

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE BENCH, AT CHENNAI  
ORIGINAL APPLICATION NO. 14/2023**

**IN THE MATTER OF:**

BRIJESH KALAPPA

...PETITIONER

VERSUS

STATE OF KARNATAKA AND ANR

...RESPONDENTS

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**Filed By:**



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**Date: 24.08.2023**

**NATIONAL GREEN TRIBUNAL SOUTHERN  
ZONE BENCH, AT CHENNAI ORIGINAL  
APPLICATION NO. 14/2023**

**IN THE MATTER OF :**

BRIJESH KALAPPA

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**REPLY ON BEHALF OF RESPONDENT NO. 1 (HORTICULTURE  
DEPARTMENT, GOVERNMENT OF KARNATAKA)**

**MOST RESPECTFULLY SHOWETH :**

1. That the instant Original Application has been filed seeking a direction against felling of trees at the Balabrooie Guest House, Bengaluru.
2. It is submitted at the outset that all averments made in the Application are denied, unless specifically admitted by this Respondent.
3. It is submitted that this Respondent no;1 / **HORTICULTURE DEPARTMENT** is entrusted with the work of maintenance of lawns and trees situated within the premises of Balabrooie Guest House (*'the said guest house'*). There exists a Nursery inside the premises of the said guest house, which is taken care of by this Respondent. It is not authorized for pruning, shifting or cutting of any trees situated within the property mentioned by the Applicant.

*B. Kalappa*

4. It is submitted that, WP No. 17841/2018 was filed before the Hon'ble High Court of Karnataka at Bengaluru by one Sri Dattatraye. T Devare and the Bangalore Environmental Trust in 2018 in PIL on non-implementation of the Karnataka Preservation of Trees Act 1976.
5. It is submitted that the Hon'ble High Court in W.P.No. 17841/2018 by passing an order dated 23.04.2019 directed the Respondents to form an Expert Committee to examine whether trees proposed to be felled can be saved by adopting alternate methods. Further the Hon'ble High Court specifically directed as under;

*"The respondents are directed to constitute a Committee consisting of experts from the field of Environment, Science, Technology and concerned fields.*

*The Expert Committee shall examine whether trees proposed to be felled could be saved by adopting any method. After exhausting all methods, if it is found that it is impossible to save any tree, only then it shall be permissible to cut the trees.*

*It is expected of the Expert Committee to give its considered opinion to save the trees."*

True Copy of the order dated 23.04.2019 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP No. 17841/2018 is annexed herewith as **Annexure R-1**.

*B. J. ad*

6. In Pursuant to the above order of the Hon'ble High Court, Respondent No. 2 herein/BBMP has constituted an Expert Committee, which is taking care of matters pertaining to felling of trees within the limits of BBMP, including the said guest house which forms subject matter of this Application.
7. It is submitted that the Applicant having himself placed an order dated 07.10.2021 passed in WP No. 17841/2018 in the present Application, failed to apprise till this date Hon'ble Court regarding developments taken place thereafter.
8. It is submitted that the High Court of Karnataka by passing an order dated 17.01.2023 permitted the State Government to use Balabrooie Guest House to set up the proposed Constitutional Club a recreational facility for the legislators, after the undertaking given by the Government to the court that neither any structural changes would be made to the 100 year old building nor any trees in the premises would cut or damaged.
9. It is submitted that the Hon'ble Division Bench have passed an order while modifying the Interim Order passed on 07-10-2021 in which the court had directed the Authorities to maintain the status quo on the nature of the use of Balabrooie Guest House. Also, the court had earlier restrained the Government from handing over the Guest House to any organization feeling or trimming trees in an around the Guest House premises, without prior permission of the Court. However the Government filed and IA 15/2022 before the

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Hon'ble High Court seeking modification of the earlier Interim Order to permit it to carry out the maintenance works of the building and to make only aesthetic changes to the interiors for using the building for Constitutional Club instead of a Guest House.

10. It is submitted that the Government has also made it clear to the Court that only the interior aesthetic changes would be carried without making any structural changes to either the interiors or the exteriors of the existing building. Accepting the Government's undertaking the bench made it clear that no tree could be either cut or damaged in the premises and structural change to building would be permitted. Accordingly modified the order dated 7-10-2021 as sought under AI 15/2022 and the Respondents were directed to carry out maintenance of the building by improving the aesthetic of the interior of the Guest House without making any structural modification and no causing damage to the trees in respect of the Guest House area. And permitted the State to convert the Guest House into a "Constitutional Club" after obtaining necessary permission from the concerned Authority.

True Copy of the order dated 17.01.2023 passed by the Hon'ble High Court Karnataka at Bengaluru in WP No.17841/2018 is annexed herewith as **Annexure R-2**

11. It is submitted since that Government has undertaking before the Hon'ble High Court that no trees are being felled for this purpose and they would not cause damage to the tree in the Guest House area and that they neither demolish the existing Balabrooie Guest House, nor take any action of cutting of the

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trees in the Guest House, the instant Application arising out of the same cause of action leads to multiplicity of proceedings.

12. It is submitted that the Applicant in the instant Application failed to disclose any grounds or cause of action. He merely expressed apprehension about possibility of cutting several heritage trees, aged more than 100 years, existing on the Guest House campus if the premises were converted into a Club by taking up construction activities for housing the proposed club because the protection and preservation of trees in very important, and that the Government Authorities for their recreational purposes ought not to sacrifice century old trees and the buildings. And to agitate this issue National Green Tribunal is only the proper forum.
13. It is submitted that feeling of trees in Karnataka is governed by the Karnataka Preservation of Trees Act, 1976. And the Hon'ble High Court of Karnataka in WP No. 17841/2018 which is pending for consideration, is been monitoring the implementation of the said Act. The Applicant herein has not pointed out any instance of non-compliance of the said Act.
14. In light of the above orders of the Hon'ble High Court and also in the general scheme of Departmental Jurisdiction, the role of this Respondent No.1/Horticulture Department does not include regarding felling of trees. With respect to the said Guest House, the role of Respondent's No.1/ Department is very limited as to its maintenance and preservation of the trees situated at the said guest house, and this Respondent is

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carrying out its circumscribed responsibility with due diligence. This Respondent is no where responsible for the cutting of trees not only in the said premises, but also elsewhere in the State.

15. It is further submitted, so far as this Respondent's limited role is concerned, this Respondent is bound to take permission from the Respondent No.2/BBMP for cutting any trees situated within the premises of its own properties also. It is for this reason this Respondent is neither a, proper nor a necessary party to the instant proceedings.

16. It is hence prayed that for want of any grounds for intervention owing to the reasons stated above this Hon'ble Tribunal may be pleased to dismiss the instant Application with costs.

*B. Lalit*

**Respondent No. 1  
Through the Deputy Director  
Department of Horticulture  
Government of Karnataka**

**DEPUTY DIRECTOR HORTICULTURE  
SRI CHAMARAJENDRA (CUBBON) PARK,  
BANGALORE-560 001,**

**Filed By:**

*Darpan KM*  
*Asst*

**Darpan KM  
Advocate for Respondent No. 1**

**Date:26-07-2023**

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE BENCH, AT CHENNAI  
ORIGINAL APPLICATION NO. 14/2023**

**IN THE MATTER OF :**

BRIJESH KALAPPA

...PETITIONER

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**AFFIDAVIT**

I, H.T. Balakrishna, S/o H.B. Thippeswamy aged about 43 years, working as Deputy Director of Horticulture, Sri Chamarajendra (Cubbon) Park, Department of Horticulture, having office at the Cubbon Park, Bangalore 560 001, Karnataka do hereby solemnly affirm and state as under:

1. That I am the Litigation Conducting Officer and Swearing Officer Authorized by the Government of Karnataka of behalf of respondent No. 1 in the above-mentioned Original Application and being fully conversant with the facts and circumstances of the case, I am competent to swear this affidavit.
2. That I have gone through the accompanying Reply, drafted on my instructions. I say that the contents thereof are true and correct to the best of my knowledge and belief. Annexures are true copies of their respective originals.

**VERIFICATION:**

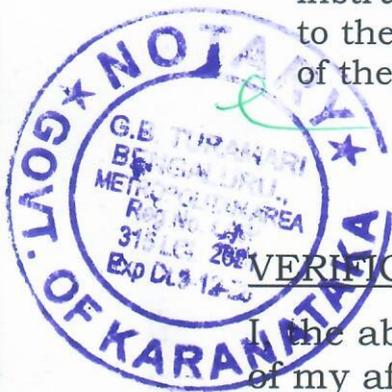
I the above named deponent do hereby verify that the contents of my affidavit are true and correct to the best of my knowledge and belief, no part of which is false and nothing material has been concealed therefrom.

Verified at Bangalore on this 26<sup>th</sup> day of July, 2023.

*B. Jadhav*  
**DEPUTY DIRECTOR HORTICULTURE  
SRI CHAMARAJENDRA (CUBBON) PARK,  
BANGALORE-560 001.**

**SWORN TO BEFORE ME** *23 B. Jadhav*  
**DEPUTY DIRECTOR HORTICULTURE  
SRI CHAMARAJENDRA (CUBBON) PARK,  
BANGALORE-560 001.**

*2037*  
**G.B. TURAMARI  
ADVOCATE & NOTARY  
# 45/1, Behind Binny Mill  
st Main Road, Ganganagar Extn.  
BENGALURU 560 032**



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**W.P. (C) NO. 17841/2018**

**IN THE MATTER OF:**

1. Dattatraya T Devare
2. Bangalore Environment Trust

...PETITIONERS

Versus

1. State of Karnataka
2. Karnataka Forest Department
3. The Bangalore Urban District Tree Authority
4. Bruhath Bengaluru Mahangara Palike
5. Bangalore Metro Rail Corporation Limited
6. Bangalore Electricity Supply Company Limited

...RESPONDENTS

**LNS J (AG.CJ) & PSD J**

**23.04.2019**

**ORDER**

The respondents are directed to constitute a Committee consisting of experts from the field of Environment, Science, Technology and concerned fields.

The Expert Committee shall examine whether trees proposed to be felled could be saved by adopting any method. After exhausting all methods, if it is found that it is impossible to save any tree, only then it shall be permissible to cut the trees.

It is expected of the Expert Committee to give its considered opinion to save the trees.

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****W.P. (C) NO. 17841/2018****IN THE MATTER OF:**

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4. Bruhath Bengaluru Mahangara Palike
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6. Bangalore Electricity Supply Company Limited

...RESPONDENTS

**THE HON'BLE CHIEF JUSTICE AND HMJ ASHOK S. KINAGI****17.01.2023****ORDER**

In pursuance of the order dated 07.12.2022, Respondent No.5 has filed a status report dated 09.01.2023 stating that Respondent No.5 has taken further steps pursuant to the award of contract for compensatory plantation / afforestation and three years' maintenance. In the said status report, he has produced a copy of the Letter of Acceptance issued in favour of one Shivanna, Forest and PWD Contractor for raising of 4,000 number of saplings and its maintenance for a period of three years. He has further produced a copy of the Letter of Acceptance issued in favour of Mr. Venkateshappa K, Forest and Civil Contractor for raising of 4,000 number of saplings and its maintenance for a period of three years. He has also produced a copy of the Letter of Acceptance issued in favour of Mr. Shivanna, Forest and PWD, Class-I Contractor for raising of 4,000 number of saplings and its maintenance for a period of three years.

It is further contended that in compliance of the directions of this Court dated 07.12.2022, the fifth respondent has cleared the tree cuttings to make way for construction of metro rail project in respect of Official Memorandums dated 29.08.2022 and 19.09.2022. In so far as translocation of trees in respect of the aforesaid official memorandums is concerned, it is stated that the same is in progress and it would take minimum of three months to carry out the translocation as per the GKVK Tree Translocation Guidelines.

The Status Report filed by Respondent No.5 / BMRCL is taken on record.

Learned counsel for petitioners submits that Respondent No.5 has not taken steps for planting 15,800 trees.

Learned counsel appearing for Respondent No.5 submits that Respondent No.5 has already started technical evaluation and it is under process. He further submits that 260 days is required for completing the process.

However, Respondent No.5 has already taken sufficient time for translocation of trees and also planting of saplings. Hence, 260 days is quite a long time. Hence, it would be just and proper to direct Respondent No.5 to complete the entire process of planting remaining saplings, within a period of 120 days. Hence, it is directed that Respondent No.5 shall expedite the matter and complete the entire exercise within a period of 120 days from today.

### **ORDER ON I.A.NO.15 OF 2022**

Learned Additional Government Advocate has filed I.A.No.15/2022 seeking to modify the order dated 07.10.2021 passed on I.A.No.8/2021. By the said order, this Court has directed the parties to maintain status-

quo in respect of the structure in question and other adjoining areas mentioned therein.

In support of the said application, Smt. T.V. Sunandamma, D/o. T.M. Virupanna who is working as Under Secretary to Government, Department of Personnel and Administrative Reforms (State Protocol), Vidhana Soudha, Bengaluru, has filed an affidavit contending that the writ petition has been filed by the petitioners seeking a direction to the Tree Authorities, Tree Officer, to comply with the Karnataka Preservation of Trees Act, 1976 and Karnataka Preservation of Trees Rules, 1977.

It is further contended that I.A.No.8/2021 came to be filed by the petitioners relating to the Press Meeting held by the Speaker of the Karnataka Legislative Assembly regarding a decision of "Constitution Club" at Balabrooie Guest House in the city. This Court, considering the averments made in the application regarding grievance of the petitioner that there were trees which are 100 to 200 years old, granted interim relief. The grievance of the petitioner was that there will be felling of trees in the heritage building contending that State Government should be restrained from construction of "Constitution Club" in Balabrooie Guest House. This Court, vide order dated 07.10.2021, directed the parties to maintain status-quo in respect of the structure in question and other adjoining areas in the guest house and further directed that the building should not be allotted to any other organization until further orders of this Court and no felling / trimming of trees, cutting of shrubs shall take place without the leave of the Court.

It is further contended that as per the direction of this Court, the BBMP had conducted a tree census of the entire area and have filed a report stating that there are 159 trees in the Guest House area. It is also contended that there is no proposal of reconstruction / redesign /

demolition of the Balabrooie Guest House before the Government. There is only a proposal of maintenance of the building by improving the aesthetic of interior of the guest house without making any structural modification or changing the exterior and interior works of the building, so as to accommodate the Constitution Club. Learned Additional Government Advocate has further undertaken that no trees are being felled for this purpose and there would be no damage to the trees in the guest house area. Further, the grievance of the petitioners that the trees would be felled is incorrect as there is no proposal for cutting or felling of any of the trees in the guest house area. She has further undertaken that there is no demolition or reconstruction of the existing Balabrooie Guest House nor there is any action of cutting of the trees in the guest house and the order of status-quo in respect of the building for allotting the said guest house be vacated.

Learned counsel for the petitioner has not filed any Statement of Objections to the said application. The State has stated in paragraph 5 of the application that there is only a proposal of maintenance of the building by improving the aesthetic of interiors of the guest house without making any structural modification or changing the exterior and interior works of the building, so as to accommodate the Constitution Club. The said statement is recorded and is taken as an undertaking.

She has further undertaken that there will be no damage to the trees in the guest house area. The said statement is taken as an undertaking.

In view of the same, I.A.No.15/2022 is allowed and the order dated 07.10.2021 is modified.

The respondent is directed to carry out maintenance of the building by improving the aesthetic of the interior of the guest house without making

any structural modification and there shall be no damage to the trees in respect of the guest house area. The State is permitted to convert the Guest House into a "Constitutional Club" after obtaining necessary permission from the concerned Authority.

Learned counsel for Respondent No.5 seeks time to file a quarterly Status report from October 2022 to December 2022. He is permitted to file the said Quarterly report within a period of two weeks from today.

BBMP is also permitted to file a Status Report within a period of two weeks.

Interim order granted on 07.10.2021 is extended till the next date of hearing.

Learned counsel for the BBMP seeks time to file Statement of Objections to I.A.No.13/2022. Two weeks' time is granted to file Statement of Objections.

Re-list this petition on 06.02.2023.