

Daily Order

Judge Name	Case No/Year	Date of Order	Daily Order
CHIEF JUSTICE AND ASHOK S.KINAGI	WP 38401/2014	04/03/2020	<p>1. The first issue is regarding implementation of directions issued by this Court in W.P.No.817 of 2008 by judgment and order dated 11th April 2012.</p> <p>2. We have carefully perused the affidavit filed on behalf of the State dealing with the compliance.</p> <p>3. After having perused the said affidavit dated 13th February, 2020 of Sri.N.Manjunath Prasad, Principal Secretary to the Government, Revenue Department, M.S.Building, Bengaluru, we find that It is an affidavit reporting non-compliance with the directions issued eight years back vide order dated 11th April 2012 in W.P.No.817/2008. All the committees as contemplated by the said judgment and order have not been constituted. The committees so constituted have hardly held meetings. Even the Apex Committee has held only five meetings. Though the Apex Committee is empowered to entertain complaints and issue directions, the very fact that the Apex Committee exists and is entitled to entertain grievances at various levels is not made known to the members of the public. As a result of failure to constitute committees, there is no proper survey of lakes and tanks in the entire State of Karnataka as directed vide order dated 11th April 2012 in the writ petition. A direction was issued to conduct survey by demarcating boundaries and to make proper fencing. However, such survey in terms of the order of this Court has not been carried out at all for the last about eight years.</p> <p>4. The data of existing and disappeared lakes which is placed on record comes from the following sources :</p> <p>1) Remote Sensing Application Centre (data of Bengaluru);</p>

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			<p>2) The Survey Settlement and Land Records Department ;</p> <p>3) Karnataka Public Lands Corporation Ltd.;</p> <p>4) Minor Irrigation Department;</p> <p>5) RTCs and village records;</p> <p>6) Laxman Rao Report;</p> <p>7) Justice N.K.Patil Report</p> <p>8) EMPRI Lake Survey</p> <p>5. Barring few exceptions, the data collected from these entities does not tally and there is a large variance. Therefore, it is a matter of great importance that the directions issued way back in the year 2012 to conduct survey of all lakes and tanks are scrupulously implemented. The State Government shall ensure that all concerned Committees are constituted within a period of one month from today and a direction is issued to all the Committees to complete the work of survey as directed under the order dated 11th April 2012 within the time bound programme fixed by the State Government. All the Committees shall be provided with a soft copy of the data collected from the aforesaid eight sources. It is obvious that on the basis of the data furnished by the aforesaid entities as well as RTCs, village records and other relevant documents, the data of the lakes which have disappeared with passage of time shall also be collected by the Committees. The State shall fix a time bound programme for completing the task. The State shall also issue orders to comply with the directions in the judgment and order dated 11th April 2012 in W.P.No.817 of 2008.</p>

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			<p data-bbox="644 199 1477 645">6. Another important task which remains is of removal of unauthorized constructions within 30 meters buffer zone around the lakes. This exercise will have to be immediately undertaken after the survey of lakes. In fact, the District Level Committees shall ensure that as and when a survey of an individual lake is completed, appropriate authorities take action to remove unauthorized constructions within 30 meters buffer zone. Thereafter, the action as contemplated in clauses (3) (4) and 5 of paragraph 50 of the judgment and order will have to be taken.</p> <p data-bbox="644 869 1477 1234">7. We direct the State Government to give wide publicity to existence of the Apex Committee and the fact that the Apex Committee is empowered to deal with all the complaints and to issue necessary directions to the concerned Committees for proper maintenance and development of lakes. Further, the mode of making complaints and the manner in which the complaints shall be entertained shall also be published while giving publicity to the existence of Apex Committee.</p> <p data-bbox="644 1458 1477 1861">8. As stated earlier, the affidavit of Sri.N.Manjunath Prasad, the Principal Secretary to the Government, Revenue Department shows complete non-compliance with the directions in the order dated 12th April 2012. In view the said non-compliance, in fact, today this Court would have been justified in initiating contempt action against the State Government. However, today we are refraining from passing such order with the hope that before the next date, substantial compliance will be made by the State Government.</p> <p data-bbox="644 2085 1477 2152">9. The affidavit of the State Government brings on record another disturbing feature regarding the memorandum of</p>

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			<p>understanding executed by the State Government with Corporate Entities as per the draft annexed on pages 118 onwards. The draft indicates that the State is virtually parting with the lakes to private Corporate Entities.</p> <p>10. We direct the State Government to place on record along with the affidavit the copies of such agreements already executed. The issue of legality of the agreements will have to be considered. Prima facie, it appears to us that by the execution of the said agreements, the State wants to shift its burden of maintaining the lakes to the private Corporate Entities. Unless the legality of such agreements is examined, we cannot permit the State Government to execute such agreements. Therefore, we direct that till further orders are passed, the State Government shall not execute any such MOU with any Corporate Entity. However, this order will not prevent the State Government from taking funds from the Corporate Entities for rejuvenation of lakes.</p> <p>11. We direct the State Government to file an affidavit on or before 17th April 2020 setting out further steps taken as directed by this Court in W.P.No.817/2008. However, while filing the affidavit, the State Government will have to justify the stand taken by it that it intends to execute MOUs with Corporate Entities in the form which is available from page 118 onwards of the affidavit filed by it.</p> <p>12. Now, coming to the compliance affidavits filed by BBMP, it is stated that out of 205 lakes which includes 38 lakes which has been recently transferred to BMMP on 11th December 2013, survey of 116 lakes have been carried out.</p>

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			<p data-bbox="644 282 1474 566">13. Learned AAG states that insofar as the lakes which are vesting in the State are concerned and which are handed over to BBMP, it is the obligation of the BBMP to remove the encroachments on the lake area. In response to the said submission, the learned Senior counsel for the BBMP states that the BBMP will take immediate steps for removal of illegal constructions in the lake areas.</p> <p data-bbox="644 786 1474 981">14. In view of the submissions made on behalf of the State Government, BBMP will have to take all possible steps to remove the encroachments on the lake area of the lakes handed over by the State Government to the BBMP.</p> <p data-bbox="644 1205 1474 1489">15. The National Environmental Research Institute (NEERI) has sought time to submit its report. We grant time to submit the report till 31st March 2020. As soon as the report is received from the NEERI, copies thereof shall be furnished to the State by the BBMP and to the parties to these writ petitions so that the report can be taken up for consideration on the next date.</p> <p data-bbox="644 1709 1474 1861">16. As report of NEERI is likely to be received by 31st March 2020, after the report is submitted, the directions already issued by this Court will have to be moulded in terms of the recommendations of NEERI.</p> <p data-bbox="644 2000 1474 2152">17. As stated in the affidavit of 12th February 2020, a survey of 160 lakes has been completed by the BBMP and survey of 45 lakes remains to be carried out. It is stated that a request has been made to the ADLR to</p>

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			<p>conduct survey. We direct the concerned ADLR to commence and conduct the survey of remaining 45 lakes within the maximum period of two months from today.</p> <p>18. As regards encroachments on the lakes which have been handed over to BBMP, the State Government and BBMP shall take joint action for removing such encroachments. Proceedings shall be immediately initiated to clear the encroachments. If encroachments are in the form of construction of structures, BBMP shall exercise powers under the Karnataka Municipal Corporations Act, 1976 for demolishing the structures.</p> <p>19. The progress made regarding removal of encroachments on the lakes within the jurisdiction of BBMP shall be reported to the Court both by the State and the BBMP by filing affidavits on or before 14th April 2020.</p> <p>20. Learned Senior Counsel appearing for the BBMP seeks modification of the directions issued by this Court regarding Subramanyapura lake and Begur lake. However, necessary opinion of the experts in this regard has not been placed on record by the BBMP. The BBMP can pray for modification only after reports of the experts is placed on record.</p> <p>21. We direct the BBMP to file reply to I.A.2 of 2020 filed by Citizen Action Group. This application shall be considered on the next date.</p> <p>22. As regards the directions issued on I.A.2 of 2019 in W.P.No.24768/2005, we extend the time granted to the</p>

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			<p>BBMP to file compliance affidavit by a further period of two weeks. It is made clear that thereafter no further extension will be granted. We permit the counsel for the petitioner in the said petition to file a memo for placing necessary facts on record.</p> <p>23. There is one more important aspect on which an affidavit has been filed by the BBMP on 12th February 2020. There is an inordinate delay on the part of the BBMP in framing the Solid Waste Management Bye-laws. A draft of the Bye-law was approved way back on 13th July 2019. It is reported that the final draft of the bye-law after considering the objections was placed before the Council of BBMP on 28th January 2020. But consideration of the same has been postponed. We direct that appropriate decision for approval of the final draft of the bye-laws shall be taken by BBMP Council in its next meeting.</p> <p>24. We may record here that framing of bye-laws has been inordinately delayed by the BBMP. This order shall be brought to the notice of the Council of BBMP by the Municipal Commissioner.</p> <p>25. For considering further compliance, the petition shall be listed on 20th April 2020 at 2.30 p.m.</p> <p>26. Learned AAG has placed on record a copy of the final report of the Technical Committee on three breached tanks within the BBMP limits containing suggestions for preventing such incident. The copies of the report shall be supplied to the parties to the petition.</p>

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			<p data-bbox="644 197 1479 568">27. The State Government will make its stand clear as regards the acceptance of the report of the Committee. From the report, it appears that large number of recommendations have been made by the Committee. The Committee has recorded that breaches in respect of all the three tanks were avoidable and the Committee has made suggestions from preventing such incidents happening in the future. These aspects will be considered on the next date of hearing.</p> <p data-bbox="644 698 1479 775">28. It will be open to the State Government to provide soft copies to all concerned.</p>

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