

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 & 227 OF THE  
CONSTITUTION OF INDIA  
(ORIGINAL JURISDICTION)**

**W. P NO...../2014**

**BETWEEN:**

Citizens Action Group  
Registered under the Karnataka  
Societies Registration Act, 1960  
Having its office at  
Jawan's Colony  
BDA Park, 1<sup>st</sup> Stage,  
Indiranagar  
Bangalore 50 038  
Represented by its Secretary  
Ms. Nomita Chandy

PETITIONER

**AND:**

1. The State of Karnataka,  
Department of Urban Development  
M.S Building  
Bangalore 560001  
Represented by its Chief Secretary
2. Deputy Commissioner (Bangalore Urban)  
M.S. Building  
Bangalore 560001
3. The Bangalore Water Supply and Sewerage Board  
Cauvery Bhavan  
Bangalore 560009  
Represented by its Commissioner
4. Bruhat Bangalore Mahanagara Palike  
Corporation Building, NR Square  
Bangalore 560002  
Represented by its Commissioner
5. The Bangalore Development Authority  
T. Chowdiah Road  
Kumara Park West  
Bangalore - 560020  
Represented by its Commissioner
6. The Lake Development Authority  
Parisara Bhavana  
Bangalore  
Represented by its Commissioner

RESPONDENTS

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**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE**  
**CONSTITUTION OF INDIA**

*The Petitioner above named begs to submit as follows:-*

1. This petition is filed in the public interest under Article 226 of the Constitution by the Petitioner Association seeking action on the issue of non-maintenance of storm water drains in Karnataka by the Respondents. The petition is filed by the Petitioner Association to protect the right of the citizens of the State of Karnataka to health, safety and the environment under Article 21 of the Constitution and to ensure that storm water drains are maintained and building violations which are unsafe and would endanger the lives of urban residents are not permitted.

**ARRAY OF PARTIES:**

2. The Petitioner is the Citizens Action Group, an association formed by the residents of Bangalore city, including many eminent members of the local medical, education, legal and business fraternity, NGO's and retired civil servants. Some eminent citizens who are members of this organisation are Mrs. Nomita Chandy, Mr. Zarir Batliwala, Dr. Uttara Vidyasagar, Mr. Anil Chinniah, Mrs. Surya Vaz, Mrs. Laila Ollapally, Advocate. The organisation takes up matters of public importance affecting the city and its residents with the primary aim of safeguarding the well-being of residents and the balance of the city's eco-system. The Petitioner Association has, for the past several years, been actively advocating for the idea of safe building practices and sound planning to actualize the aspirations of the citizens in Karnataka to live in a safe, healthy, sustainable and well-planned environment. The present concern of the Petitioner is with the clogging of storm water drains, which has led to serious health and safety hazards in Bangalore. The Petitioner Association has therefore filed this petition in the public interest under Article 226 on behalf of its members and all other residents of the State.

3. The Respondent No. 1 is the State of Karnataka, represented by its Chief Secretary. The Respondent No. 2 is the Department of Urban Development of the State of Karnataka, represented by its Principal Secretary.
4. The Respondent No.3 is the Bangalore Water Supply and Sewerage Board (BWSSB), which is the body responsible for drainage and sewage systems and their maintenance in Bangalore. The Respondent No. 4 is Bruhat Bangalore Mahanagara Palike (BBMP), which is the urban local body responsible for persons coming within the jurisdiction of Bangalore city limits.

**Brief Facts:**

5. The present concern in this petition is the state of affairs relating to storm water drains in Bangalore. The recent rains in Bangalore in 2014 exposed the poor condition of the drainage system in the city. Roads, drains and houses in many areas were flooded, causing a grave threat to lives and homes in the city.
6. It is submitted that the existing drainage system is unable to handle any rains in the city due to the complete non-maintenance of the drains and sewage system by the Respondents, leading to loss of lives and health hazards. Originally, storm water drains or 'rajakaluves' in Bangalore were designed in keeping with the three valleys that run across the city at Vrishabhavathy, Hebbal and Koramangala-Challaghatta. Bangalore, as a metropolitan city, has vastly expanded in size and scale over the years. This unprecedented growth, unaccompanied by the necessary improvements to infrastructure such as roads and drainage systems, has resulted in problems of a large magnitude. The city drainage system comprises major drains, roadside drains and shoulder drains, all of which get overburdened during the rainy season. There are several serious problems relating to maintenance of storm water

drains such as flooding, encroachment of drains, sewage lines being linked to storm water drains, bad road design and blockage of drains.

7. It is submitted that under the Bangalore Water Supply and Sewerage Board Act 1964, the Respondent No.3 BWSSB has the legal obligation to maintain, repair and keep in good condition all drains in the city, including storm water drains. The applicable sections of the BWSSB Act ("Act") are as follows:

***Section 64. Control of sewers and sewage disposal works.—(1) All Government sewers, all sewage disposal works and all works, materials and things appertaining thereto shall be under the control of the Board.***

***(2) The Board shall maintain and keep in repair all Board sewers and sewage disposal works and shall construct as many new drains and sewage disposal works as may from time to time be necessary for effectual sewerage and sewage disposal of the Bangalore Metropolitan Area.***

Further, the Respondent No.3 BWSSB is also under an obligation to ensure that no person can block any sewer or drains of the BWSSB or put any materials that would block the sewers under Section 65 of the Act. Private drains cannot be linked to the Board's sewers without specific permission of the Board under Section 66, which states as follows:

***65. Certain matters not to be passed into Board sewers.—(1) No person shall throw, empty, or turn into any Board sewer or into any drain or sewer communicating with a Board sewer,—***

***(a) any matter likely to injure the sewer or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents; or***

***(b) any chemical, refuse or waste steam, or any liquid of [such temperature as may be specified by notification by the Board], being refuse or steam which or a liquid which when so heated, is,***

*either alone or in combination with the contents of the sewer, dangerous, or the cause of a nuisance, or prejudicial to health; or*  
*(c) any dangerous petroleum.*

*(2) In this section, the expression “dangerous petroleum” has the same meaning as in the Petroleum Act, 1934 (Central Act 30 of 1934).*

**66. Application by owners and occupiers to drain into Board sewer.—***(1) Subject to such conditions as may be prescribed by regulations made in this behalf, the owner or occupier of any premises having a private drain, or the owner of any private drain within the Bangalore Metropolitan Area may apply to the Board to have his drain made to communicate with the Board sewers and thereby to discharge foul water and surface water from those premises or that private drain:*

*Provided that nothing in this sub-section shall entitle any person to discharge directly or indirectly into any Board sewer,—*

*(i) any trade effluent from any trade premises except in accordance with the regulations made in this behalf; or*

*(ii) any liquid or other matter the discharge of which into Board sewers is prohibited by or under this Act or any other law.*

*(2) Any person desirous of availing himself of the provisions of sub-section (1) shall give to the Board notice of his proposals, and at any time within one month after receipt thereof, the Board may by notice to him refuse to permit the communication to be made, if it appears to it that the mode of construction or condition of the drain is such that the making of the communication would be prejudicial to the sewerage system, and for the purpose of examining the mode of construction and condition of the drain it may, if necessary, require it to be laid open for inspection.*

***(3) The Board may, if it thinks fit, construct such part of the work necessary for connecting a private drain with a Board sewer as is in or under a public street and in such a case, the expenses incurred by the Board shall be paid by the owner or occupier of the premises, or as the case may be, the owner of the private drain and shall be recoverable from the owner or occupier as an arrear of charges payable under this Act.***

***75. Connection with sewers not to be made without permission.- Without the written permission of the Board, no person shall, for any purpose whatsoever, at any time make or cause to be made any connection or communication with any sewer referred to in section 63 constructed or maintained by, or vested in, the Board.***

8. Similar obligations are imposed on the Respondent No.4 BBMP under Section 222 and 230 of the Karnataka Municipal Corporation Act, 1977 which require maintenance of sewers and sewage disposal works and the requirement for sewage and rainwater drains to be distinct.

9. **Rain Water and Sewage Drains to be Distinct and Separate:** It is submitted that in addition to the blockage of drains as stated above, there is a huge incidence of sewer lines being opened into storm water drains, which has led to the clogging of sewer lines, thereby causing sewage to mix with storm water. The BWSSB Act actually mandates the Respondent No.3 BWSSB to ensure that rain water and sewage drains are kept distinct and separate under Section 72, which states as follows:

***72. Sewage and rain water drains to be distinct.—Whenever it is provided in this Chapter that steps shall or may be taken for the effectual drainage of any premises, it shall be competent to the Board to require that there shall be one drain for filth and polluted water and an entirely distinct drain for rain water and unpolluted***

***sub-soil water or both rain water and unpolluted sub-soil water, each emptying into separate Board sewer or Corporation drain or other suitable places.***

10. However, this is not being done. A report by the CAG dated March 31, 2010 reveals that more than half of sewage generated in Bangalore is directly discharged into storm water drains and lakes.

(A copy of the article titled, "Over half of Bangalore sewage flows into storm water drains, lakes" in the Deccan Herald, dated March 15, 2011 is annexed herein and is marked as **ANNEXURE – A**)

11. The Respondent No. 4 Bruhat Bangalore Mahanagara Palike (BBMP Bangalore) and the Respondent No. 3 BWSSB are not equipped to handle heavy rains and there is regular flooding due to the poor maintenance of storm water drains. The illegal buildings and encroachments of storm water drains directly or indirectly result in overflow of storm water drains or flooding of rainwater.

12. **Encroachments**: It is submitted that encroachments, revenue layouts and illegal constructions, especially along storm water drains and in low-lying areas, are other major causes of flooding. There is a huge problem of people dumping garbage and encroaching canals meant for rainwater. Under Section 76, the Respondent No. 3 BWSSB has the responsibility to ensure that without its permission, no buildings or private streets are erected or constructed over the sewers. It states as follows:

***76. Buildings and private streets not to be erected or constructed over sewers without permission.—(1) Without the written permission of the Board no private street shall be constructed and no building, wall, fence or other structure shall be erected on any Board sewer constructed or maintained by, or vested in, the Board.***

***(2) If any private street be constructed or any building, wall, fence or structure erected on any sewer as aforesaid without the written permission of the Board, the Board may remove or otherwise deal with the same as it thinks fit.***

***(3) The expenses incurred by the Board in so doing shall be paid by the owner of the private street or of the building, fence, wall or other structure or, as the case may be, by the person offending and shall be recoverable as an arrear of charges payable under this Act.***

13. There are similar obligations on the 4<sup>th</sup> Respondent BBMP under Section 233 and 234 of the KMC Act which mandate that Connection with sewers cannot to be made without permission and that Buildings and private streets not to be erected or constructed over sewers without permission.

14. However, nearly a third of the storm water drains or Rajakaluves have been encroached upon, according to a survey conducted by the Deputy Commissioner of Bangalore Urban District. Even if the respondents clean the canals regularly, unless there is strong monitoring of encroachment of storm water drains, this cannot improve.

(A copy of the news report titled, "A third of Rajakaluves encroached says Survey", The Hindu, dated January 2, 2014 is annexed herein and is marked as **ANNEXURE - B**)

15. It is submitted that, in addition to the drainage system, the design of roads also plays a part in controlling floods. Roads must be designed based on the run-off of storm water. City drains can hold up to 45 mm of water per hour, not over 100 mm, as happened in the recent rains. As a result, rainwater that has no space to drain out tends to flood the city. There are also other reasons for flooding, caused mainly by a lack of maintenance of roads, drains, footpaths



and sewer lines. Rainwater accumulates in potholes and depressions on roads and drains out at a very slow pace, which is further compounded by lack of proper connectivity to storm water drains. A recent article in The Hindu revealed that the drains had not been cleared of silt in the past two years.

(A copy of the article titled, "BBMP told to remove silt from drains ahead of monsoon" in The Hindu, dated July 1, 2014 is annexed herein and is marked as **ANNEXURE – C**)

16. A comprehensive approach to the problem is required which essentially involves putting in place a sustainable drainage management system, the effective maintenance and repair of storm water drains regularly by the respondents in terms of the BWSSB Act and strict action when there is violation of the same. Risk assessment of vulnerable areas must be carried out and corrective measures taken to minimize them.

17. In this regard, the Petitioner had earlier filed a petition being W.P. No. 21412 of 2009, which was disposed by this Hon'ble Court with direction to the Petitioner to make representation to the 1<sup>st</sup> Respondent State Government to take action on this issue and the 1<sup>st</sup> Respondent State Government was directed to take appropriate decision in the matter and formulate necessary guidelines to ensure that such negligence in the matter of storm water drains is not repeated in any part of the State.

(A copy of the order of the High Court in W.P. No. 21412 / 2009 dated 28.7.2009 is annexed herein and is marked as **ANNEXURE – D**)

18. The Petitioner sent a representation and thereafter an Expert Committee was set up by the then Chief Secretary Mr. Ranganath, under the Chairmanship of the Chairman of the 3<sup>rd</sup> Respondent BWSSB. The Expert Committee consisted of the following members:

- i. Ms. Nomita Chandy, Secretary CAG
- ii. Prof. Sathya Varanashi, Architect and Urban Planner

- iii. Mr. Prem Chandavarkar, Architect and member of CIVIC
- iv. Ms. Anjali Mohan, Urban Expert
- v. Mr. Prasanna Rao – Urban Designer
- vi. Representative of Torsteel Foundation

(A copy of the Representation dated September 18, 2009 is annexed herein and is marked as **ANNEXURE – E**)

19. Thereafter there were several meetings held of this Expert Committee and several detailed suggestions were made for the improvement of the problem. However, no action has been taken. The Petitioner thereafter even made a representation to the 1<sup>st</sup> Respondent State Government, but no action has been taken so far to implement any of the measures for the improvement of storm water drains in the State.

(A copy of the submissions made by the Petitioner to the Expert Committee are annexed herein and marked as **ANNEXURE – F**)

(A copy of the letter dated November 8, 2011 sent by the Petitioner is annexed herein and is marked as **ANNEXURE – G**)

20. The Petitioner therefore having no other equally efficacious alternative remedy has filed this writ petition on the following grounds among others. The Petitioner has not filed any other petition in this or any other court or forum in respect of this cause of action.

**GROUND:**

21. **THAT** the Respondents, by failing to comply with duties vested in them and in allowing sewage drains to open into storm water drains, have deprived the citizens of Bangalore of their rights to health and a pollution free environment as envisaged under the Constitution.

22. **THAT** the 3<sup>rd</sup> Respondent BWSSB's is required to maintain the sewage systems in the city and as per the provisions of section 65, 66, 72 and 74 of

the BWSSB Act, it requires the Respondent sewage and rainwater are to be effectively drained separately. The 3<sup>rd</sup> Respondent by allowing sewage drains to open into storm water drains and getting the drains mixed, by not controlling encroachments of the rain water drains, by allowing people to illegally release effluents into the sewers and not taking steps to maintain and repair storm water drains in the city is violating its statutory duties under the said Act, thereby endangering the health of citizens of Bangalore and the environment and deserves the intervention of this Hon'ble Court.

23. **THAT** the 4<sup>th</sup> Respondent BBMP's obligatory functions pursuant to Section 58 of the Karnataka Municipal Corporations Act, 1976 include "the collection, removal, treatment and disposal of sewage, offensive matter and rubbish and, the preparation of compost manure from such sewage, offensive matter and rubbish" and "the construction, maintenance and cleaning of drains and drainage works and of public privies, water closets, urinals and similar conveniences." By failing to adequately maintain and clean storm water drains, by keeping some storm water drains open and by allowing encroachments to take place, the 4<sup>th</sup> Respondent has consistently failed to comply with its statutory obligations.

24. **THAT** the right to life guaranteed in Article 21 of the Constitution has been interpreted by the Hon'ble Supreme Court to include the right to a clean environment and the right to health. The Respondent authorities, in allowing for encroachment of storm water drains, dumping of garbage, and not taking any action for the same, have acted in a manner detrimental to the interests of the citizens, including their right to health, safety and an environment free from congestion. In *M.C.Mehta -vs- Union of India (2006) 3 SCC 399*, Y.K.Sabharwal, CJ, taking note of the flagrant violations of municipal laws and the master plan observed that the court cannot remain a mute spectator when

the violations also affect the environment and healthy living of law-abiding citizens. The Court held that the word "environment" covers a broad spectrum which brings within its ambit a hygienic atmosphere and ecological balance. It is therefore, not only the duty of the State but also the duty of every citizen to maintain a hygienic environment. The Court held that there is a constitutional imperative on the State Government and the municipalities, not only to ensure that the environment is properly safeguarded but it is also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. Any violation of building norms through the form of encroachments takes a toll in terms of public welfare, health and safety and deserves the intervention of this Hon'ble Court.

25. **THAT** the Respondents have a duty under Article 21 of the Constitution to ensure the health and safety of the residents of Bangalore. By not providing for adequate maintenance of storm water drains, not providing adequate precautions against mixing of sewage, not preventing encroachments the Respondent Authorities are putting the lives of citizens of Bangalore at grave risk and are depriving them of their right to health and safety.

26. **THAT** the Respondents under Article 48A of the Constitution have an obligation towards protection and improvement of the environment. The actions of 3<sup>rd</sup> and 4<sup>th</sup> Respondents in not properly discharging their statutory duties and in allowing for encroachments of storm water drains, dumping of garbage and allowing sewage drains to open into storm water drains is in violation of the Directive Principles of State Policy and deserves the intervention of this Hon'ble Court.

27. **THAT** the Respondent Authorities have consistently failed to comply with the statutory duties vested in them which has resulted in the poor condition of storm water drains and flooding in the rainy season, posing a grave threat to

the lives and homes of citizens of Bangalore. The illegal omissions of the Respondent Authorities violate the fundamental rights and constitutional privileges envisaged in Article 21 and Article 48a.

28. THAT the State is the parent of all citizens and it is the bounden duty of 1<sup>st</sup> and 2<sup>nd</sup> Respondents through their functionaries, to ensure the development and welfare of its citizens. By failing to provide basic civic amenities, the State is abdicating its responsibility to ensure the health, wellbeing and safety of its citizens.

### **PRAYER**

In light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court may be pleased to:

- A. Direct the Respondents to carry out a complete de-silting of all storm water drains in Bangalore;
- B. Direct the Respondents to have treatment plants installed at the head of each storm water drain before the water is let into the Bangalore lakes.
- C. Direct the Respondents to divert storm water drains / sewers from leaving their effluents into lakes such as Ulsoor lake.
- D. Direct the Respondents to pass orders to stop non-degradable pooja idols and material been put into the lakes based and place size restrictions on any such objects that are put into lakes.
- E. Direct the Respondents to remove all illegal encroachments on the banks of storm water drains and create alternative sewage lines so that the sewage is not let directly into the storm water drains from private houses.
- F. Direct the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to develop, in consultation with the public, a set of comprehensive guidelines for the management of a drainage system in the city.

- G. Direct the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, along with other authorities, to appoint a Monitoring Committee with sufficient staff and infrastructure to oversee the management of storm water drains;
- H. Direct the Respondents to close all open manholes leading into storm water drains, so that there are no further accidents.
- I. Pass any such further orders as it may deem fit in the interest of justice and equity.

**INTERIM PRAYER**

Pending disposal of this petition, it is most respectfully prayed that this Hon'ble Court may be pleased to direct the Respondents to carry out a Survey of all storm water drains in Bangalore, give details relating to whether they are encroached or not, and give a report of the same within a period of 6 weeks, in the interest of justice and equity.

Place: Bangalore

Date:

Counsel for the Petitioner

JAYNA KOTHARI

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