

Daily Orders for Case WP 38401/2014

Sl. No	Judge(s) Name	Date of Order	Daily Order
83	ALOK ARADHE AND J.M.KHAZI	02/06/2022	<p>ORDER IN W.P.NO.38401/2014 Smt.Jayna Kothari, learned Senior counsel along with Mr.Rohan Kothari, learned counsel for the petitioner. Mr.Dhyan Chinnappa, learned Additional Advocate General along with Mr.S.Rajashekar, learned Additional Government Advocate for respondent Nos.1 and 2. Mr.D.N.Nanjunda Reddy, learned Senior counsel along with Mr.Amit Deshpande, learned counsel for the respondent No.4. Mr.V.Raghunath, learned counsel for the respondent No.6. Mr.G.R.Mohan, learned counsel for the respondent No.7. Mr.Leo F.Saldanha, respondent No.8-in-person. Smt.Sruti Chaganti, learned counsel for the respondent No.9. This Court, by an order dated 18.04.2022, had referred to the compliance memo dated 11.04.2022 filed by the State Government in which it is stated that the State Government had found the encroachments in respect of Subramanya lake which read as under: (1) There is an encroachment of 1 acre 7 guntas which space is utilised for the purpose of link road between Subramanyapura and Uttarahalli and this road, is presently being used by the general public and is the only connecting road between Subramanyapura and Uttarahalli. (2) There is also encroachment of 3 acres 39 guntas by Slum Dwellers and this slum is called Bhuvaneshwarinagara Kolache Pradesha, Uttarahalli. This slum is notified slum as per order dated 18.03.2005 bearing No.KSACR 4/2003-04 which got notified in official gazette on 14.04.2005. The encroachment by slum dwellers needs to be carried out by Slum Clearance Board as it is a notified slum. Similarly, in respect of Begur lake, the following encroachments have been found: (1) An extent of 6 acres 37 guntas is encroached by private persons in the lake area. (2) Encroachment to an extent of 1 acre 36 guntas is already removed. Remaining private encroachment area measuring an extent of 5 acres 1 guntas requires to be removed. (3) The encroachment of lake area by Government is 3 acres 26 guntas for the purpose of Nice Road and public road. (4) An extent of 11 guntas is utilized for the purpose of formation of island in the middle of the lake for the purpose of developing tourism in the area for the benefit of general public. BBMP is proposing to develop this island. Details and particulars in this regard will have to be furnished by BBMP. The said 11 guntas is shows as Block No.VIII in blue colour in the survey sketch. On 31.5.2022, it was directed that a notification issued under Section 10(1) of the Karnataka Tank Conservation and Development Authority Act, 2014 shall be produced by the counsel for the Tank Development Authority. When a query was put to the learned Additional Advocate General, learned Additional Advocate General submitted that a notification dated 23.05.2016 was issued under Section 13 of the Lake Development Authority Act, 2014 by which the Officers of the Forest Department, Bruhat Bengaluru Mahanagara Palike (BBMP) and the Bangalore Development Authority (BDA) were designated as designated officers in respect of each lake. It is also pointed out that the aforesaid Act was repealed by the Karnataka Tank Conservation and Development Authority (Amendment) Act, 2018. However, under Section 19 of the aforesaid Amendment Act, the action taken under the Lake Development Authority Act has been saved. Therefore, it is submitted that the notification dated 23.05.2016 survives. On the other hand, learned Senior counsel for the BBMP submits that the aforesaid notification is in contravention of Section 2(d) of the Karnataka Tank Conservation and Development Authority Act, 2014. Admittedly, a notification under Section 13 of the Lake Development Authority Act, 2014 has been issued, by which the officers of the Forest Department, BBMP and BDA have been designated as designated officers vide notification dated 23.05.2016 are the designated officers for removal of encroachments in respect of each of the lakes mentioned therein. In the present proceedings, we are not called upon to examine the validity of notification dated 23.05.2016. Therefore, it is not necessary for us to examine the issue whether the notification dated 23.05.2016 is in contravention to Section 2(d) of the Act. It is not in dispute before us that in view of notification dated 23.05.2016, the Executive Engineers of the BBMP are the designated officers in respect of Subramanyapura lake and Begur lake as has been stated in the said notification. It is also not in dispute that the encroachment exists in the tank area of the aforesaid lakes which is required to be removed by the designated officers in accordance with the procedure prescribed under Section 22 of the Karnataka Tank Conservation and Development Authority Act, 2014. Therefore, it is directed that the designated officers shall initiate proceedings for eviction of unauthorised occupants of Subramanya lake and Begur lake in accordance with the proceeding prescribed under Section 22 of the Act and shall take steps to remove the encroachment. A report in this regard shall be submitted before this Court by the designated officers of the BBMP within a period of six weeks from today. The Additional Advocate General assures this Court that all assistance for removal of encroachments shall be provided to the designated officers if a request is made to the State Government in this behalf. Mr.Leo Saldanha, respondent No.8-in-person submits that he has filed an affidavit on 01.06.2022 stating that a road is being constructed at Sunkanapalya lake. However, copy of affidavit has been supplied yesterday to the learned counsel for the respondents. Learned Additional Advocate General and other counsel for the respondents therefore pray for a short accommodation to enable them to seek instructions and to make a statement with regard to construction of road on Sunkanapalya lake. I.A.No.2/2020 shall be considered on the next date of hearing. In the meanwhile, it is open to the respondents to respond to the same, if so advised. Let the matter be listed for submission of compliance report on behalf of the designated officers of BBMP, on 15.07.2022. ORDER IN W.P.NO.20652/2018 Mr.Kiran C.V., learned counsel submits that he has filed NOC vakalath for respondent No.4. Office is directed to reflect his name as the learned counsel for the respondent No.4. ORDER IN W.P.NO.29107/2019 Mr.G.R.Mohan, learned counsel for the appellant. Let a copy of I.A.No.1/2021 be supplied to the learned Additional Advocate General and the learned Senior counsel for the BBMP. They pray for and are granted two weeks time to enable them to respond to the same.</p>