

## **Widen Roads only in strict compliance with Karnataka Town and Country Planning Act and Karnataka Tree Preservation Act** Landmark Decision of High Court of Karnataka

On 16 March 2009, the Division Bench of the Hon'ble High Court of Karnataka consisting of Chief Justice Mr. P. D. Dinakaran and Justice Mr. V. G. Sabahit directed the Bruhat Bengaluru Mahanagara Palike (BBMP - Bangalore's civic authority) to strictly comply with the Karnataka Town and Country Planning Act (KTCP Act) and Karnataka Tree Preservation Act (KTP Act) when dismissing BBMP's appeal to carry on its ambitious mega project of road widening unconditionally. This interim direction was issued in a Public Interest Litigation filed by Environment Support Group and ors. (WP 7107/2008) challenging the legality of the ongoing road widening programme.

It may be recalled that BBMP has pushed for widening of roads since 2004 on its unilateral claim that this would help relieve traffic congestion. It has repeatedly asserted its right to carry on this mega project costing at least Rs. 4,000 crores without complying with the provisions of the KTCP Act, amongst other. According to its current plans, 91 roads are proposed to be widened presently running over a length of about 400 kms.

This road widening project will destroy some of the oldest neighbourhoods of Bangalore, ruin livelihoods of hundreds of traders, put thousands of people dependent on street trade and a variety of commercial services, displace hundreds of homes, and cause the felling of at least 40,000 avenue trees thus depleting urban greenery and open space. Such a massive exercise has been undertaken by BBMP in total disregard to environmental, social and economic impacts. Various independent studies and the city's traffic commissioner have questioned the logic of this approach providing evidence that the problem of congestion was due to untreated intersections and not because of lack of space on roads. Communities, environmental and social action groups, legislators and a host of other actors have consistently campaigned against the need for widening roads, and protested against the brazen approach of BBMP. But the BBMP has continued with its illegal and controversial approach guided by a draconian bureaucracy which has no oversight due to the lack of an elected City Council for over two years now.

So far four major roads have been widened. One such is the Bellary Road connecting the city to the new Bangalore International Airport. This project was undertaken without compliance with the provisions of the KTCP Act. At a very early stage Environment Support Group and *Hasiru Usiru* (a network of organisations and individuals interested in protecting the city's environment and open spaces) contested the proposal (as it was designed) and advocated a participatory approach to redeveloping this road in conformance with the KTCP Act and the National Urban Transport Policy. This appeal was brushed aside as BBMP was in a hurry to provide connectivity to the new Bangalore International Airport and failed to comply with planning provisions, statutory public consultation requirements or even standards for safe road design. One major terrible result of this brazen approach has been that 53 people have been brutally killed in accidents on this one road and hundreds more have been injured and traumatised. Almost always, victims were pedestrians. The reason for such a high rate of accidents is not far to seek: 30 kms of Bellary Road widened and walled to connect to the airport has only 6 safe traffic intersections! As this road runs through densely populated neighbourhoods and several villages, people are forced to risk their limb or life in carrying on living. Such irresponsible planning has also resulted in fragmenting neighbourhoods and villages, and put at high risk the lives of elderly people and children who have to use the road daily.

### **Background to the PIL:**

When the PIL was admitted by a Division Bench of the High Court of Karnataka constituted by Justice Mr. V. Gopalagowda and Justice Mr. Ravi Malimath in June 2008, the Court had hoped that BBMP would comply with all laws and progressive policies, such as the National Urban Transport Policy and National Policy on Street Vendors, while widening roads. To ensure this actually happened, the Court established a Committee of interdisciplinary experts based on suggestions made by the Petitioners and Respondents. Mr. A.N. Yellappa Reddy, former Environment Secretary of Karnataka, was appointed to chair this scoping Committee and formulate legally compliant road widening schemes that were also sensitive to and protective of the rights of disabled, elderly people and children, and to ensure designs were so developed that trees were not unnecessarily felled and public transport and fossil fuel independent transport modes were advanced.

In the six months that this Committee functioned, Mr. Reddy conducted the proceedings in a secretive manner. Rather than allowing public engagement at all stages of planning and implementation of projects, as the law mandated and as Committee members repeatedly demanded, the approach adopted by Mr. Reddy was to push ahead with widening of roads despite its illegalities, and social and environmental impacts. Troubled by this undemocratic and unscientific approach, the Petitioners approached the Karnataka Legal Services Authority (Hon'ble Lok Adalat) in November 2008 for relief, as required per the High Court direction.

The Lok Adalat favourably considered the Petitioners representation and directed Mr. Reddy to ensure Committee meetings would be made public. It also directed the Committee to consider representations of Petitioners, affected public and independent experts while formulating suggestions for the programme of road widening and such other infrastructure projects. However, this relief was short-lived for during December 2008 BBMP proceeded to widen Palace and Sheshadri Roads in the city

centre causing the felling of over 500 old trees that formed the heritage of the city. This ruthless act was patently illegal and based on the non-existent power of the Committee to approve such legally non-compliant projects.

Deeply disturbed by such illegal exercise of power, the Petitioners moved the Hon'ble Lok Adalat once again. In its decision of 6<sup>th</sup> January 2009, the Lok Adalat held that little could be done now about the heritage trees that had been felled on Sheshadri and Palace Roads. It, however, reprimanded officers of BBMP and the Tree Officer over their efforts to get Court approval for actions in contravention of town planning law. Returning the case to the High Court to decide the applicability of KTCP Act to the activity of road widening, it directed BBMP and the Tree Officer to seek the Adalat's permission prior to any tree felling in Bangalore.

Rather than complying with the provisions of the law as mandated, BBMP sought to continue road widening and moved the matter before the High Court of Karnataka seeking its approval for road widening activity. Hearing the petition, the Division Bench headed by the Chief Justice Mr. Dinakaran clarified in its order of 16 March 2009 that "that the respondent corporation is at liberty to proceed with the works relating to widening of the roads. Of course, while doing so, the respondent-corporation shall **strictly follow** the provisions of the Karnataka Town and Country Planning Act and the Karnataka Preservation of Trees Act" (emphasis added). Thus granting the Petitioners, Environment Support Group and ors., the main relief sought for – that KTCP strictly applies to road widening. A logical consequence of the High Court order was that the Committee headed by Mr. Yellappa Reddy became infructuous.

### **Highly significant implications of the High Court order:**

The implications of this direction of the High Court are significant and far reaching. The Karnataka Town and Country Planning Act, 1961, is perhaps one of the finest pieces of urban planning legislations and many states in India have adopted similar laws since independence. This law requires planning and implementation authorities to evolve urban projects by consulting the wide public in many stages. It further demands a detailed process of enquiry into social, economic and environmental impacts of projects and requires that implementing agencies develop schemes transparently by making public plans before undertaking any project.

Needless to state, most States have failed to implement this legislation. It is no wonder, therefore, that Indian cities are amongst the worst planned and managed anywhere in the world. Indian cities are also characterised by very low involvement of the public in decision making and some of the worst infrastructure scandals are a direct consequence of this intransparent and undemocratic approach. The lack of compliance with KTCP Act has also resulted in violation of several fundamental socio-economic and environmental justice rights, and of the rights to housing and sustenance of livelihoods such as by street vendors. Needless to state, the concerns of weaker sections of society, such as urban poor, the elderly, disabled and the needs of children are rarely considered with the sensitivity they deserve.

A direct and tangible result of the High Court direction to affected communities in urban areas of Karnataka is that hundreds of property owners, tenants and traders have now secured their statutory right to be consulted prior to any road widening work being implemented. By implication, this direction applies to all urban development and infrastructure projects, such as the Metro, High Speed Rail Link to the airport, building new roads (such as the one through the University of Agricultural Sciences campus) and so on.

Because the Court has explicitly stated that the provisions of Karnataka Tree Preservation Act will also be strictly complied with, the burden now lies with the Tree Officer of Bangalore to ensure that no tree is felled unless the activity demanding tree felling is firstly and fully compliant with the provisions of the Karnataka Town and Country Planning Act.

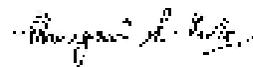
### **What next:**

This unprecedented and landmark direction has significant bearing on the nature of engagement of urban communities with authorities. For one, it greatly advances the democratisation of decision making in urban areas, enhances the quality of public review of projects and ensures a high degree of transparency in formulation of schemes and implementation of projects. This is a sign step towards the development of healthy, environmentally sensitive, safe and just cities.

To ensure that this order is strictly implemented, ESG along with *Hasiru Usiru* network will intensify its engagement with communities affected by road widening and other infrastructure projects and build their awareness on the significance of this victory. This is the most sure way to secure the wide public from adverse impacts of coercive and illegal actions by urban planning and development authorities.



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