



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF NOVEMBER, 2023

BEFORE

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THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 17877 OF 2023 (LB-BMP)

BETWEEN:

DR V L NANDISH

...PETITIONER

(BY SMT. ANANDITA SRINIVASAN.,ADVOCATE)

AND:

1. THE COMMISSIONER
BRUHAT BENGALURU MAHANAGARA PALIKE
(SOUTH ZONE),
(BYRASANDRA WARD),
OFFICE AT 2ND CROSS ROAD,
3RD BLOCK EAST,
LIC COLONY,
JAYANAGAR
BENGALURU-560011.
2. THE JOINT COMMISSIONER
(SOUTH)
OFFICE AT NO. 8,
9TH CROSS ROAD, 2ND BLOCK,
JAYANAGAR EAST
JAYANAGAR
BENGALURU-560011.





3. THE TREE OFFICER
B.B.M.P
OFFICE AT 2ND CROSS ROAD,
3RD BLOCK EAST,
LIC COLONY,
JAYANAGAR
BENGALURU-560011.

...RESPONDENTS

(BY SRI. N.K. RAMESH .,ADVOCATE FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT/ORDER/DIRECTION DIRECTING THE RESPONDENTS TO CONSIDER THE REPRESENTATION DTD 25.7.2023 (ANNX-A) AND REPRESENTATION DTD 31.7.2023 (ANNX-B) GIVEN BY THE PETITIONER AND ETC.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- i) *Issue a Writ/Order/Direction directing the respondents to consider the representation dated 25.07.2023 (Annexure-A) and representation dated 31.07.2023 (Annexure-B) given by the Petitioner.*
- ii) *Issue a Writ/Order/Direction directing the Respondents to take necessary steps forthwith to remove the tree situated in house No. 1367, 31st B Cross, 4th T Block, Jayanagar, Bengaluru.*
- iii) *Pass such order/s as this Hon'ble court deems fit to grant on the facts and*



circumstances of the case, in the interest of justice and equity.

2. The grievance of the petitioner is that the petitioner being the owner of property bearing No. 1368/31st B Cross, 4T Block, Jayanagar, Bengaluru, by constructing a residential house has been enjoying the same for last 40 years. A tree growing in the neighbouring house No.1367, 31st B Cross, 4th T Block, Jayanagar, Bengaluru, had started leaning on to the property of the petitioner and it is in that background, the petitioner made several requests to neighbouring property owners to remove the said tree to address the threat posed by the tree to the life and liberty of the petitioner. When the said neighbour did not take any action, the petitioner had approached the Corporation authorities to do the needful, despite which no action was taken.

3. Notice having been served to the Corporation, the Corporation initially contended that permission for removal of a tree can only be granted to the owner



of the land on which the tree is located and cannot be granted to a neighbouring owner. When it was pointed out to the counsel for the Corporation that if the said land owner was not interested in taking any steps on account of the falling of the tree not affecting that land owner but affecting the neighbouring land owner, the interest of the neighbouring owner would also have to be taken into consideration by considering the application after inspecting and examining the tree.

4. Sri.N.K.Ramesh, learned counsel for the Corporation had sought time for inspection of the tree and thereafter submitted that necessary permission would be granted. When the counsel for the petitioner pointed out that the petitioner does not have the wherewithal to remove the tree, it was for the Corporation to remove the said tree and recover any cost incurred from the owner on which land the tree is located.



5. Sri.N.K.Ramesh, learned counsel fairly acceded to the request and thereafter the tree has been removed since there was no permission required under the Karnataka Preservation of Trees Act, 1976 which would not apply to dangerous trees. On enquiry with Sri.N.K.Ramesh, as to whether there is any procedure adopted by the Corporation in such circumstances, he had submitted that there is no such procedure, but, however Standard Operating Procedure [SOP] would be drawn up. Today, a memo along with SOP guidelines/parameters adopted by Tree Officers/Deputy Conservator of Forest, BBMP for felling dangerous trees has been placed on record. Same reads as under:

Standard Operating Procedure (SOP)

**Guidelines/Parameters adopted by the
Tree Officer/Deputy Conservator of Forests, BBMP
for felling dangerous tree**

Introduction

Trees being the vital resources for the survival of all living beings, still poses a severe risk when the tree is dried/damaged, causes threat to lives and property. Hence regular maintenance of tree is required to prune the dried



and dangerous branches of the trees standing on the roadside/inside the public properties or inside the private properties. Further many complaints are being received by public for removal of dangerous/dried trees. Presently the Forest Wing, Bruhat Bengaluru Mahanagara Palike has adopted certain parameters/guidelines to prune/fell the dangerous trees and also to avoid unlawful tree felling without the knowledge of the Forest department.

In pursuance to the Hon'ble High Court of Karnataka Orders dtd. 07.09.2023 in the Writ Petition 17877/2023.

".... is granted two weeks' time to place on record the Standard Operation Procedure or guidelines that are in place with the BBMP and as to what action the Tree Officer and or the Corporation, would take whett a complaint/representation application is filed indicating the there is a danger posed to life or property on account of a particular tree. If no guidelines are in place then what are the steps that the respondents are proposing to take in relation there to "

Hon'ble High Court of Karnataka Orders dtd. 20.08.2018 in the Writ Petition 17841/2018

".....However, we make it clear that it is reported to the Tree Officer that due to the condition of a tree or trees, there is an imminent danger to the life or property, notwithstanding the Order dtd. 23 April 2019, in case of such emergency, the Tree Officer is entitled to grant permission for felling of trees. However, if such power is exercised, the Tree Officer or Officers shall submit a report to this Court in writing setting out the details of the permission granted."

Therefore in obedience to the above stated directions, the references/guidelines/parameters which are being followed by the Tree Officer/Deputy Conservator of Forests, Forest wing, BBMP are stated below wherein the tree has been considered as dangerous tree.

The Tree Officer/Deputy Conservator of Forests conducted a Meeting on 11.09.2023 with the Assistant Conservator of Forests and Range Forest Officers and briefed the parameters/guidelines to be followed for felling of dangerous tree. Further discussed about the conditions of the trees which could be categorised as dangerous tree, the details are as follows:



- *Base of the tree is infested with insects/termites, hollow or weak*
- *Roots of the tree are exposed on the Road*
- *Dried tree*
- *Very tall tree which tend to fall during strong winds*
- *Tree obstructing traffic*
- *Tree standing near High Tension Electrical lines*
- *Tree damaging structural buildings and bridges*
- *Silviculturally matured tree inside private land*

Further during the TEC Meeting held on 16.09.2023, the subject was placed before the Tree Expert Committee for discussion on draft formulation of Standard Operating Procedure (SOP). The Committee suggested the following guidelines/parameters to assess whether the dangerous tree and causing threat to the public and property.

Existing regulations/guidelines:

1. As per Municipal Corporations, Karnataka Act, 1977-Precautions in case of dangerous trees:

i. If any tree or any branch of a tree or the fruit of any tree be deemed by the Commissioner to be likely to fall and thereby to endanger any person or any structure, the Commissioner may by notice require the owner of the said tree to secure, lop or cut down the said tree or remove the fruit so as to prevent any danger therefrom.

ii. If immediate action is necessary, the Commissioner may himself before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or to take such temporary measure, as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 450.

2. As per KPT Act and norms, 1976



In this context, the Tree Officer based on the following norms and rules of the KPT Act 1976:

As per the Chapter V, Section 08, Sub-Section 03 states:

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

(i) is dead, diseased or wind-fallen; or

(ii) has silviculturally matured: or

(iii) constitutes a danger to life or property; or

(iv) constitutes obstruction to traffic; or

(v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes; or

(vi) is required in rural areas to be removed either for extension of the cultivation in areas specified in Schedule II (except where such removal does not involve felling of all trees in the areas proposed for cultivation, extension of cultivation or change in crop cultivation or for the bona fide use of the applicant..".

3. Hon'ble High Court of Karnataka Orders dtd. 20.08.2018 in the Writ Petition 17841/2018

"....However, we make it clear that it is reported to the Tree Officer that due to the condition of a tree or trees, there is an imminent danger to the life or property. notwithstanding the Order did 23rd April 2019, in case of such emergency, the Tree Officer is entitled to grant permission for felling of trees. However, if such power is exercised, the Tree Officer or Officers shall submit a report to this Court in writing setting out the details of the permission granted."

In consideration of the above points, the forest officer/field staff should meticulously review the applications and assess the field/site and tree conditions in the following lines;

1. The overall structure (symmetric/asymmetrie, bent/lean etc.) of the tree. (The decision is to be taken in condition to the leaning angle and the proximity of people and properties)



2. Status of the leaves/canopy symptoms (discolouration, dried leaves, galls etc.).

(The decision is to be taken in condition to the percentage (90%) of leaf symptoms and prevailing season)

3. Status of branches (dried, partially dried etc.), branch union (accumulation of barks, oozing of sap etc.) and remnants of pruned branches.

4. Status of the trunk for external cavities (40-50% of the defective portion of the trunk), vertical splits (all along the clear bole), canker (mechanical injuries 60-70% of the defective portion of the trunk), bark distortion etc.

5. Status of the collar region (decay/rot 40-50% of the defective portion of the trunk, visible fungal fruiting bodies) of the trees.

6. Proximity and depth (approximate) of building or concrete structures in and around the tree.

7. Frequency of soil/utility work in and around the tree (for roadside trees).

8. Any other major conditions as noted.

In concern to the above site/tree conditions arrived out visual assessment, the field officer should regularly monitor and assess trees (target tree with priority) standing on the roadside, bus stand, parking area etc., where people gather and properties are involved.

9. Assessment of the internal hollow/decay of the collar region of a tree is also equally essential to predict the condition of a tree for its failure. In this line, it was suggested to have Sonic Tomography, a device to assess the tree's internal trunk status, detect decay in and also colour region.

In addition following points were suggested:

10. Visualization and assessment of the tree have to be mentioned in detail in the Mahazar completely by the Dy RFO's/RFO's.

11. Ascertain the correct reason and mention the same in the Mahazar for the removal of the tree.



12. The Mahazar of the tree has to be enclosed with relevant and supportive photographs.

13. Template 02 as prescribed in the Memorandum of Procedure has to be prepared for the dangerous tree and documented along with Mahazar, photographs and other documents.

14. In the case of a disputed tree, the Tree Officer may cancel or suspend the permission granted under Section 8. after giving an opportunity of being heard to the guarantee and after recording reasons therefore. (As per Section 8A of KPT Act 1976).

The Standard Operation Procedure (SOP) to be followed by the Tree Officer, Forest Wing, BHME for removal of dangerous tree:

a. The Application seeking permission for removal of the dangerous tree/branches which are causing threat to the lives of persons and properties. The application should consist of documents (inter alia as prescribed according to KPT Act 1976)

- Purpose/reason for removal of tree
- Location of the tree with GPS coordinates
- Tree details viz., species, girth, height etc..
- Photographs

b. On receipt of the Application, the Tree Officer, which are imminent threat to life and property are handed over to the concerned zonal Range Forest Officer Dy, RFOs as per the Section 8 of KPT Act 1976 and also as per the Hon'ble High Court Orders in WP 17841/2018, dtd 20.08.2019.

c. The Field forest Officer will visit the site/spot and draw the spot Mahazar through visually assessing the tree completely and mentioning the exact genuine reasons along with supportive photographs

d. The Template 02 (sample copy enclosed) as prescribed in the Memorandum of Procedure (MOP) has to be prepared by the concerned Range Forest Officer, certified by the concerned Assistant Conservator of Forests and decision



taken by the Deputy Conservator of Forests. The MOP is adopted to assess the trees (for more than 50 trees) pertaining to applications submitted under Karnataka Preservation of Trees Act, 1976 submitted to Hon'ble High Court of Karnataka during December 2020.

e. The Tree Officer shall make all possible endeavors to dispose of the application received as a matter of emergency. (As per the Section 8 of the KPT Act the Tree Officer shall dispose of the application received within a period of three months from the date of its receipt). Further, in case of heavy rain, reasonable time is required to fell the tree and dispose the application.

f. The Tree Officer may cancel or suspend the permission granted under Section 08 on any other grounds specified below, after giving an opportunity of being heard to the guarantee and after recording reasons therefore, viz., as per KPT Act 1976.

- *Furnishing of false or wrong information to obtain permission;*
- *Discovery of defects in title;*
- *Misuse of felling permission;*
- *Non-fulfillment of conditions of felling permission;*
- *Violation of any provision of this Act or the rules or orders made there under.*
- *Felling of unpermitted trees,*
- *Dispute between guarantee and others.*

g. Precautions in case of dangerous trees as per Section 323 of Municipal Corporations Karnataka Act 1977. The Commissioner Tree Officer has to abide by the above norms, for removal of any tree or any branch of a tree or the fruit of any tree to be likely to fall and thereby to endanger any person or any structure so as to prevent any danger wherein the cost of so doing shall be recoverable from the owner of the tree in the manner provided in Section 470 of Municipal Corporations, Karnataka Act, 1977.



6. Learned counsel submits that such procedure would be followed henceforth. His submission is placed on record, this court has not expressed any opinion on the validity or otherwise of the above SOP.

7. In view of the SOP having been placed on record and the dangerous tree, subject matter of the above petition having already been removed, there would be no further orders required to be passed.

The petition stands ***disposed***.

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 109