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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

WRIT PETITION NO.40299 OF 2014 (LB-BMP)

C/W

WRIT PETITION NO.47937 OF 2019 (LB-BMP)

IN WP No.40299/2014:

BETWEEN:

1. MANTRI TRANQUIL APARTMENTS
OWNERS ASSOCIATION
"MANTRI TRANQUIL" NOS.7/9/13,
GUBBALALA VILLAGE,
BENGALURU - 560 061.
REPRESENTED BY ITS PRESIDENT
MR. M.S.RAGHU RAM.
2. MANTRI DEVELOPERS PRIVATE LIMITED,
NO.41,VITTAL MALLYA ROAD,
BENGALURU - 560 001.
REPRESENTED BY ITS AUTHORIZED SIGNATORY
SRI. GIRISH GUPTA H.S.,

...PETITIONERS

(BY SRI B.C.SEETHARAMA RAO, ADVOCATE FOR
PETITIONER NO.1;
SRI MAHESH S., ADVOCATE FOR PETITIONER NO.2)

AND:

1. BRUHAT BENGALURU MAHANAGARA PALIKE
HUDSON CIRCLE, N.R. ROAD,
BENGALURU-560 001
REPRESENTED BY ITS COMMISSIONER





2. ASSISTANT EXECUTIVE ENGINEER,
BRUHAT BENGALURU MAHANAGARA PALIKE,
UTTARAHALLI SUB-DIVISION,
SUBRAMANYAPURA, UTTARAHALLI MAIN ROAD,
BENGALURU - 560 061.
3. BANGALORE DEVELOPMENT AUTHORITY
T. CHOWDIAH ROAD, KUMARA PARK WEST,
BANGALORE - 560 020.
REPRESENTED BY ITS COMMISSIONER.
4. THE STATE OF KARNATAKA,
URBAN DEVELOPMENT AUTHORITY,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
VIDHANA SOUDHA, BANGALORE - 560 001. } AMENDED VIDE
COURT ORDER
DATED
03.11.2022

...RESPONDENTS

(BY SRI N.R. JAGADEESWARA, ADVOCATE FOR R1 AND R2;
SRI KRISHNA, ADVOCATE FOR R3;
SRI BOPANNA BELLİYAPPA, A.G.A. FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I) ISSUE AN ORDER OR WRIT IN THE NATURE OF A WRIT OF CERTIORARI QUASHING THE IMPUGNED NOTICE DATED 30.07.2014 IN AEE/SDV/PR/268/2014-2015 CAUSED BY THE 2ND RESPONDENT UNDER ANNEXURE-G, II) ISSUE AN ORDER IN THE NATURE OF MANDAMUS DIRECTING THE 1ST AND 2ND RESPONDENTS NOT TO INTERFERE WITH THE RIGHTFUL OCCUPATION OF THE RESIDENTS OF THE 1ST PETITIONER ASSOCIATION IN THE RESIDENTIAL COMPLEX KNOWN AS "MANTRI TRANQUIL" BUILT ON THE PROPERTY BEARING KHATA NO.1208/7, 9 AND 13 SITUATED AT SY.NO.7, 9 AND 13 OF GUBBALALA VILLAGE, UTTARAHALLI HOBLI, BANGALORE SOUTH TALUK AND III) ISSUE AN ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DIRECTING THE 1ST AND 2ND RESPONDENTS NOT TO DEMOLISH THE RESIDENTIAL COMPLEX THE PETITIONERS KNOWN AS "MANTRA TRANQUIL" BUILT ON THE PROPERTY BEARING KHATA NO.1208/7, 9 AND 13 SITUATED AT SY.NOS.7, 9 AND 13 OF GUBBALALA VILLAGE,



UTTARAHALLI HOBLI, BANGALORE SOUTH TALUK, OR ANY PORTION THEREOF AND ETC.

IN WP NO.47937/2019:

BETWEEN:

1. ROYAL PALMS RESIDENTS WELFARE ASSOCIATION,
REP. BY ITS PRESIDENT SRI KRISHNAN A,
R/O: ROYAL PALM LAYOUT,
SY NO.11, GUBBALALA CROSS,
NEXT TO MANTRI TRANQUIL,
KANAKAPURA MAIN ROAD,
BENGALURU – 560 061.
2. SRI. B.R. SANJAY
S/O B.S. RAJENDRAPPA,
AGED ABOUT 52 YEARS,
R/O: NO.454, 7TH MAIN,
4TH BLOCK JAYANAGARA,
BENGALURU – 560 011.

...PETITIONERS

(BY SRI. ONKARA K.B., ADVOCATE)

AND:

1. THE COMMISSIONER,
BRUHAT BENGALURU MAHANAGARA PALIKE (BBMP)
HUDSON CIRCLE, N.R. SQUARE,
BANGALORE – 560 002.
2. THE JOINT COMMISSIONER,
BRUHAT BENGALURU MAHANAGARA PALIKE (BBMP)
BOMMANAHALLI ZONE,
BENGALURU – 560 068.
3. ASSISTANT EXECUTIVE ENGINEER,
BRUHAT BENGALURU MAHANAGARA PALIKE (BBMP)
UTTARAHALLI SUB-DIVISION, SUBRAMANYAPURA,
UTTARAHALLI MAIN ROAD, BENGALURU – 560 061.



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4. THE COMMISSIONER,
BANGALORE DEVELOPMENT AUTHORITY,
T. CHOWDAIAH ROAD,
KUMARA PARK WEST,
BANGALORE – 560 001.
5. THE CHIEF ENGINEER,
(STORM WATER DRAINS)
BRUHAT BENGALURU MAHANAGARA PALIKE (BBMP)
BBMP OFFICE BUILDING,
HUDSON CIRCLE,
N.R. SQUARE, BANGALORE – 560 002.

...RESPONDENTS

(BY SMT. SARITHA KULKARNI, ADVOCATE FOR R1 TO R3
AND R5;
SRI KRISHNA, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I) ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENTS NOT TO TRANSGRESS OR TRESPASS OR NOT TO INTERFERE WITH THE RIGHTFUL OCCUPATION AND POSSESSION OF RESIDENTS OF THE 1ST PETITIONER ASSOCIATION FORMED IN THE RESIDENTIAL LAYOUT KNOWN AS "ROYAL PALMS LAYOUT" SITUATED AT SY.NO.11 OF GUBBALALA VILLAGE, UTARAHALLI HOBLI BANGALORE SOUTH TALUK, UNDER THE GUISE OF STORM WATER DRAIN OR UNDER THE GUISE OF REMOVAL OF ENCROACHMENT OVER THE STORM WATER DRAIN AS PRAYED FOR IN THE REPRESENTATION DATED 23.09.2019 AS PER ANNEXURE-A.

II) ISSUE AN ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENTS NOT TO DEMOLISH THE RESIDENTIAL HOUSES CONSTRUCTED IN THE RESIDENTIAL LAYOUT KNOWN AS "ROYAL PALMS LAYOUT" SITUATED AT SY.NO.11 OF GUBBALALA VILLAGE UTARAHALLI HOBLI, BANGALORE SOUTH TALUK, IN THE INTEREST OF JUSTICE AND EQUITY.



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WP No. 40299 of 2014
C/W WP No. 47937 of 2019

THESE PETITIONS COMING ON FOR DICTATING ORDERS,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R. NATARAJ

ORAL ORDER

The petitioners in W.P.No.40299/2014 have challenged a notice bearing No.AEE/SDV/PR/268/2014-2015 dated 30.07.2014 issued by the respondent No.2. They have sought for writ in the nature of mandamus to direct the respondent Nos.1 and 2 not to interfere with the occupation of the members of the petitioner No.1 in the residential complex known as "Mantri Tranquil" built on property bearing Khata No.1208/7, 9 and 13 situated at Sy.Nos.7, 9 and 13 of Gubbalala Village, Uttrahalli Hobli, Bangalore South Taluk. They have also sought for a writ in the nature of mandamus to direct respondent Nos.1 and 2 not to demolish the residential complex known as "Mantri Tranquil" built on property bearing Khata No.1208/7, 9 acres and 13 guntas situate in Sy.Nos.7, 9 and 13 of



Gubbalala village, Uttarahalli Hobli, Bangalore South Taluk, or any portion thereof.

2. The petitioners in W.P.No.47937/2019 have sought for writ in the nature of mandamus to direct the respondents not to transgress or trespass or to interfere in the rightful occupation and possession of the residents of the petitioner No.1 formed in the residential layout known as "Royal Palms Layout" situated at Sy.No.11 of Gubbalala village, Uttarahalli Hobli, Bangalore South Taluk under the guise of restoring a storm water drain or under the guise of removal of encroachment over the storm water drain as per their representation dated 23.09.2019. They have also sought for writ in the nature of mandamus directing the respondents not to demolish the residential houses constructed in the residential layout known as "Royal Palms Layout" situated at Sy.No.11 of Gubbalala village, Uttarahalli Hobli, Bangalore South Taluk.

3. The petitioners in W.P.No.40299/2014 contend that the petitioner No.2 proposed to develop land in



Sy.Nos.7, 9 and 13 of Gubbalala Village, measuring 19 acres 30 guntas. The aforesaid land was already converted from agricultural to non-agricultural residential use in terms of orders dated 16.12.2004 and 31.03.2005. The property so converted was assessed to tax by the Panchayat and the name of the petitioner No.2 was included in the property records of the Panchayat. The lands fell within the limits of the Bruhat Bengaluru Mahanagara Palike (for short, 'BBMP') in the year 2007. The respondent No.1 entered the name of the petitioner No.2 in the property register in respect of the aforesaid properties and assigned Khata No.1208/7, 9 and 13. Petitioners claim that as per the Comprehensive Development Plan,1995 (for short, 'CDP,1995') the lands above mentioned lay within the residential zone and there was no mention of any storm water drain running through the aforesaid lands. The petitioner No.2 in order to construct a multi-dwelling residential apartment sought sanction of a building plan from the Bangalore



Development Authority (for short, 'BDA') and also no objection certificates from the Pollution Control Board, BWSSGB, BESCOM, BSNL, Director General of Police, Airport Authority of India. Later, it sought approval of a building plan from the BDA to construct 05 residential buildings consisting of Ground plus 14 upper floors. The said plan was sanctioned on 21.08.2007 which was thereafter modified. The BDA also granted license for the construction and a commencement certificate authorizing the commencement of construction. Petitioners contend that after obtaining all the relevant permissions and sanctions from the concerned authorities, developmental activities in the aforesaid lands were taken up. The concerned authorities had also inspected the lands and were satisfied that petitioners had obtained all the required permissions and sanctions as stated above. Petitioners claim that after the construction was completed in all respects in accordance with the sanction plan, the BDA issued an occupancy certificate. It is claimed that the



petitioner No.2 had sold the individual apartments to various purchasers, who all constituted as members of an apartment association as per the provisions of the Karnataka Apartment Ownership Act and Rules, 1972. Petitioners claim that the petitioner No.2 had put up five buildings with eleven wings consisting of 1131 apartments, where all the apartments have been sold to third parties way back in the year 2009. Petitioners contend that after such registration, the owners of the apartments had applied to the BBMP for entering their names in the property register and that the same are pending.

4. It is claimed that the respondent Nos.1 and 2 have assessed the individual apartments to property tax and they are collecting the property taxes regularly from the owners of the apartments from the year 2009-10 and onwards. They also contend that separate electricity meters are installed by BESCOM in the year 2010 and the members of petitioner No.1 are drawing electricity and are paying the charges for consumption. Petitioners claimed



that when things stood thus, the petitioner No.1 was served with a notice dated 30.07.2014 by the respondent No.2 alleging that the petitioner No.2 had constructed a building on the storm water drain and also constructed a compound wall, parking in basement and laid a garden over the same. The respondent No.2 therefore directed the petitioner No.1 to remove the same to ensure free passage of storm water, failing which they would initiate appropriate proceedings for removal of such constructions. The petitioners contend that the impugned notice was as bald as it could be as the respondent No.2 did not intimate in which portion of the land belonging to the petitioners, the storm water drain ran and where the petitioner No.2 had constructed a building over it. Therefore, the petitioner No.1 submitted a reply dated 12.08.2014 to the respondent No.2, informing that all the approvals were obtained and the apartment complex has been developed by the petitioner No.2. The petitioner No.1 informed the respondent No.2 that they have been informed by the



Petitioner No.2 that there is no discrepancy in the construction and that all terms and conditions imposed by various Governmental authorities at the time of approvals have been strictly adhered to and that the petitioner No.2 had not put up any construction over the storm water drain. The petitioner No.2 had purportedly assured the petitioner No.1 that no storm water drain exists within the project area. The petitioners contend that the project area measures about 19 acres 30 guntas in Sy.Nos.7, 9 and 13 of Gubbalala Village. The respondent No.2 had issued the notice without even identifying the course of the storm water drain or even identifying the portion of the land where construction was put up. It was also contended that when the lands in question were converted for non-agricultural residential use and when a plan was sanctioned by the authorities enabling petitioner No.2 to put up construction, none of the authorities had indicated that a storm water drain ran through the said lands. It is also claimed that even as per in the CDP,1995, there was



no mention that storm water drain ran through the lands in question. It is also claimed that when the authorities had physically inspected the land before sanctioning a plan, they did not find any storm water drain running through the lands in question. The petitioners claim that to their utter shock, the officers of BESCOM visited the residential complex on 11.08.2014 and instructed and held out to the petitioners that the respondent No.1 and 2 have instructed them to disconnect electricity on the ground that the construction has been put up over the storm water drain. The petitioners claim that despite the repeated requests by the occupants, the authorities of BESCOM disconnected power supply to a portion of the residential complex. The petitioners claim that there is no storm water drain running through Sy.No.7 of Gubbalala Village or any portion of the project area. They contend that there is a small portion of kharab land which the petitioner No.2 was attempting to get it regularized.



5. They also claimed that when the petitioner No.2 procured the lands for development, there was no storm water drain running through the said lands and therefore the question of putting up any construction over the storm water drain did not arise. They also claimed that the respondent No.2 had mentioned in the notice that a survey was conducted before issuing the notice, though no such survey was conducted to the knowledge of the petitioners as they were not notified about it. They also claimed that the officers of respondent Nos.1 and 2 had made periodical visits during the course of construction and they had not raised any objection of whatsoever nature. It is thus claimed that the notice in question is issued only to harass the petitioners that too after eight years from the date of putting up construction. The petitioners have therefore challenged the said notice.

6. The petitioners in W.P.No.47937/2019 contend that the father of the petitioner No.2 had acquired 08 acres 18 guntas of land in Sy.No.11 of Gubbalala Village



and other properties in terms of a deed of partition dated 29.12.1959. He got the same converted for non-agricultural residential use in terms of an order of the Deputy Commissioner dated 11.03.1997. He claimed that his father intended to form residential sites in the converted land and therefore got a plan approved from the Subramanyapura Grama Panchayat on 26.06.1997. They contend that after the area fell within the limits of the BBMP, the father of the petitioner No.2 paid improvement charges to the BDA on 04.01.2005. Thereafter, they contend that the land was converted into residential sites and most of them were sold to buyers and subsequently the khatahs were transferred to their respective names. They also contend that many of the buyers have constructed houses in their respective sites after obtaining necessary approvals and sanctions from the concerned authorities in accordance with the relevant rules and bye-laws. They also contend that as per the CDP, 1995, their property lay within a residential zone and there was no



mention of any *nala* or groundwater drain running through the aforesaid land. The petitioner No.1 was constituted from amongst the owners of residential sites within the layout. They contend that some poles were laid here and there by respondent No.2 within the layout and when the petitioners enquired, the employees of the respondents informed that those poles identified the storm water drain running through the layout and informed the residents to voluntarily vacate their houses. The petitioners claim that the respondents had informed them that a survey was conducted before marking the storm water drain, though no such survey was conducted to their knowledge. The petitioners claim that from the date, the land was converted for non-agricultural residential use, till the date the officers of the respondents had granted sanctions and permissions to form a layout and construct buildings thereon, none of the authorities had ever found that a storm water drain ran through the lands in question. As a matter of fact, they contend that even in the CDP, 1995,



there was no mention of any storm water drain running through the land of the petitioners. The petitioners further claim that the respondents threatened to demolish the construction put up over a non-existing storm water drain and the same was evident from the reports published in the newspapers. They contend that a storm water drain already exists on the northern end of the layout and the same is intact and even to this day is protecting the layout from heavy rain and persistent storm. However, the respondents without considering the same and without conducting any survey have laid poles just to intimidate the residents. The petitioners submitted detailed representation dated 23.09.2019 requesting the respondent Nos.1 and 2 to consider the drain already existing on the northern side of the layout as the actual drain flowing in Sy.No.11 and to remove the poles laid within the layout. The petitioners contend that since the respondents are threatening to dispossess the residents



under the guise of removal of encroachment over the storm water drain, they have filed this petition.

7. The writ petition is opposed by the respondent Nos.1 and 2, who have filed statement of objections contending that the petitioners have an alternate remedy under Section 102 of the Municipal Corporation Act, 1976 and therefore the writ petition is not maintainable. They also contend that due to rapid urbanization there has been several encroachments on public properties by builders and developers. In that regard, a public interest litigation was filed before this Court in W.P.No.31394/2009. The Division Bench of this Court specifically directed the removal of all encroachments over the storm water drains in the city of Bangalore. The respondents contend that these storm water drains play an important role in discharging the rain water to the nearby tanks and thereby preventing flooding of water in the low lying areas. Therefore, it is claimed that these storm water drains play an important role in controlling flood like situation and also



act as a source of water for lakes and tanks and helps in recharging the ground water level.

8. The respondents contend that in the village map of Gubbalala, particularly in the land bearing Sy.Nos.7, there is a clear indication that a storm water drain runs through the survey numbers. Therefore, they contend that the claim of the petitioners that there is no reference to the existence of storm water drain is false and incorrect. They contend that in view of the order passed by the Division Bench of this Court in W.P.No.31394/2009, the Deputy Commissioner of Bangalore Urban District and Chief Engineer (Storm Water Drain) of BBMP appointed surveyors for conducting a survey for identifying the limits of the storm water drain. In furtherance thereto, a survey was conducted and in the survey there was a clear demarcation of the storm water drain and the encroachment made over such storm water drain including the encroachment made by the petitioners in both these writ petitions. It was observed in the survey



that the petitioners had encroached 242.8 meters long and 5 meters wide and in all measuring 12 guntas of land. They contend that the survey report not only depicts the encroached portion but also specifies the exact measurement of the encroachment. They contend that in the CDP, 1995, there is no mention regarding the storm water drain as it only depicts the overall picture of the larger area and the petitioners cannot rely upon the same and contend that there is no storm water drain running through the aforesaid survey numbers. They contend that the Village map and the survey report show the exact location of the storm water drain. With these contentions, the respondent Nos.1 and 2 pray that the petition be dismissed.

9. A rejoinder is filed by the petitioners in W.P.No.40299/2014 to the statement of objections filed thereto, wherein, it is contended that the decisions of the Division Bench in W.P.No.31394/2009 is not applicable to the case on hand as there are no storm water drains



running through the properties of the petitioners. They have also denied the existence of storm water drains as mentioned in Annexure-R2. They also claim that the village map cannot be relied upon as it was drawn up almost a century ago and the same does not reflect the correct topography of the lands in question. It is also contended that the topography of the lands would undergo changes over the time and the course of streams, drains, etc. It is contended that in the CDP, 1995, the land of the petitioners lies within the residential zonal and there is no reference to any storm water drain. They also contend that they are not aware of the appointment of the surveyors by the Deputy Commissioner and the appointment of the Assistant Executive Engineer for the purpose of the identifying the storm water drains. They contend that the inspection done in respect of Sy.No.7 and the encroachment over the storm water drain is false. They contend that to their knowledge, no survey was conducted as none of the petitioners or their



representatives had affixed the signatures. They contend that the survey was primarily based on revenue and survey extracts and not based on land conversion, ground reality, etc. They also contend that no notices were ever issued to them before conducting such a survey. They contend that since the planning authority had sanctioned a development plan and the petitioner No.2 had constructed and completed the residential apartment in respect of which occupancy certificate is issued by the BDA, it is not open to now allege encroachment of the storm water drains.

10. The BDA has filed its statement of objections contending that as per the RTC for the year 2005-06, the total land the kharab in Sy.No.7, 9 and 13 are as follows:

Sy.No.	Total extent (Acres-Guntas)	'A' Kharab (Acres-Guntas)	'B' Kharab (Acres-Guntas)
7	14-06	1-06	0-19
9	03-31	0-16	--
13	09-06	0-34	--



11. It is contended that as per the order of conversion of Sy.No.7, the Deputy Commissioner collected the market value of 27 guntas of 'A' kharab. It is contended that it approved a modified development plan at the authority meeting dated 25.05.2007 as per the then Revised CDP,1995, and a work order dated 23.07.2007 was issued in respect of 18 acres 38.5 guntas out of 22 acres 6.5 guntas of converted land. It is contended that as per the RCDP, 1995, there was no storm water drain in Sy.Nos.7, 9 and 13. However, in the master plan 2015, adjacent to Sy.No.7, storm water drains was shown.

12. The learned counsel for the petitioners in both the said petitions reiterated the above contentions and submitted that when the storm water drain is not shown in the Comprehensive Development Plan, conversion sketch and in the building/layout plan sanctioned, the respondents cannot now claim that a storm water drain existed and runs through the survey numbers where the construction is put up and upset the apple cart by issuing



a notice alleging that the petitioners have put up construction over the storm water drain. They also contend that the respondents have not disclosed whether the storm water drains still exists in view of the urbanization of the area. They contend that due to rapid urbanization, the drains and other water courses have gone extinct and do not serve any useful purpose and therefore restoration of these drains does not serve any useful purpose. They therefore contend that the respondents with an oblique intent are claiming that these storm water drains are required to drain water from the surrounding areas into Subramanyapura lake.

13. They contend that the petitioner No.2 in W.P.No.40299/2014 has in fact made provision for discharge of rain water that may be collected within its project area. They submit that assuming that there was a storm water drain running through the land in question, the drain that is laid by the petitioners in W.P.No.40299/2014 would be sufficient to drain the water



during the rainy season. They also contend that during the last several years, there is no incidents of water logging or flooding and therefore, no useful purpose would be served in trying to pull down constructions put up by the petitioners lawfully in accordance with the plan sanctioned etc. They also raised several contentions such as, that the respondents have only tried to single out the petitioners and have not made any attempts to restore the alleged storm water drains in other areas. Therefore, they contend that the impugned notices are designed to harass and cause inconvenience to the residents and members of the petitioners.

14. The learned counsel for the respondent Nos.1 and 2 on the other hand submitted that the storm water drains connect to Subramanyapura lake and the same is mentioned in the village map of Gubbalala. He contends that the very fact that the petitioners in W.P.No.40299/2014 have made provision for discharge of storm water drains from their property makes it more than



evident that they knew that a storm water drain ran through the property and therefore the petitioners are bound to restore the storm water drain and if need be, by demolishing or removing the construction put up thereon. He submits the petitioners have put up construction at their own risk notwithstanding the fact that the construction so put up, was on a public utility and therefore no interference is warranted with the notices issued by the respondent Nos.1 and 2 to the petitioners.

15. This Court in terms of an order dated 27.10.2014 in W.P.No.40299/2014, passed the following order:

"ORDER

Sri. Gachchinmath, learned counsel for BBMP submits that there is a storm water drain cutting across the property belonging to the petitioners. In the absence of relevant material constituting substantial legal evidence of the fact of starting point of the storm water drain and its ending point and the nature of development having taken place



at the starting point or ending point, it would be in futility to continue the exercise of identifying drains in petitioners' property. Therefore, the Authorities are directed to place before Court relevant material particulars of the starting point of the drain and what development activity has taken place and the number of drains cut besides the public road and other material particulars including the topography and gradients of the entire layouts beside the property in question.

There shall be an ad-interim order of stay as prayed for."

16. This Court granted stay of the notice issued by the respondent Nos.1 and 2. Thereafter, on 18.11.2014, a map was filed by the learned counsel for the respondent Nos.1 and 2 in compliance with order dated 27.10.2014. This Court after perusing the map, in terms of an order dated 03.12.2014 held,

"it is not possible to accept the map ex facie to establish that the Raja Kaluve does pass through the properties belonging to the petitioner. If development activity has taken



place, layouts formed, then it is not known as to what would be the effect of or purpose in the Raja Kaluve. This is the question that requires to be considered in this petition. The Chief Engineer of the respondents is directed to submit a detailed report."

17. Later, in terms of an order dated 16.12.2014, this Court noted the appearance of the Chief Engineer, BBMP before the Court who submitted that he would look into the records and make an appropriate survey and thereafter make suggestions. On a submission made by the learned counsel for the BDA that the authority had conducted an aerial survey of the topography of all the properties with the help of a French Organization before preparing the master plan, this Court directed that material be secured from the BDA, which would help the Chief Engineer to chalk out an alternative to the course of water other than the Raja Kaluve, which exists. This Court also recollected the fact that in respect of a storm water drain running into Parappana Agrahara lake, there was



some diversion and therefore it held that if the storm water drain to Parappana Agrahara lake could be altered then the same could be done in the instant case also. Later, in terms of an order dated 16.01.2015, this Court noticed the submission made by the learned counsel for the BDA, who stated that the Comprehensive Development Plan of the year 2007 did not disclose the existence of a Raja Kaluve in Sy.No.7. However, he stated that the land in Sy.No.7 was 14 acres 06 guntas of which 27 Guntas was the 'A' kharab and 19 guntas was the 'B' Kharab. He mentioned that the Deputy Commissioner had permitted the diversion of 11 acres 9.5 guntas which included "A" Kharab of 27 guntas. It is over this land that the BDA had permitted the petitioner No.2 in W.P.No.40299/2014 to put up construction over 09 acres 25 guntas. Therefore, this Court held, *"it is for the BDA to explain as to how the Raja Kaluve came into existence in Sy.No.7, as disclosed in the master plan 2015, while it was not found in the CDP 2007"*. It also held that the exact location of 19 guntas of



'B' kharab land in Sy.No.7 was not identified. Therefore, this Court directed the BDA to answer the query and also place on record all such material for easy determination of the boundaries of land measuring 14 acres 06 guntas of which 11 acres 9.5 guntas was permitted to be used for non-agricultural commercial activity. The BDA was also directed to place on record the revenue records such as, Aakarband, survey tippani (map) of Sy.No.7.

18. In the meanwhile, the petitioners in W.P.No.47937/2019 challenged the notice issued to them where this Court granted an interim stay of the notice vide order dated 06.11.2019.

19. Later, in terms of an order dated 03.11.2022, this Court noticed a sketch furnished by the learned counsel appearing for the BBMP which showed the Raja Kaluve which existed earlier and also the storm water drain as it exists today over which construction was put up by the petitioners in W.P.No.40299/2014. The department of Urban Development was ordered to be arrayed as a



respondent. This Court also called for an expert opinion on the subject. Later, a memo dated 29.11.2022 was filed by the respondent Nos.1 and 2 and the relevant portion of the report at paragraph Nos.6 and 7 reads as follows:

"6. As per the above table it is seen that based on the entire catchment area of all the 04 drains as mentioned above, the existing drains carrying capacity is less than what is required as per catchment area. Hence the present section of drains existing is insufficient to handle the total catchment area discharge.

7. Accordingly, the proposed sections of the drains in the respective drain alignment 1, 2, 3 & 4 as mentioned in above table shall have to be provided."

20. Following the above, this Court passed an order dated 30.11.2022 which is as follows:

"Learned AGA submits that they would study the report of B.B.M.P. and would also consult expert in the field to suggest the alternate. Submission taken on record.



It is submitted that in this regard a report of the Controller and Auditor General of India on Performance Audit of Management of Storm Water Drain in Bangalore urban area has already been submitted to the Government of Karnataka. Keeping in view the recommendation made in the said report learned AGA to submit the report by next date of hearing.

List these matters on 15.12.2022”

21. Thereafter, on 15.12.2022, taking note of the orders passed by this Court on 03.11.2022 and 30.11.2022, the State Government constituted an expert committee to look into the viability of restoring storm water drains over which construction was put up by the petitioners. The learned counsel for the respondent Nos.1 and 2 submitted that a report would be filed shortly. Later, the State Government passed another order dated 19.02.2025 reconstituting the committee. The committee then conducted an inspection of the storm water drain on



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25.11.2022, wherein it identified four major drains, the details of which are as below:

SI No	Description (As per survey map)	Drain No's		Catchment area for this drain in Sq.kms	Existing cross section of the drain	Discharge in cumecs (Cum/Sec)			Proposed cross section for the drain
		From	To			Carried by the Existing drain	Required as per catchment area 3.62	Proposed as per catchment area	
1	Drain No-1 (Partly existing on ground)	Gubbalala Main road	Junction at Manthri Tranquil and Royal Palm Layout	0.165	1.80m x 1.70m (within the premises of Mantri Tranquil Apart -ment)	3.10	3.62	3.73	2.00m x 1.95m (up to the point of merging with drain 2)
2	Drain No-2 (Non Existing on ground)	Gubbalala Main road	Junction at Manthri Tranquil and Royal Palm Layout	0.743			14.66	14.94	4.00m x 2.50m (After the merging point of Drain 1 and Drain 2)
3	Drain No-3 (As per Existing)	Kaveri Pipeline Road	Jayanagara Housing Society Junction	0.57	1.80m x 1.50m	3.78	11.25	11.63	3.50m x 2.40m (Before merging with drain 1)
4	Drain No-4 (As per existing)	Kanakapura road (Iskon Temple entrance)	Subramanyapura lake Inlet	0.954 (Cumulative of all the three above drains plus additional 10.046)	1.80 m x 1.90m	5.22	16.31	17.44	4.50m x 2.50m



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22. A hydrological study of Subrahmanyapura lake was also conducted by a private entity at the instance of the respondent Nos.1 and 2, which disclosed the storm water drains running into the Subrahmanyapura lake through the land bearing Sy.Nos.7 and 11 of Gubbalala Village. The entity which conducted the study indicated that the available cross section for draining water through the drains was insufficient. This entity seems to have conducted vast inspection in the land of the petitioners as well as around the land in Sy.Nos.7 and 11. Thereafter, the expert committee constituted by the State Government had also conducted inspection and had come to the conclusion that drain Nos.3 and 4 which drained water from the catchment area into Subramanyapura lake was blocked by the petitioners in W.P.No.40299/2014 and a report in that regard was placed on record, which indicate as follows.

“ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ರಿಟ್ ಅರ್ಜಿ ಸಂಖ್ಯೆ:40299/2014 & 47937/2019 ಪ್ರಕರಣಗಳಿಗೆ ಶಿಂಬಂಧಿಸಿದಂತೆ ಬಿಬಿಎಂಪಿ ವ್ಯಾಪ್ತಿಯಲ್ಲಿರುವ ಮಂತ್ರಿ ಡೆವಲಪರ್ ರವರು ಮಳೆನೀರುಗಾಲುವೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿ



ಕಾಂಪೌಂಡ್ ತಡೆಗೋಡೆ ಮತ್ತು ಪಾರ್ಕಿಂಗ್ ತಳಮಹಡಿ ನಿರ್ಮಿಸಿರುವ ಕುರಿತು ಪರಿಶೀಲಿಸಿ ವರದಿ ನೀಡಲು ರಚಿಸಿರುವ ತಜ್ಞರ ಸಮಿತಿಯ ವರದಿ.

ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ರಿಟ್ ಅರ್ಜಿ ಸಂಖ್ಯೆ:40299/2014 &47937/2019 ಪ್ರಕರಣಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಬಿಬಿಎಂಪಿ ವ್ಯಾಪ್ತಿಯ ಮಂತ್ರಿ ವಸತಿ ಸಮುಚ್ಚಯದವರು ಮಳೆನೀರುಗಾಲುವೆಯನ್ನು ಒತ್ತುವರಿ ಮಾಡಿ ಕಾಂಪೌಂಡ್ ತಡೆಗೋಡೆ ಮತ್ತು ಪಾರ್ಕಿಂಗ್ ತಳಮಹಡಿ ನಿರ್ಮಿಸಿರುವ ಕುರಿತು ಪರಿಶೀಲಿಸಿ ವರದಿ ನೀಡಲು ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ನಅಇ205 ಎಂಎನ್‌ಯು 2022 ದಿನಾಂಕ:19/02/2025 ರಂತೆ ತಜ್ಞರ ಸಮಿತಿಯನ್ನು ರಚಿಸಲಾಗಿದ್ದು, ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು ಉತ್ತರಹಳ್ಳಿ ಹೋಬಳಿ ಗುಬ್ಬಲಾಳ ಗ್ರಾಮದಲ್ಲಿ ನಿರ್ಮಿಸಿರುವ ಮಂತ್ರಿ ಟ್ರಾಂಕ್ವಿಲ್ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಬಳಿ ಇರುವ ರಾಜಕಾಲುವೆಯನ್ನು ದಿನಾಂಕ:22/08/2025 ರಂದು ಬಿಬಿಎಂಪಿ, ಬಿಡಿಎ ಕಂದಾಯ ಅಧಿಕಾರಿಗಳೊಂದಿಗೆ ಪರಿವೀಕ್ಷಣೆ ನಡೆಸಲಾಗಿದ್ದು. ಈ ಕೆಳಕಂಡಂತೆ ತಾಂತ್ರಿಕ ವರದಿಯನ್ನು ಸರ್ಕಾರಕ್ಕೆ ಸಲ್ಲಿಸಲಾಗಿದೆ.

1. ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಉತ್ತರಹಳ್ಳಿ ಹೋಬಳಿ, ಗುಬ್ಬಲಾಳ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 7(ಪಿ), 9(ಪಿ) ಮತ್ತು 13(ಪಿ) ರ ಜಮೀನುಗಳ ಒಟ್ಟು 18ಎ-38.50ಗುಂ ವಿಸ್ತೀರ್ಣದ ಪ್ರದೇಶದಲ್ಲಿ ಮಂತ್ರಿ ಡೆವಲಪರ್ಸ್ ಸಂಸ್ಥೆಯವರು ವಸತಿ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ಸಮುಚ್ಚಯವನ್ನು (Mantri Tranquil) ನಿರ್ಮಾಣ ಮಾಡಿರುತ್ತಾರೆ.

2. ಪ್ರಶ್ನಿತ ರಾಜಕಾಲುವೆಯು ಗ್ರಾಮ ನಕ್ಷೆಯಂತೆ ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಉತ್ತರಹಳ್ಳಿ ಹೋಬಳಿ, ಗುಬ್ಬಲಾಳ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 12 ರಿಂದ ಪ್ರಾರಂಭವಾಗಿ ಸರ್ವೆ ನಂ.11, 7, 3, 60 ರಲ್ಲಿ ಹರಿದು ಸುಬ್ರಮಣ್ಯಪುರ ಕೆರೆ ಸೇರುತ್ತದೆ. ತಹಶೀಲ್ದಾರ್, ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು ರವರು ದೃಢೀಕರಿಸಿ ನೀಡಿರುವ ಸರ್ವೆ ನಕ್ಷೆಯಂತೆ ಗುಬ್ಬಲಾಳ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 7 ರಲ್ಲಿ ಉಪಸ್ಥಿತವಿರುವ ರಾಜ ಕಾಲುವೆಯನ್ನು ಅನುಮೋದನೆ ಪಡೆಯದೆ ಪಥ ಬದಲಾಯಿಸಿ M/s. Mantri Developers ರವರು 0-12 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣದ ಪ್ರದೇಶವನ್ನು ಒತ್ತುವರಿ ಮಾಡಿ ಬಹು ಮಹಡಿ ಕಟ್ಟಡ ನಿರ್ಮಿಸಿರುತ್ತಾರೆ. ಸದರಿ



ಕಾಲುವೆಯು ಸರ್ವೆ ನಕ್ಷೆಯಂತೆ 5 ಮೀ ಅಗಲ ಇರುತ್ತದೆ (ಸರ್ವೆ ನಕ್ಷೆ ಲಗತ್ತಿಸಿದೆ Annexure-1)

3. ವಾಸ್ತವವಾಗಿ ಗ್ರಾಮ ನಕ್ಷೆಯಲ್ಲಿನ ಪಂಕ್ತಿಕರಣದ ಬದಲಾಗಿ Mantri tranquil ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ರವರು ತಮ್ಮ ಸ್ವತ್ತಿನ ಅಂಚಿನಲ್ಲಿ ಅಂದರೆ ಸರ್ವೆ ನಂ.13 ಮತ್ತು 9 ರ ಎಲ್ಲೆಗೆ ಹೊಂದಿಕೊಂಡಂತೆ ಸ್ಥಳದಲ್ಲಿ 1.80ಮೀ ಅಗಲದ ಕಾಲುವೆಯನ್ನು ಅಭಿವೃದ್ಧಿಪಡಿಸಿರುವುದನ್ನು ಗಮನಿಸಲಾಗಿದೆ.

4. ಮಂತ್ರಿ ಟ್ರಾಂಕ್ವಿಲ್ ಆವರಣದಲ್ಲಿ ಹರಿಯುತ್ತಿರುವ ಕಾಲುಗಳ ನಕ್ಷೆಯಲ್ಲಿ (ಪ್ರತಿ ಲಗತ್ತಿಸಿದೆ Annexure-2) ಡೈನ್ ಸಂಖ್ಯೆ (1) ಸ್ಥಳದಲ್ಲಿರುವಂತೆ ಅಭಿವೃದ್ಧಿದಾರರು ನಿರ್ಮಿಸಿರುವ ಕಾಲುವೆಯಾಗಿದ್ದು, ಇದು ಅಪಾರ್ಟ್ ಮೆಂಟ್ ಪ್ರವೇಶದ ಗೇಟ್‌ನಿಂದ ಪ್ರಾರಂಭವಾಗಿ ಕಾಂಪೌಂಡ್ ಗೋಡೆ ಅಂಚಿನಲ್ಲಿ (ಒಳಭಾಗದಲ್ಲಿ) ಹರಿಯುತ್ತಿರುತ್ತದೆ. ಡೈನ್ ಸಂಖ್ಯೆ (2)ಗ್ರಾಮ ನಕ್ಷೆಯಲ್ಲಿ ಉಪಸ್ಥಿತವಿರುವ ಕಾಲುವೆಯಾಗಿದ್ದು, ಇದು ಮಂತ್ರಿ ಟ್ರಾಂಕ್ವಿಲ್ ಯೋಜನೆಯ ಹೊರಭಾಗದಲ್ಲಿದ್ದು, ಇದು ಅಸ್ತಿತ್ವದಲ್ಲಿರುವುದಿಲ್ಲ. ಈ ಪ್ರದೇಶದಲ್ಲಿ ಈಗಾಗಲೇ ಕಟ್ಟಡಗಳು ಅಭಿವೃದ್ಧಿಯಾಗಿರುತ್ತವೆ. ಡೈನ್ ಸಂಖ್ಯೆ (3) BWSSB pipe line ರಸ್ತೆ ಕಡೆಯಿಂದ ಬರುತ್ತಿದ್ದು, ಡೈನ್ ಸಂಖ್ಯೆ (1) & (3) ಜಂಕ್ಷನ್ ಬಳಿ ಸೇರಿ ಕಾಂಪೌಂಡ್ ಅಂಚಿನಲ್ಲಿ ಹರಿದು ಅಪಾರ್ಟ್ ಮೆಂಟ್ ಆವರಣದಿಂದ ಹೊರಬಂದು ಡೈನ್ ಸಂಖ್ಯೆ (4) ರ ಜೊತೆ ಸೇರಿ ಸುಬ್ರಮಣ್ಯಪುರ ಕೆರೆ ಸೇರುತ್ತದೆ.

5. ಬಿಬಿಎಂಪಿ ಮತ್ತು ಬಿಡಿಎ ವತಿಯಿಂದ ಸದರಿ ಪ್ರದೇಶದ Hydraulic data, ಜಲನಯನ ಪ್ರದೇಶ (catchment) ಅಧ್ಯಯನ (Annexure-3) ಅನುಸಾರ ಡೈನ್ ಸಂಖ್ಯೆ (1) & (3) ಸೇರಿದ ನಂತರ ಹೆಚ್ಚಿನ ಪ್ರಮಾಣದ ನೀರು ಬರುವುದರಿಂದ ಪ್ರಸ್ತುತವಿರುವ ಕಾಲುವೆಯ ಅಳತೆಗಿಂತ ಹೆಚ್ಚುವರಿ ಸೆಕ್ಷನ್ ಅವಶ್ಯಕವಿರುತ್ತದೆ.

ಮೇಲ್ಕಂಡ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ತಜ್ಞರ ವಿವಿಧ ತಾಂತ್ರಿಕ ಅಂಶಗಳನ್ನು ಗಮನದಲ್ಲಿಟ್ಟುಕೊಂಡು ನೀರನ್ನು ಸಮರ್ಪಕವಾಗಿ ಕಾಲುವೆಯಲ್ಲಿ ಸಾಗಿಸಲು ಮಂತ್ರಿ ಟ್ರಾಂಕ್ವಿಲ್ ಕಾಂಪೌಂಡ್ ಅಂಚಿನಲ್ಲಿ ಅಗತ್ಯ ಜಾಗ ಲಭ್ಯವಿರುವುದರಿಂದ ಪ್ರಸ್ತುತವಿರುವ ಕಾಲುವೆ (1.8ಮೀ X 1.9ಮೀ) ಅನ್ನು ನಾಲಾ ಖರಾಬಿನ ವಿಸ್ತೀರ್ಣಕ್ಕೆ ಸಮಾನಾಂತರವಾದ ಅಂದರೆ 5ಮೀ ಅಗಲದ ಡೈನ್ ಅನ್ನು



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ಅಭಿವೃದ್ಧಿದಾರರು ತಮ್ಮ ಸ್ವಂತ ವೆಚ್ಚದಲ್ಲಿ ಅಗಲೀಕರಣಗೊಳಿಸಲು
ಸೂಚಿಸಬಹುದಾಗಿರುತ್ತದೆ.”

23. In the said report, the details of the four major drains running through the aforesaid survey numbers is also mentioned. The private entity was also of the opinion that the available drains are insufficient to drain the water from the catchment area. Long after these surveys were conducted and long after it was found that the construction put up over the storm water drain by the petitioners obstructed the free flow of water, the petitioners in W.P.No.40299/2014 seem to have filed representation dated 12.12.2025 before the Deputy Commissioner to find out a practical solution that respects both public infrastructure requirements and the rights of the lawful occupants.

24. The learned counsel for the petitioners in W.P.No.40299/2014 submitted that the Deputy Commissioner should be directed to find out a viable



alternative so as to protect the public interest and also the interest of the members of the petitioner No.1.

25. I have considered the submissions of the learned counsel for the petitioners in both the petitions as well as the submissions of the learned counsel for the respondents 1 and 2. I have also perused the reports submitted by the survey authorities and all the materials placed on record.

26. A public interest litigation was filed before this Court in W.P.No.31394/2009 to remove the encroachment over storm water drains in the City of Bengaluru. An affidavit was filed by BBMP stating that it would take steps to remove the encroachment, following which the writ petition was disposed off on 04-08-2011 directing action to be initiated for removal of the encroachments. The Deputy Commissioner in terms of an order dated 28-02-2013 deputed surveyors for surveying and identifying the storm water drains in the city of Bengaluru. Following this, the Chief Engineer, BBMP Storm water drains passed an



order dated 02-03-2013 deputing the Assistant Executive Engineer of Bommanahalli zone to conduct an inspection along with the surveyors. Accordingly, an inspection was conducted in Sy.No.7 of Gubbalalu and it was found that petitioner No.2 in W.P.No.40299/14 had closed the storm water drain running through Sy.No.7. It was also noticed that a 5 feet drain existed at places but was obstructed at two places. It also appears that the drain in Sy.No.11 was identified and poles were placed identifying the storm water drain. It is in the backdrop of the above that notices were issued for removal of the encroachment over the storm water drains, which are challenged in these writ petitions. The petitioners have replied to these notices and before the same could be considered by the Municipal Corporation, the petitioners have approached this Court and have kept an innocuous litigation alive for over 11 years. The petitioners in W.P.No.47937/2019 have taken advantage of an interim order granted as well as the delay in disposal of this petition and changed the nature of the



land in Sy.No.11 of Gubbalala by allowing its members to put up construction.

27. The village map of Gubbalala shows that a storm water drain runs through Sy.Nos.7 and 11 and empties into the Subramanyapura lake. The orders of conversion of land in Sy.Nos.7 and 11 shows that the kharab land was reserved to the State government for all times to come. The petitioners in both the petitions have not placed on record the conversion sketch of both the above survey numbers that were converted for non-agriculture residential use. They have also not placed on record the RTC extracts of both the survey numbers. Be that as it may, it is undisputed that an extent of 0-19 guntas is the 'B' kharab deducted towards the storm water drain running through Sy.No.7 while 0-18 guntas is deducted towards the storm water drain running through Sy.No.11. The petitioners in W.P.No.47937/2019 admit that the storm water drain exists in Sy.No.11 but they contend that,



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೩. ನಮ್ಮ ಬಡಾವಣೆಯಲ್ಲಿ ನಡೆಸಿರುವ ಸರ್ವೆ ನಕ್ಷೆಯನ್ನು ಪರಿಶೀಲಿಸಿದರೆ ಅದರಲ್ಲಿ ರಾಜಾಕಾಲುವೆಯು ನಮ್ಮ ಬಡಾವಣೆಯ ಹಲವಾರು ಮನೆಗಳನ್ನು ಹಾದುಹೋದಂತೆ ತಪ್ಪಾಗಿ ತೋರಿಸುತ್ತದೆ. ಆದರೆ ವಾಸ್ತವದಲ್ಲಿ ಹಳೆಯ ರಾಜಾಕಾಲುವೆಯ ನಮ್ಮ ಬಡಾವಣೆಯ ಹಿಂದಿನ ಬದಿಯಲ್ಲಿ ಹಾದು ಹೋಗಿದ್ದು, ಅದು ಈಗಲೂ ಸುವ್ಯವಸ್ಥಿತವಾಗಿದ್ದು ನಮಗೆ ಇದುವರೆಗೂ ಮಳೆ ಪ್ರವಾಹಗಳಿಂದ ರಕ್ಷಿಸುತ್ತಿದೆ. ನಮ್ಮ ಬಡಾವಣೆಗೆ ಇದುವರೆಗೂ ನೆರೆ ಹಾವಳಿಯಿಂದ ಯಾವುದೇ ಹಾನಿಯಾಗಿರುವುದಿಲ್ಲ.

(Underlining by the Court)

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೬. ನಮ್ಮ ಬಡಾವಣೆಯ ಮಧ್ಯಭಾಗದಲ್ಲಿ ಯಾವುದೇ ಕಾಲುವೆ ಇಲ್ಲದೇ ಇರುವುದರಿಂದಲೇ ಬಿ.ಡಿ.ಎ. ಆಗಲೇ ಬಿ.ಬಿ.ಎಂ.ಪಿ. ಯೇ ಆಗಲಿ ನಮಗೆ ಬಡಾವಣೆ ನಿರ್ಮಿಸಲು ಹಾಗೂ ಮನೆ ಕಟ್ಟಿಕೊಳ್ಳಲು ಅನುಮತಿ ನೀಡಿರುತ್ತದೆ. ಅದೂ ಅಲ್ಲದೆ ತಾವು ನಮ್ಮಿಂದ ಪ್ರತಿ ವರ್ಷ ಕಂದಾಯವನ್ನು ಸಹ ಪಡೆಯುತ್ತಿದ್ದೀರಿ. ನಮ್ಮಿಂದ ಲಕ್ಷಗಟ್ಟಲೆ ಬೆಟರ್ನಿಕ್ ಶುಲ್ಕವನ್ನು ಸಹ ಪಡೆದಿರುತ್ತೀರಿ. ಆದ್ದರಿಂದ ಅತಿ ಸುಂದರವಾಗಿ ನಿರ್ಮಿಸಲ್ಪಟ್ಟಿರುವ ನಮ್ಮ ಬಡಾವಣೆಯನ್ನು ಯಾವುದೇ ಕಾರಣಕ್ಕೂ ವಿರೂಪಗೊಳಿಸಬೇಡಿ.

೭. ಇತ್ತೀಚೆಗೆ ತಾವು ನಡೆಸಿರುವ ಸರ್ವೆ ನಕ್ಷೆಯನ್ನು ಪರಿಶೀಲಿಸಿದರೆ ಅದರಲ್ಲಿ ತಾವು (ಸರ್ವೆ ನಡೆಸಿರುವವರು) ಸರಿಯಾಗಿ ಸರ್ವೆ ನಡೆಸದೆ ಪ್ರಾಚೀನ ಕಾಲದ ಗ್ರಾಮನಕ್ಷೆಯ ಆಧಾರದ ಮೇಲೆ ಒಂದು ಅಂದಾಜಿನ ಪ್ರಕಾರ ಕಾಲುವೆಯನ್ನು ಗುರುತಿಸಿದಂತಿದೆ. ಅದರಲ್ಲಿ ಹಾಕಿರುವ ಷರಾದಲ್ಲಿ ಅದನ್ನು ನಮೂದಿಸಲಾಗಿರುತ್ತದೆ. ಅದೂ ಅಲ್ಲದೆ ಈಗಾಗಲೇ ನಮ್ಮ ಬಡಾವಣೆಯ ಹಿಂಬದಿಯಲ್ಲಿ ಹಾದು ಹೋಗಿರುವ ಕಾಲುವೆಯನ್ನು ಪರಿಗಣನೆಗೆ ತೆಗೆದುಕೊಂಡಿರುವುದಿಲ್ಲ.

(Underlining by the Court)

೮. ರಾಜಾಕಾಲುವೆಯ ಮುಖ್ಯ ಉದ್ದೇಶ ಮಳೆಯ ನೀರು ಸರಿಯಾಗಿ ಹರಿದು ಕೆರೆಯನ್ನು ಸೇರುವುದು ಹಾಗೂ ನೆರೆ ಬಂದಾಗ ಮಳೆ ನೀರು ಸರಾಗವಾಗಿ ಹರಿದು ಮನೆ ಮಠಗಳು ಮತ್ತು ಜನ ಜಾನುವಾರುಗಳು ನೀರಿನಲ್ಲಿ ಕೊಚ್ಚಿಹೋಗದಂತೆ ತಡೆಯುವುದು. ಈ ಎರಡೂ ಕೆಲಸವನ್ನು ಈಗಾಗಲೇ ಇರುವ ಕಾಲುವೆ ಸಮರ್ಥವಾಗಿ ನಿಭಾಯಿಸುತ್ತಿದ್ದು, ಇದು ನಮ್ಮ ಬಡಾವಣೆಯ ಹಿಂಭಾಗದಲ್ಲಿರುವುದರಿಂದ ಯಾರಿಗೂ ತೊಂದರೆಯಾಗಿರುವುದಿಲ್ಲ. ಯಾವುದೇ ಬಡಾವಣೆಯ ಮಧ್ಯಭಾಗದಲ್ಲಿ ಹಾದು ಹೋಗುವ ಕಾಲುವೆಯಿಂದ ಅನುಕೂಲತೆಗಳಿಗಿಂತ ಅನಾನುಕೂಲತೆಯೇ ಹೆಚ್ಚು. ದಯವಿಟ್ಟು ಈ ಅಂಶವನ್ನು ಪರಿಗಣಿಸಿ.

(Underlining by the Court)



28. The petitioners in W.P.No.40299/2014 contend that there was no mention of the storm water drain in the CDP-1995 and that BDA had sanctioned a development plan and that they have constructed multi dwelling residential apartments over the land in Sy.No.7 of Gubbalala. They however have not produced the RTC of Sy.No.7 of Gubbalala. They also have not disputed the fact that within their project, they have maintained a drain that measures 1.80 meters x 1.70 meters and which exits their compound.

29. In so far as Sy.No.7 of Gubbalala is concerned, it measures 14 acres 06 guntas including 'A' kharab of 27 guntas and 'B' kharab of 19 guntas. Out of the above, an area measuring 11 acres 9.5 guntas including 'A' kharab of 0-27 guntas was converted for non-agricultural purpose, where petitioner No.2 in W.P.No.40299/2014 is permitted to put up multi-dwelling residential units. Likewise, the petitioner in W.P.No.47937/2019 is an association of the residents of a layout formed in Sy.No.11 of Gubbalala



village which measures 08 acres and 18 guntas and 'B' kharab land measuring 0-18 guntas, where a layout of sites is formed and is approved by the local panchayat, though it is not known how the panchayat could have done so. There is no mention in the layout plan about the storm water drain running through Sy.No.11, though the petitioners all claim that it runs behind the back of their layout. Be that as it may, as far as the 'B' kharab land is concerned, there can be no gainsaying the fact that it vested in the State Government in view of Section 67 of the Karnataka Land Revenue Act, 1964 (for short, 'the Act, 1964') and is vested in the Municipal Corporation by virtue of Section 174 of the Karnataka Municipal Corporation Act, 1976.

30. The petitioner No.2 in W.P.No.40299/2014 has developed a residential complex and has also provided a drain measuring 1.80 meters x 1.70 meters to drain out rain water which is identified as drain-I. It has closed down a drain identified as drain-II, while drain-III



measuring 1.80 meters x 1.50 meters is existing from Kaveri Pipeline road to Jayanagara Housing Society Junction. Similarly, drain-IV from Kanakapura road to Subramanyapura lake measuring 1.80 meters x 1.90 meters exists. Neither petitioner No.2 in W.P.No.40299/2014 nor the petitioner No.1 in W.P.No.47937/2019 have any right, title or interest over the 'B' kharab land and it is also not their case that they have perfected their right over it.

31. On the other hand, their contention is that (i) the BDA had sanctioned a plan which did not show any storm water drain, (ii) that there is no mention about the storm water drain in the CDP-1995 and hence the respondents cannot now turn around and claim that there is a storm water drain that is closed by the petitioners. In support of this contention, they have highly relied on the judgment passed by learned Single Judge of this Court in ***Sobha Developers Limited Vs. Bruhat Bangalore Mahanagara Palike and others*** reported in **2012 SCC**



OnLine Kar 2679. Though this is a catchy argument, the petitioner No.2 in W.P.No.40299/2014 has not denied the fact that it has developed a 1.80 meters drain to drain out the storm water from its property into Subramanyapura lake and blocked drain-II that drains water from the surrounding areas. On the contrary, its tongue in cheek argument is that the BDA has permitted to put up construction and therefore it cannot be held responsible. A perusal of the judgment passed in **Sobha Developer's** case referred *supra*, merely mentioned "*once the master plan is prepared indicating the existence of roads, drains, streets, etc. and particularly the Planning Authority at an undisputed point of time had prepared a sketch of the lands wherein no passage of nala in the middle of the property or the existence of the pathway therein was shown, it is not open for the Corporation at such a belated stage to raise an objection solely based on the village map to contend that the existing nala was deviated by the petitioner*". However, the Court contemporaneously held



that "the Corporation undoubtedly has to ensure that the existing nalas and drains have to be kept intact and no encroachment is made by any private parties on the same. They have every right to prevent the obstruction to be caused for free flow of water in the nala/drain. The existence of the drain in the instant case is also evident from the master plan. The survey sketch now prepared also discloses that the nala is in existence and the same is constructed on the sites by the petitioner as it passes by the side of the petitioner's construction. If the width of the nala is reduced only at the place where the nalas passes through the properties of the petitioner and if the Corporation on expert's opinion finds that the reduced passage would cause flooding in the area and in and around, then the best course is to find a solution to the problem by engaging the petitioners and the owners of the area over which the nala passes for widening the nala in the interest of their own safety and security".



32. At this stage, it is relevant to note that a master plan under Section 12 of the Karnataka Town and Country Planning Act, 1961 (for short, 'the Act, 1961') is a vision document prepared to regulate future land use in a planning area. There is no mention in Section 12 of the Act, 1961 that the master plan should refer the water bodies, high level channels, storm water drains etc. All it refers to is the future land use, the present land use, complete street pattern and areas reserved for public utilities, future development, etc. In this regard, it is profitable to refer to the judgment of the Apex Court in the case of ***Rajendra Kumar Barjatya and another vs. U.P. Avas Evam Vikas Parishad and Ors.*** reported in **2024 SCC OnLine SC 3767**, where it was held that "*Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held*



accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc." The finding in **Sobha Developer's**, case referred supra cannot be treated as a binding precedent. For a judgment to be binding, it should deal with an issue with reference to the law on the subject and a casual statement made in the course of the judgment would at the most be an *obiter dicta* which has no precedential value. In this regard, it is apposite to rely on the judgment of the Apex Court in case of **Union of India and Others Vs. Dhanwanti Devi and Others** reported in **(1996) 6 SCC 44**, wherein it was held as:

"9. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi.



According to the well-settle theory of precedents, every decision contains three basic postulates – (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statement of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above."

33. The judgment of the co-ordinate Bench in ***Sobha Developer's*** case referred *supra*, cannot therefore be of any binding values as it did not state the provisions of law applicable to the legal facts and the solution to the problem based on statutory provisions. As a matter of fact, once the land is vested in the State Government by virtue of Section 67 of the Act, 1964 such vesting cannot be divested by the BDA by not showing it in the master plan. This trend if allowed would set a bad precedent for all times to come as it would be handy to developers and the real estate mafia to strong arm the law and collude with the planning authorities to efface these arteries of



water bodies in the master plan and obtain development plan and construct buildings over drains, etc. As a matter of fact, the department of revenue is not a member of the BDA and therefore any stipulation in the master plan prepared by BDA is not binding upon the Department of Revenue. Therefore, the reliance placed by the learned counsel for the petitioners on the judgment of ***Sobha Developer's*** case referred *supra* is of no consequence.

34. As a matter of fact, the petitioner in W.P.No.40299/2014 has mentioned in the writ petition that *"In fact there is a small portion of kharab land which the petitioner no.2 is attempting to get it regularized"*, meaning thereby that it knew about the existence of the kharab, as, even prior to the petitioner No.2 purchasing Sy.No.7 from its owner, the 'A' kharab land was regularized in favour of the owner. The very fact that the petitioner No.2 in W.P.No.40299/2014 has provided a drain within its property makes it more than evident that the kharab existed and was deducted towards the storm



water drain. The contention that the storm water drain was not shown in the master plan is inconsequential as once the land is vested in the State Government, unless it is shown that rights are created in respect of that land, no one including the petitioners can claim any right, title or interest over it even if a master plan does not reflect that.

35. The topography of the area which is evident from the hydrological report conducted by the Expert Committee shows that four drains carry the storm water from the catchment area in Gubbalala village into the Subramanyapura lake. The drain-I has the catchment area around Mantri Tranquil spread over 0.165 sq.k.m., drain-II has a catchment area of 0.743 sq. k.m. and they merge into drain-III which has a catchment area of 0.57 sq. k.m. which meets drain-IV which has catchment area of 0.954 sq.k.m. Drain-I is in existence and runs through the property of Mantri Tranquil and measures 1.80 meters x 1.70 meters, while drain-II is closed by Mantri Tranquil. The required drain for these two drains is 2.00 meters x



1.95 meters and 4.00 meters x 2.50 meters. As regards drain-III, it measures 1.80 meters x 1.50 meters and the required drain size is 3.50 meters x 2.40 meters and drain-IV measuring 1.80 meters x 1.90 meters as against the required drain size of 4.50 meters x 2.50 meters. Assuming that 3.62 cumec of water in drain-I and 14.66 cumec of water in drain-II is blocked or is not allowed to flow, the water will stagnate in the surrounding areas leading to loose soil, damaging foundation and a host of other problems including sanitation affecting the health of the residents.

36. Yet another common sense fact that we cannot ignore is that regardless whether the storm water drain is mentioned in the CDP or not, when it rains, water flows from the higher level to the lower level and when there is a deluge, it takes with it, whatever comes in its way or inundate other low lying areas. Water is the elixir of all life on this planet and human beings blessed with wisdom have devised means to capture and store it for proper use



by forming tanks at a lower level so that the water from the higher level drains into it. In order to ensure that the arteries of this water bodies are kept sacrosanct, the British excluded them from assessment and gave us a blue print etched in stone so that they are maintained for posterity. We have to thank the British for the topographical survey and the great Trigonometrical survey of India which they did on donkeys back using basic equipments and giving us a document that continues to be a beacon for survey and revenue administration for over a hundred years. It is unfortunate that despite the technological advancement, we are unable to conduct a second general survey in the State of Karnataka. Following the demarcation of these public utilities, the legislature has declared in Section 67 of the Act, 1964 that they shall vest in the State absolutely and free from all encumbrances. When an area is included within the limits of a planning authority and master plan is to be introduced for such area, the reference point is always a village map



and nothing else. The proposed development should be around what exists and not by damaging or systematically excluding public utilities, so as to confer largesse on the owner of the property over which such public utilities exist.

37. Every Bengalurean was of the impression that there can be no flooding in the city of Bengaluru, though several low lying areas where the poor lived were frequently inundated. The administration woke up only when an upscale/rich locality where the rich and famous lived came under water and several vehicles worth hundreds of crores were found floating. In the instant case, this Court has conducted several exercises to find out whether there is encroachment over the storm water drain and every exercise has shown that there is encroachment.

38. A map of the area placed on record by the Expert Committee constituted by the State Government as well as the building plan filed by the petitioners, go to show, that if the storm water drain as it ran through



Sy.Nos.7 and 11 is preserved, then it would be difficult for the owners of the respective properties to develop them as it would cut through their properties and they may have to set apart the applicable buffer. The fact that the course of these drains have been altered is evident from the report of the expert committee. While the Mantri Tranquil has pushed the drain-I to the edge of its property, it has closed off drain-II. Therefore, the involvement of erstwhile owners of Sy.No.7 in effacing the storm water drain from the master plan in collusion with the officials of the BDA cannot be ruled out.

39. Having regard to the fact that the State Government, Municipal Corporation as well as this Court have taken all possible steps to find out whether the storm water drains can be restored without causing any damage to the construction put up, this Court is of the opinion that the Municipal Corporation need not consider the reply submitted by the petitioners to the notices which are impugned in these petitions.



40. Having regard to the fact that Subramanyapura lake is a live lake and Gubbalala village has a catchment area of nearly a square k.m., in the interest of the other general public residing in the area, this Court considers it appropriate to provide an opportunity to the petitioners herein to suggest an alternative course for restoration of the storm water drains. Failing this, the Municipal Corporation is directed to proceed to remove the constructions put up over the storm water drains and restore them, and if possible by erecting RCC retaining walls of the drain for the desired size.

ORDER

(i) The writ petitions are ***dismissed.***

(ii) In view of the report of the Expert Committee, the reply filed by the petitioners to the notices issued by the BBMP, which are impugned herein, are rejected.



(iii) The BBMP is directed to re-inspect the drains on 28.02.2026 and if the petitioners provide an alternative course, the BBMP shall reconsider diverting the course of the drains and ensure free flow of water into Subramanyapura lake. While doing so, the BBMP shall also ensure that adjacent land owners are not disturbed and no inconvenience is caused to them.

(iv) It is made clear that if the petitioners do not provide an alternative course for the drains to be laid within 15 days from 28.02.2026, the BBMP shall take necessary measures to restore the drains as per the report of the Expert Committee constituted by the State Government.

Sd/-
(R. NATARAJ)
JUDGE