or statutory remedy is available to the Petitioners. The Petitioners therefore submit that this is a fit case for this Hon'ble Court to exercise its jurisdiction under Article 226 of the Constitution of India, 1950.

126. The Petitioners submits that the Petitioners have not preferred any other legal action in relation to any of the matters herein, and nor have they preferred any other Writ Petition on the same cause of action.

#### **COURT FEE**

127. The Petitioners have paid a Court Fee of Rs. 500/- (Rupees Five Hundred only) as under the Karnataka Court-Fees and Suits Valuation Act, 1958.

#### **INTERIM PRAYER**

In view of the grave urgency in the matter, and the rapid continuation of depletion of tree cover in the city of Bengaluru, the Petitioners humbly pray that, for the duration of the proceedings in the instant petition, this Hon'ble Court be pleased to pass the following interim orders in the interests of justice and equity:

- a. Directing the Respondent No. 3 to forthwith carry out and complete a comprehensive census of the existing trees in Bengaluru within a period of six months, and publish the same in a manner that is easily accessible to the public, including on the website of the Respondent No. 2;
- b. Constituting a committee / task force to oversee that the Tree Officers and the Tree Authority carry out their functions and duties in accordance with the provisions of the Karnataka Preservation of Trees Act, 1976 and the Karnataka Preservation of Tree Rules 1977, and the guidelines and principles enumerated by the Hon'ble Bombay High Court in its judgment dated 20.09.2013 passed in PIL 93 of 2009, produced at **Annexure AY**;
- c. Directing the Respondent No. 3 to submit detailed monthly reports before this Hon'ble Court of its discharge of functions and duties under Section 7 of the

Karnataka Preservation of Trees Act, 1976 and the Karnataka Preservation of Tree Rules 1977;

- d. Directing the Respondents No. 2 and 3 to submit a monthly report detailing the number of applications received for felling of trees, including details and reasons for grant or rejection of such permissions;
- e. Calling for the records and proceedings of meetings of the Respondent No. 3 and the records of all decisions taken by Tree Officers and the Tree Authority in respect of felling of trees for the last 10 years;
- f. Directing the Respondent No. 1 to constitute permanent Greening Authorities and Co-ordination Committees and ensure their regular operation in the manner undertaken by them in WP No. 7288/2014

#### PRAYER

Wherefore, in view of the grounds raised hereinabove, it is most humbly prayed by the Petitioners herein that this Hon'ble Court be pleased to:

- A. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondent No. 3 and the Tree Officers under their jurisdiction to carry out their functions and duties in accordance with the provisions of the Karnataka Preservation of Trees Act, 1976 and the Karnataka Preservation of Tree Rules 1977, and the guidelines and principles detailed by the Hon'ble Bombay High Court in its judgment dated 20.09.2013 passed in PIL 93 of 2009, produced at **Annexure AY**;
- B. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondent No. 3 to hold regular meetings, at least once in every three months, in accordance with Section 4 of the Karnataka Preservation of Trees Act, 1976, and make publicly available the minutes thereof;

- C. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondents No. 1 and 3 to ensure that the Respondent No. 3 carries out a complete and comprehensive census of trees every five years and publishes the same on the website of the Respondent No. 2;
- D. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondents No. 1 and 3 to prescribe and ensure that a standard number of trees are planted and maintained alongside roads in public parks, gardens, and on the banks of rivers and lakes, in a scientific manner so as to ensure their growth and development, as per Section 7(g) of the Karnataka Preservation of Trees Act, 1976;
- E. Issue a writ of certiorari or any other appropriate writ, order, or direction, striking down Section 8(3)(vii), as being *ultra-vires* the object of the Karnataka Preservation of Trees Act, 1976 and unconstitutional;
- F. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondents No. 1 and 3 to make it mandatory that all applications seeking to fell trees for public purposes are considered only after the issuance of a public notice, and that the Tree Officer be directed to consider all objections and pass a reasoned order, after considering all possible alternatives to felling of the trees, and that such application should be rejected where the felling of trees can be prevented by any alternative means;
- G. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondent No. 3 to ensure that no permissions to fell trees are granted by the Tree Officers where it is evident that a public project is being parcelled in a manner to circumvent the issuance of a public notice under the provisions of the Karnataka Preservation of Trees Act, 1976;
- H. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondents No. 1 to 3 to ensure that permissions granted to fell trees are

published on the website of the Respondent No. 2 for a period of at least fifteen days and are kept in abeyance before the applicant can proceed to carry out the actual felling of such trees;

- I. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondents No. 1 to 3 to ensure that in every case where permission is granted to fell a tree, all endeavours shall be first made to transplant the tree instead, and if that is not possible, then permission to fell the tree shall be granted only on the express condition that the applicant must plant a new tree in its place on the same site, as per Section 8(5) of the Karnataka Preservation of Trees Act, 1976;
- J. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondent No. 1 to reconsider appointment of Tree Officers in a manner to ensure their independence and impartiality;
- K. Issue a writ of mandamus or any other appropriate writ, order, or direction, directing the Respondent No. 1 to reconsider differentiating the list of species of trees specified under Section 8(7) of the Karnataka Preservation of Trees Act, 1976, for urban and rural areas; and
- L. Pass any other order as this Hon'ble Court may deem fit in the interests of justice and equity.

**Place:** Bengaluru

**Date:**

**Advocate for the Petitioners**