

KARNATAKA LOKAYUKTA, BENGALURU

No:

25-10-2021

ORDER

In 'Deccan Herald' dated 13.09.2021, a news item with the heading "**At Jarakabande Kaval, lake disappears from face of earth**" has been published. Instead of repeating the same, it is useful to extract the said news item, which reads as hereunder:

At Jarakabande Kaval, lake disappears from face of earth; Officials dole out Rs.100-cr property to private players;

Jarakabande lake, once the refuge of animals in the eponymous reserve forest situated in northern Bengaluru, does not exist anymore.

And the credit for this goes to the Revenue Department's ingenious officials who split the six-acre lake land valued at nearly Rs.100 Crores into four parts and doled it out to various individuals.

In the past three years, Forest Department Officials made representations

to several government agencies, including the Karnataka Tank Conservation and Development Authority (KTCDA) and the Revenue Department, to restore the lake land but to no avail.

In 1988, the government handed over 115 city lakes to the Forest Department but took back all except five in 2010. Jarakabande Lake, spread over five acres and 36 guntas on the edge of Jarakabande Reserve Forest, was among the five lakes whose custodianship was not taken out of the department.

The lake was part of survey number 101, which is spread over 59 acres and 25 guntas, in JB Kaval, Yelahanka. In 2013, officials said, revenue (RTC) records were 'tampered with' when the state government and the Forest Department were omitted from the mutation records as the owner and custodian respectively, in columns 9 and 11.

As per the revenue act, no lake land can be given to private parties. And it should not be used for any purpose other than storing water or as a wetland, a forest

officer told DH and called for punishing the revenue officer responsible for the scam under section 31 of the Karnataka Tank Conservation and Development Authority.

Another official who dug up the history of Jarakabande lake said it was a classic case of land grab. There are many such cases in south Bengaluru. Revenue records were changed in a fraudulent manner, and the lake bed or buffer zone was turned into a housing layout with luxury plots, he said.

A senior official in the KTCDA said they had been writing to the Bengaluru Urban Deputy Commissioner for the last two years requesting that the records be set right.

We raised the issue at a meeting of the state level apex committee as well. The committee has directed the district revenue officials to set the record straight, the official told this news paper.

Bengaluru Urban Deputy Commissioner J Manjunath who has launched encroachment clearance drives in recent times, said that the lake land had been marked as 'B' kharab in private land.

“The issue has to be examined in detail and only then can we take action. I have directed the Tahasildar to look into it, he said.”

2. The news item extracted above indicates that Jarakabande Kaval lake is situated in the land bearing Sy.No. 101 measuring 5 Acres 36 guntas of JB Kaval, Yelahanka, Bengaluru Urban District. The news item further indicates that in 1988, the Government had handed over the lake in question to the Forest Department, which is the custodian of the lake. However, in 2013 the RTC extract of the lake in question was tampered with by omitting the State Government and Forest Department from the mutation records as the owner and custodian. Further, it is highlighted in the news item that the ingenious officials of revenue department have split the 6 Acres of lake area in to four parts and doled it out to various individuals and thereby causing disappearance of the lake.

3. It is needless to point out that it is impermissible to give any lake area to the private parties and it should not be used for any purpose other than for storing of water. Protection of lakes is also constitutional duty of every citizen of the State. However, as observed earlier, the news item extracted above indicates that at the behest of the officials of revenue department, who have duty and responsibility to protect the lake in question, the revenue records have been tampered with by omitting the name of State Government and Forest Department as owners and split the lake area into four parts and gave it to various private individuals.

4. The Hon'ble Supreme Court in the case ***Jitendra Singh V/s. Ministry of Environment and others (2019 SCC online SC 1510)*** has emphasized the importance of protecting the lakes for a proper and healthy environment which

enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution of India. In this connection, it is relevant to extract the observation made by the Hon'ble Supreme Court at Paragraph No. 15, 16, 18, 19 and 20, which reads as follows:

"15. In Hinch Lal Tiwari v. Kamala Devi², this Court settled that 'ponds' were a public utility meant for common use and held that they could not be allotted or commercialised. It had refused to give any weight to similar arguments of the pond having become levelled, with merely some portion getting covered during rainy season by water. Importantly, it emphasised that:

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites."

16. This Court reiterated in *Jagpal Singh v. State of Punjab*³ and noted that since time immemorial, certain common lands had vested in village communities for

collective benefit. Except in exceptional circumstances when used exclusively for the downtrodden, these lands were inalienable. It was observed that such protections, however, remained on paper, and since Independence powerful people and a corrupt system had appropriated these lands for personal aggrandisement. Pointing out the harms in allowing such misappropriation, the Court noted an urgent public interest in stopping such misdeeds. Further, various directions were issued for eviction of illegal occupants and restoration of the common land to villagers. **It was explicitly specified that “long duration of such illegal occupation or huge expenditure in making constructions thereon” cannot be a “justification for condoning this illegal act or for regularising the illegal possession”.**

18. Even otherwise, the action of the respondent-authorities contravenes their Constitutional obligations. Article 48-A of the Constitution casts a duty on the State to “*endeavour to protect and improve the environment and to safeguard the forests and wild life of the country*”, and Article 51-A(g) expects every citizen to perform his fundamental duty to “*protect and improve the natural environment*”. A perusal of our Constitutional scheme and judicial development of environmental law further shows that all persons have a right to a healthy environment. It would be gainsaid that the State is nothing but a collective embodiment of citizens, and hence collective duties of citizens can constructively be imposed on the State. Such an interpretation of the Constitution has also been adopted in *MC Mehta v. Union of India*⁴ wherein this Court mandated the State to ensure mandatory environmental education to all school students in pursuance of the fundamental duties enshrined in Article 51-A(g):

“24. Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment which is considered to be one of the fundamental duties under the Constitution (vide Clause (g) of Article 51A of the Constitution) we are of the view that it is the duty of the Central Government to direct all the educational institutions throughout India

to teach atleast for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes. The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India.”

19. There remains therefore no doubt that it is the responsibility of the respondents to ensure the protection and integrity of the environment, especially one which is a source for livelihood for rural population and life for local flora and fauna.

20. Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. **Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians.** Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.”

5. In the light of what is stated, the authorities who are entrusted with the responsibility of protecting the lakes are required to take immediate remedial measures to preserve and rejuvenate the lake in question.

6. The object of the Karnataka Lokayukta Act 1984 (hereinafter referred to as 'K.L. Act') is to redress the grievance of the public as a consequence of mal-administration and also to prevent mal-administration in the State Administration. The failure on the part of the concerned authorities of the State in protecting the lake in question, in my considered view falls within the meaning of 'mal-administration' under Sec. 2(10) of the K.L. Act.

7. Therefore, I am of the view that it is desirable for me to consider the news item published in 'Deccan Herald' as source material to exercise the power conferred on me under Sec. 7(1)(b) and 9(3)(a) of the K.L. Act. Accordingly, I exercise my suo-moto power and the office is directed to register this proceedings as suo-moto proceeding.

8. With a view to examine the issues raised in the news item referred to above, I am of the view, that it is necessary to implead the officers mentioned herein below as parties/respondents to this proceeding and issue notice to them and call for comments from them.

1.	The Deputy Commissioner, Bengaluru Urban District, Bengaluru.
2.	The Deputy Conservator of Forests, Forest Department, Bengaluru Urban Division, Aranya Bhavana Annexue Building, 18 th Cross, Malleshwaram, Bengaluru.
3.	The Chief Executive Officer, Lake Conservation and Development Authority, 2 nd Floor, Parisara Bhavana, Church Street, Bengaluru.
4.	The Member Secretary, KSPCB, Parisara Bhavana, Church Street, Bengaluru.

5.	The Chief Engineer (Lakes), BBMP, Bengaluru.
6.	The Executive Engineer, BWSSB, Yelahanka Division, Bengaluru.
7.	The Tahasildar, Yelahanka Taluk, Bengaluru.

9. The Officers/Officials referred to above are directed to examine the issues raised in the news item extracted above and take such other steps to protect the lake in question. They are given six weeks time to submit their report/comments i.e., on or before 06.12.2021.

10. However, it is needless to point out that pending submission of report/comments, it is open to the authorities concerned to redress the issues highlighted in the news item in accordance with law.

11. Communicate this order to the authorities referred to above along with the copy of news item published in 'Deccan Herald'. The copy of this order may also be communicated to Sri. Chiranjeevi, Kulkarni, News Reporter, who has published the news item in 'Deccan Herald', Bengaluru to assist this authority in conducting the investigation, if he is desirous.

List this matter on 06.12.2021.

Sd/-
(Justice P. Vishwanatha Shetty),
Lokayukta,
Karnataka State.

GAK*

12) ARLO-4 (Complaints Section)}