

IN THE HIGH COURT OF KARNATAKA AT BANGLORE

(Original Jurisdiction)

W.P. No. /2020(GM-PIL)

BETWEEN:

1.Mr Vijaya Suvarna

**MEMORUNDUM OF WRIT PETITION UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA**

The petitioners named above respectfully submit as follows:

1. The address of the petitioners for the purpose of issue of court summons, notice etc. from this Hon'ble court is as shown in the cause title above. They may also be served through their counsel Sri. H Sunil Kumar, L2-05, Splendid Plaza, 2nd Floor, 5th A Block, 100ft Road, Koramangala, Bangalore-560095
2. The address of the respondents for the similar purpose is as shown in the cause title above.
3. The petitioners are aggrieved by non consideration of their representation dated 14/05/2020 submitted to the respondents. A copy of the representations are produced as **ANNEXURE, A AND A1**

BRIEF FACTS OF THE CASE

4. It is submitted that the petitioners are permanent residents of Mangalore and public spirited citizens. They are filing this petition in the larger interest of the public. They have no private interest in filing the present PIL. Hence they are seeking liberty of this Hon'ble court to file the present petition.
5. It is submitted that Mangalore city has a Public Ground popularly called as Nehru Maidan. It consists of 21 acres of land and this has been under the control of Mangalore mahanagara Palike. It also has a football and other stadiums which are used by the general public. The Nehru maidan is a popular public ground and it is one of the few public spaces which is available for the public of Mangalore. It has a history of more than 100 Years and the British Government had classified and reserved the Nehru maidan as a Public ground.

6. It is submitted that the Nehru maidan is popular place among sports fans and general public for more than hundred years. Thousands of people play football and other games in the said ground everyday. Senior citizens and woman use Nehru maidan for morning walk and every day thousands of people play foot ball and other sports in the Nehru maidan. The Mangalore city has produced some of the best football players in the country and is has given finest football players for the state and the nation. Every day along with games and sports, training is also given to the players. Many people have tried to preserve the public ground called as Nehru Maidan by submitting numerous representations to the government and also requesting the elected representatives for sanctioning funds for its development.
7. It is submitted that the government of Karnataka by notification dated 23/12/1985 under the Karnataka parks and open space (prevention and regulation) act 1985 has declared the Nehru maidan as a play ground. A copy of the notification dated 23/12/1985 is produced as **ANNEXURE B**.
8. It is submitted that despite being declared as a playground under the Karnataka parks and open space (prevention and regulation) act 1985 the Respondents have given permission to construct market for vegetables and meat in the Football ground. This is illegal and violation of law.
9. It is submitted that the Deputy Director for youth and sports Department Mangalore has also written a letter dated 16/02/2016 to the Commissioner Mangalore Mahanagar Palike requesting for funds for the development of football ground of Nehru maidan. In the said letter a sum of Rs. 25 Lakhs was also released for the development of the football ground. Further the District Incharge Minister, Minister for Sports, youth Empowerment and Fisheries has also directed that the football ground shall be used only for sports purpose and not for any

other purpose. On 15/02/2016 a meeting was held under the chairmanship of Deputy commissioner for the construction of turf ground and pavilion. It was also agreed to place the decision and direction of the Minister to preserve the football ground for sports purpose before the Mangalore Corporation Council. A copy of the letter dated 16/02/2016 is produced as **ANNEXURE-C**

10. It is submitted that the respondents 2 and 3 have been making all efforts and they are constructing meat and vegetable market in the football ground of Nehru Maidan and citizens of state will have no place for walking or other recreational and sports activities. Copies of photo graphs of construction of the market is produced as **ANNEXURE- D,D1,D2,D3,D4,D5.**

GROUND

11. It is submitted that non consideration of the representation of the petitioners is wrong, illegal and violation of law.
12. It is submitted that as per section 6 of the Karnataka Parks, Play-fields and Open spaces (Preservation and Regulation) Act 1985“ *No park, play-field or open space specified in the list published under section 4 or section 5 shall be used for any purpose other than the purpose or purposes for which it was used on the date of commencement of this Act in such area*”.As per section 8(1) of the act“*No person shall construct any building or put up any structure likely to affect the utility of the park, play-field or open space or make any encroachment in or over any park, play-field or open space specified in the list published under section 4 or section 5*”. Hence it is a clearly violation of section 6 and 8(1) of the Karnataka parks, play- fields and open (preservation and regulation) act. If the respondent 2 and 3 are putting permanent structures and market in play ground, it while take away precious public space and citizens will be deprived of football ground for sports and recreational activities. It is also painful to see that public spaces like parks and

playgrounds are diverted for other purpose and the citizens end up in Concrete Jungle away from the beauty and bliss of Nature. Hence interference of this Hon'ble Court is greatly required.

13. It is submitted that the Deputy Director for youth and sports Department Mangalore has also written a letter dated 16/02/2016 to the Commissioner Mangalore Mahanagar Palike requesting for funds for the development of football ground of Nehru maidan. In the said letter a sum of Rs. 25 Lakhs was also released for the development of the football ground. Further the District Incharge Minister, Minister for Sports, youth Empowerment and Fisheries has also directed that the football ground shall be used only for sports purpose and not for any other purpose. On 15/02/2016 a meeting was held under the chairmanship of Deputy commissioner for the construction of turf ground and pavilion. It was also agreed to place the decision and direction of the Minister to preserve the football ground for sports purpose before the Mangalore Corporation Council. Hence it was already decided to preserve the football ground for sports activities only and not for any other purpose.

14. It is submitted that as observed by the Hon'ble Supreme Court in the case of *Kharak Singh v. The State of U.P. & Others*, [1964] 1 SCR 332; *Municipal Council, Ratlam v. Shri Vardhichand & Ors.*, [1981], Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any

State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the illeffects of urbanisation.

15. In *Agins v. City of Tiburon*, 447 US 255 (1980), the Supreme Court of the United States upheld a zoning ordinance which provided `... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as pollution, destruction of scenic beauty. disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said: "... The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill- effects of urbanization. Such governmental purposes long have been recognized as legitimate. The zoning ordinances benefit the appellants as well public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas.
16. The statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in *Samuel Berman v. Andrew Parker*, 99 1. Ed. 27 348 US 26: "... They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore,

a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river. The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. ". (Per Douglas, J.).

17. Further any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in Village of Belle Terre v. Bruce Boraas, 39 L. Ed. 2d 797416US 1: Bangalore Medical Trust vs B.S. Muddappa And Ors.

18. It is submitted that Hon'ble Supreme Court in the case of Bangalore Medical Trust v/s B. S Muddappa and others has stated has follows: "*An exercise of power which is ultra vires the provisions in the statute cannot be attempted to be resuscitated on general powers reserved in a statute for its proper and effective implementation. The section authorises the Government to issue directions to ensure that the provision of law are obeyed and not to empower itself to proceed contrary to law. What is not permitted by the Act to be done by the authority cannot be*

assumed to be done by State Government to render it legal. An illegality cannot be cured only because it was undertaken by the Government. The section authorises the Government to issue directions to carry out purposes of the Act. That is the legislative mandate should be carried out. And not that the provisions of law can be disregarded and ignored because what was done was being done by State Government and not the authority. An illegality or any action contrary to law does not become in accordance with law because it is done at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails is law and rule and not the height of the person exercising the power".

19. It is submitted that the petitioner has not preferred any other petition either before this Hon'ble Court or any other court on the same cause of action and the petitioner has no other alternative efficacious remedy than to approach this Hon'ble Court in the form of this petition.

GROUND FOR INTERIM PRAYER

It is submitted that the Mangalore Corporation has already started construction of permanent structures in the football stadium of Nehru Maidan and this will take away a precious public playground. Thousands of people will be deprived of fresh air, ground for sports and beauty of nature. Urbanisation has already swallowed much of the public spaces and if this trend continues the citizens will only be left with Concrete Jungle. Hence Interference of this Hon'ble Court is greatly required.

PRAYER:

WHEREFORE it is most respectfully prayed that this Hon'ble court may kindly be pleased to:

- (a) Issue a writ in the nature of Mandamus directing the respondents 2 and 3 to consider the representation dated 14-5-2020 and preserve the football ground of Nehru Maidan,

Mangalore for sports activities only.

- (b) Issue a Writ in the nature of Mandamus to the respondents not to put up any permanent or temporary structures in the football stadium of Nehru Maidan, Mangalore.
- (c) Pass such other orders or directions as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of Justice and Equity.

INTERIM PRAYER

Pending disposal of the above writ petition it is most respectfully prayed that this Hon'ble Court may kindly be pleased to direct the respondents to stop all construction activities in Football stadium of Nehru Maidan, Mangalore till disposal of the above petition in the interest of Justice and Equity.

Bangalore

Date

Advocate for Petitioners

H.SUNIL KUMAR

Address for Service

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Koramangala, Bangalore-560095

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W.P. No. /2020(GM-PIL)

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Mr. Vijaya Suvarna and Others

PETITIONERS

And

The State of Karnataka and Others

RESPONDENTS

AFFIDAVIT