

Sl.No.	Description of Paper Presented
1	On the Memo of... WRIT PETITION
2	On the Memo of.....
3	On Vakalath...
4	On Certified Copies
5	On I.A.No.....for
6	On Process Fee...
7	On Copy Application
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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. No.

/2019 (PIL)

BETWEEN:

Cubban Park Walkers Association
(registered as a society under the Karnataka
Societies Registration Act, 1960)
No. 19, 1st floor
18th Cross
Cubbonpet
Bangalore – 560 002
(Represented by its President
Sri. S. Umesh)

... PETITIONER

AND

1. The State of Karnataka
(Represented by its Secretary
Government Department)

1. The Petitioner is an association registered under the Karnataka Societies Registration Act, 1960 having its office at No. 19, 1st floor, 18th Cross, Cubbonpet, Bangalore - 560 002 and is represented by its President Sri. S. Umesh in the present proceedings. A Copy of renewed Registration Certificate dated 04.05.2019 issued by the competent authority is enclosed as **ANNEXURE - A**. The President of the Association is a practising advocate and an Environmentalist.
2. The Petitioner Association is extensively involved in preservation and protection of the historical place of Bangalore i.e., Cubbon Park for the past 7 years. In this regard, the Petitioner has initiated several proactive steps to preserve the heritage value of the cubbon park. The Petitioner has been instrumental in moving the Hon'ble Lokayuktha in the year 2014 for ensuring scientific survey of Cubbon Park area and prevention of illegal constructions/encroachments within the Cubbon Park area.

As per the website maintained by the Bangalore Urban District administration:

- i) The Cubbon Park, officially known as Sri. Chamarajendra Park is a historic park, located in the heart of the city in the Central Administrative Area. The park provides sylvan surroundings to the State Legislature building- the Vidhana Soudha, the High Court Buildings - the Attara Kacheri and a number of other organizations located along the periphery and within the park which constitute the Central Administrative Area.
- ii) The Cubbon Park has a history of over 100 years. It was established in the year 1870 by Sri John Meade, the then acting Commissioner of Mysore. The vast landscape of the park was conceived by Major General Richard Sankey, the then Chief Engineer of the State. As a mark of honor to Sri John Meade, the park was initially named as "Meade's Park" and subsequently it was called the Cubbon Park. Since the inception of the park, it was developed and improved by adding new structures and features. In the year 1927, the park was officially renamed as "Sri.

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of Sri. Krishnaraja Wodeyar's rule in Mysore State, Cubbon Park is under the control of the Department of Horticulture. The Deputy Director of Horticulture (Cubbon Park) is responsible for the administration and maintenance of the park.

4. All the Respondents are entrusted with a solemn duty to preserve and protect the aforesaid heritage place. The Respondent No. 4 is a planning authority constituted under the Bangalore Development Authority Act, 1976 and is required to operate within the frame work of Bangalore Development Authority Act, 1976 and the zoning regulations published under the Karnataka Town and Country Planning Act, 1961. The Respondent No. 5 is constituted under the Karnataka Municipal Corporations Act, 1976 and is required to discharge the functions under the said statute. The Respondent No. 5 is vested with the power to grant approval for any building situated in the city of Bangalore, including any building to be constructed in the area falling within Cubbon park.

5. The Division Bench of this Hon'ble Court way back in the year 2001 while disposing off W.P. No. 32232/1998 & connected matters in the matter of Sri. G.K. Govinda Rao Vs State of Karnataka and others vide order /judgement dated 13.08.2001 has held as follows:

"An apprehension has been expressed by the learned counsel for the petitioners that in future, there could be further notifications deleting some more areas and resorting to constructions over such areas and in course of time there is every likelihood of the Cubbon park area being diluted. It is submitted, that that preservation of lung space in a busy city and maintenance of parks is essential for the health and recreation of the public and there is no guarantee that the Government will not resort to a subterfuge to overcome the provisions of Government parks (Preservation) Act. Sharing the concern of the petitioners for preservation of as much open space as possible for preservation and the need to develop the parks, we direct that no further construction (other than referred supra) shall be made covering the open area within the limits of the park specified under the Notification of 1998 without obtaining the clearances from this Court for proceeding with fresh constructions".

[Signature]

[Signature]

other authorities in the State of Karnataka authorized to sanction the plan for construction of the buildings shall not sanction any plan for construction contrary to the sanctioned scheme/approved layout plan. The sites reserved for parks, playgrounds or for providing other amenities shall be used strictly for the purpose for which they were reserved. Be it noted that violation of any of these directions by the authorities will be viewed strictly." [Para 42]

A Copy of Judgement dated 26.08.2019 is enclosed as **ANNEXURE – E.**

10. The consequences of the demolition of the existing building and putting up new building results in shrinking of the lung space and is causing ecological imbalance. The entire action is contrary to the division bench judgement in G.K. Govinda Rao's case and the Supreme Court judgement in M/ s Vinayak House Building Co-operative Society Vs The State of Karnataka.
11. The Government Order dated 23.09.2019 contravenes the provisions contained in THE KARNATAKA GOVERNMENT PARKS (PRESERVATION) ACT, 1975.
12. The Government Order dated 23.09.2019 contravenes the provisions contained in THE KARNATAKA PARKS, PLAY-FIELDS AND OPEN SPACES (PRESERVATION AND REGULATION) ACT, 1985.
13. Hence, the Petitioner is constrained to approach this Hon'ble Court in public interest on the following amongst other

GROUNDS

14. That, the proposed action to demolish the existing building (Old Election Commissioner's office) situated within Cubbon Park and to put up a multi storied (7 floor) building violates the right to clean air to which a citizen is entitled which is part of the right to life guaranteed article 21 of the Constitution of India.
15. That, the action of the State Government in granting approval for the demolition of the existing building and putting up a multi storied building is contrary to the Division Bench Judgement in G.K. Govinda rao 's case and Supreme Court judgement in M/ s Vinayak House Building Co-operative Society Vs The State of Karnataka.
16. That, the State Government has in a hurry and in the absence of a environment impact assessment study, the action in granting administrative approval cannot be said to be a bonafide

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Govindarao's case and also contrary to the apex court judgement in *M/s Vinayak House Building Co-operative Society Vs The State of Karnataka*. Hence, it is just and necessary to grant appropriate interim relief which will serve the cause of public interest.

23.

PRAYER

Wherefore, it is humbly prayed that this Hon'ble Court be pleased to -

- i) Quash Government order bearing No. PWD 33 BJP 2019 dated 23.09.2019 [Annexure-C] while declaring the same to be arbitrary, illegal and non-est in law and grant all consequential reliefs thereto.
- ii) Issue a writ of mandamus directing all the Respondents to strictly implement the order dated 13.08.2001 passed by the Division Bench in W.P.No. 32232/1998 [Annexure - B] in G.K. Govinda Rao's case as well as the judgement of the Apex Court dated 26.08.2019 in *M/s Vinayak House Building Co-operative Society Vs The State of Karnataka* [Annexure - E].
- iii) Issue a writ of mandamus directing the Respondents to ensure strict compliance with the provisions contained in THE KARNATAKA GOVERNMENT PARKS (PRESERVATION) ACT, 1975.
- iv) Issue a writ of mandamus directing Respondents to ensure strict compliance with the provisions contained in THE KARNATAKA PARKS, PLAY-FIELDS AND OPEN SPACES (PRESERVATION AND REGULATION) ACT, 1985.
- v) Grant such other and further relief/s as may be found appropriate in the interest of justice and equity.

INTERIM PRAYER

Pending notice and appearance of the Respondents, it is humbly prayed that this Hon'ble Court be pleased to grant an ex-parte ad interim order :

- i) Staying the operation and implementation of Government Order bearing No. PWD 33 BJP 2019 dated 23.09.2019 [Annexure-C] in the interest of justice and equity.

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deliberations with the stake holders is going to have a colossal impact on the right of the Bangalore citizens to have a ecologically conductive environment. The project has been conceived by the State Government without following the applicable laws including the Zonal regulations in force and the judidical dicta having the force of law. "The new plan contemplates construction of the total constructed area of 4,924 square metres, including two basements and seven floors with

exercise of power in public interest. The State Government ought to have obtained the necessary permission from the Division Bench of this Hon'ble Court before taking any steps in the matter.

17. That, it is a matter of record that no permission is sought by the State Government by moving an application in G.K. Govinda rao's case before the Division Bench. Hence, the administrative approval granted by the State Government is vide order dated 23.09.2019 is illegal and non est in law.
18. That, the order dated 23.09.2019 passed by the State Government has not considered various vital aspects of the case and has rushed in a hurry to accord approval. Before, passing the order the State Government ought to have consulted the various stake holders including conducting of the environment impact assessment study. The order is bad in law and non est.
19. That, the Government Order dated 23.09.2019 contravenes the provisions contained in THE KARNATAKA GOVERNMENT PARKS (PRESERVATION) ACT, 1975.
20. That the Government Order dated 23.09.2019 contravenes the provisions contained in THE KARNATAKA PARKS, PLAY-FIELDS AND OPEN SPACES (PRESERVATION AND REGULATION) ACT, 1985.
21. The Petitioner has not filed any writ petition on the same cause of action and no other proceedings are pending.

GROUNDS FOR INTERIM PRAYER

22. That, the action of the State Government in granting approval for the new building to come up has serious adverse environmental impact and security issues to the near by buildings. The public interest will suffer if the Respondents were to be allowed to proceed further in the matter. The balance of convenience is in favour of the Petitioner. No prejudice will be caused if the proposed project is put on hold during the pendency of the present writ petition. The action of the State Government is contrary to the Division Bench judgement in G.K.

S. J. Juresh

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