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LEGAL REPRESENTATION

Email/Regd. Post Ack. Due

Assistant Conservator of Forests & Tree Officer
Bruhat Bengaluru Mahanagara Palike (BBMP)
Sub Division-1,
17th Floor, P.U. Building,
M.G. Road, Bangalore.
Email: acsubdivision1bbmp@gmail.com
Cell: 9480685381

9th February 2017

Reg.: Public Notice No. ACF/SD-1/PR/45/2016-17 dated 07 February, 2017 issued by your office with the proposal to fell 112 trees in Jayamahar Road, Bangalore.

Sir,

A public notice was issued vide order no. ACF/SD-1/PR/45/2016-17 dated 07 February, 2017 by your office, and the same was also advertised in major news papers, stating that the "removal of 112 numbers of trees of different species existing in road side of Palace compound which are coming in the way of widening Jayamahar road", on the basis that an "on spot inspection" was already undertaken by you and that "it was found that removal of these trees is very much necessary for taking up the work of widening the Jayamahar road". Thereby, you have claimed that in conformance with Section 8 (iii) of the Karnataka Preservation of Tree Act, 1976 (as amended during 2014) you are so notifying the public, by way of aforesaid advertisement, seeking any objections or any other valid reason through email or phone and within a period of ten days. A copy of the public notice dated 07 February, 2017 is annexed herewith and marked as **ANNEXURE A**.

This public notice is *void ab initio* and for the following reasons:

- 1) There is no Section 8 (iii) in the Karnataka Preservation of Trees Act, 1976 (as amended in 2014), hereinafter referred to as KPTA, as you cite in the aforesaid Public Notice/Advertisement. Such a grave error committed is indicative of the lackadaisical manner in which you have approached a matter of serious public concern, involving the fate of tens of trees which are irreplaceable, and also indicative of the active disregard to inform the public at large of the specific nature of law and the power that it bestows upon you.
- 2) The period of ten days inviting public comments, provided by you per your notice, is also without any authority in law. There is no such mandate vested in the office of the Asst Conservator of Forests in the KPTA or its Rules. Till such time the Government of Karnataka, through an appropriate Amendment to the aforesaid KPTA or its Rules, provides you with



such powers, it follows that you cannot make up your own rules and procedures in matters of such serious and widespread public concern and of great importance to present and future generations.

- 3) In an Affidavit submitted to the Hon'ble High Court of Karnataka in W.P. No. 7288/2011 (*Suo Moto vs. Government of Karnataka and ors.*)¹ on 23rd June, 2011 by Mr. Purushotham, KFS, then Assistant Conservator Forests of BBMP, a categorical statement was made that ".....road widening is a part of development activity and such activity shall be in accordance with the provisions of the Karnataka Town and Country Planning Act" (para. 4, emphasis supplied). On the basis of this Affidavit, amongst others, the Hon'ble High Court was pleased to pass a final order in this matter in which the Principal Bench directed as follows:

"we deem it necessary to direct that felling of trees would be undertaken as an exception rather than a rule, and further that the tree officer and tree authority would fully satisfy themselves and certify that all other alternatives have been considered regarding the feasibility of the felling of trees. If any objections are received from the public, due consideration shall be given by assigning reasons. The tree officer and tree authority shall also consider the feasibility of transplantation of trees rather than felling of the same. Early action may be taken on implementation a web-based system wherein all the application for tree felling and the decision taken thereon be made available to the public in a transparent manner."

Nothing in your Public Notice/Advertisement demonstrates compliance with this direction.

- 4) The question of complying with the provisions of the KPTA, 1976 and taking any action regarding the felling of trees, arises only after there is demonstrated, transparent, accountable and comprehensive compliance with the provisions of the KTCPA, 1961 in regard to such proposals as road widening by the project implementing agencies. This requirement has also been categorically affirmed by the Hon'ble High Court of Karnataka in W.P. No. 13241/2009 (*Environment Support Group and ors v. Bangalore Metro Rail Corporation Ltd. and ors*) in the following manner:

- "if a direction is issued to the State Government, as also, the Bangalore Development Authority to ensure that in future, in case they desire to change the land use, as has been depicted in the master plan, the competent authority shall follow the procedural mandate depicted in Section 14-A of the Karnataka Town and Country Planning Act, 1961 And likewise in jcase of making a town planning scheme, the State Government, as also the Bangalore Development Authority shall comply with the procedure contained in Sections 29, 30, 31, 32 and 34 of the Karnataka Town and Country

1 This is a matter that was taken *Suo moto* by the Hon'ble High Court of Karnataka, in response to a letter written by Justice Mr. D. V. Shylendra Kumar, then a Judge of the High Court, who had raised serious concerns over the proposed felling of trees on Jayamaharoads and such others roads of Bangalore, in his letter dated 6th January 2011 to the Registrar General of Karnataka. Justice Kumar had also said in his letter that "it is also rumoured that there is a tree mafia in operation which is controlling the authorities of the Bangalore Mahanagara Palike and other public authorities for ensuring that well grown, matured and developed trees in Bangalore City are all chopped off With the administrators having the responsibility to take care and protect the trees having miserably failed and statutory provisions being practised more in breach, it is high time that such matters are not overlooked by judiciary...."



Planning Act, 1961".

- "Mr. Basavaraj Kareddy, learned Prl. Government Advocate, who represented the State and Mr. K. Krishna, learned counsel, who on our asking accepts notice on behalf of the Bangalore Development Authority, agree, that the provisions referred to hereinabove, shall be complied with, without any deviation whatsoever".
- "(n)eedless to mention, that in case of violation of direction issued by this Court, based on statement made to this Court, the concerned officer/official shall be held responsible, for his having disobeyed the order passed by this Court, as also, the prescribed mandate of law".

In the instance case of widening Jayamahhal Road, there is absolutely no compliance with the provisions of KTCPA, 1961 and thus no action can be initiated under KPTA, 1976 till such time there is comprehensive compliance by project implementing agencies with all the provisions of the KTCPA.

- 5) The absolute necessity of complying with the provisions of KTCPA, 1961 in regard to road development or widening, has also been reaffirmed in the Additional Affidavit filed by Additional Chief Secretary and Principal Secretary, Public Works Department, Government of Karnataka before the Hon'ble Supreme Court of India in Contempt Petition (Civil) No. 96/2007 (*Nandi Infrastructure Corridor Enterprises Ltd. v. P.B. Mahishi & ors.*). In this Affidavit, dated 26th February, 2016, one of the most senior officers of the Government of Karnataka has submitted as follows to the Supreme Court:

"Without prejudice to anything averred herein, the Respondent states that, Section 26 of the Karnataka Town and Country Planning Act, 1961 in particular, and Chapter V of the said Act in general, contemplates a scheme made by the Planning Authority for the purpose of implementing the proposals in the Master Plan published by the State Government. The ODP becomes an implementable Master Plan only in the wake of such a scheme made by the State Government, and in the process of implementation of this scheme, the Master Plan may be subjected to change in accordance with ground-level requirements. In the instant case, such a scheme has not come into existence yet." (para. 34, emphasis supplied)

In the instant case of widening of the Jayamahhal Road, there is no Scheme yet formulated to implement the said proposal of road widening as anticipated in the Revised Master Plan – 2015. A copy of this Affidavit is annexed herewith and marked as **ANNEXURE B**.

- 6) From your aforesaid advertisement/public notice, issued at great public expense, there appears to be no evidence whatsoever of compliance with the provisions of the KTCPA Act by the agencies proposing and implementing the road widening project. In particular, this amounts to serious violation of Sections 26, 29, 30, 31, 32 and 34 of the KTCPA, which, as has been directed by the Hon'ble High Court of Karnataka in the aforesaid order, will invite against officers involved action under Contempt of Court Act, 1971. To be clear, we wish to submit that merely indicating an intent to widen a road in the Revised Master Plan- 2015 of Bangalore does not mean and constitute that implementing agencies have the authority to proceed to implement the project of widening of the road until and unless they have formulated a scheme, prepared a budget and affected the necessary land use changes in a public and transparent manner (involving public comment period) as is indicated in Sec 26



and Chapter 5 of the KTCPA, 1961. This has been made absolutely clear in the aforesaid Judicial directions and the Affidavit submitted by the Government of Karnataka before the Hon'ble Supreme Court of India.

- 7) It follows, therefore, that till such time any agency which proposes to undertake any road widening or such other infrastructure projects is in comprehensive compliance with the KTCPA, 1961, there cannot be any application made seeking permission to fell trees before you under the KPTA, 1976. Even if such an application were made, you are law bound to reject the same *ab initio*. Therefore, the very act of conducting a survey to decide if these 112 trees on Jayamahar Road need to be felled, and then proceeding to argue in a Public Notice that they indeed need to be felled, are actions that comprehensively violative of the law and, in any case, amounts to a gross abuse of power, and exceeds your brief per the law and judicial directions.

Keeping the above in view, we urge you to immediately withdraw the aforesaid public notice as the same is in blatant violation of law and in contempt of court. We would like to submit that in the event that you fail to conform with the law and aforesaid judicial directions, and thus take action of withdrawing the Public Notice, due legal action will be initiated against you in Contempt of Court for having willfully disobeyed aforesaid Judicial directions, mandate of the law and also the direction implicit in the aforesaid Affidavit filed by the Addl. Chief Secretary of Government of Karnataka before the Hon'ble Supreme Court of India.

Yours truly,

Leo F. Saldanha
Coordinator/Trustee

Harsh Vardhan Bhati

Legal Research Associate

Environment Support Group



Cc.:

1. Hon'ble Chief Minister and Chairman, Bangalore Metropolitan Planning Authority
2. Hon'ble Minister for Bangalore Development and Town Planning
3. Hon'ble Minister of Forests, Ecology and Environment, GOK
4. Hon'ble Minister of Law, Justice, and Human Rights, GOK
5. Hon'ble Minister for Urban Development, GOK
6. Elected Representatives from Bangalore to the Parliament, Karnataka Legislature and Bruhat Bengaluru Mahanagara Palike
7. Addl. Chief Secretary and Principal Secretary, Public Works Department, GOK
8. Addl. Chief Secretary and Principal Secretary, Dept. of Forests, Ecology and Environment, GOK



9. Addl. Chief Secretary and Principal Secretary, Dept. of Urban Development, GOK
10. Principal Chief Conservator of Forests, Karnataka Forest Department
11. Commissioner, Bruhat Bengaluru Mahanagara Palike
12. Commissioner, Bangalore Development Authority
13. Media and the Public