

KARNATAKA LOKAYUKTA

No. Compt/Lok/BCD-1091/2015/ARE-1

M.S.Building,
Dr.B.R.Ambedkar Veedhi,
Bengaluru - 560 001,
Date: 14-06-2017.

**Report under Section 12(1) of the
Karnataka Lokayukta Act, 1984**

Sub: Complaint filed by Sri. Ahalya.M., No.1083,
5th Main Road, K.N. Layout, Triveni road,
Yeshwanthpura, Bengaluru - reg.

A complaint has been filed by Sri. Ahalya.M., No.1083, 5th Main Road, K.N.Layout, Triveni road, Yeshwanthpura, Bengaluru- 560022 (hereinafter referred to as '**Complainant**' in short) against Commissioner, Bruhath Bengaluru Mahanagara Palike, Bengaluru (hereinafter referred to as '**Respondent**') alleging that, one Sri. H.V.N. Krishna has unauthorisedly constructed second floor on the building in premises No.431/3, 3rd 'C Main Road, Gokula 1st Stage, 2nd Block, Bengaluru, without obtaining sanctioned plan and respondent has not taken any action.

2. The complaint filed by Smt. Ahalya.M., was taken up for investigation under Section 9 of Karnataka Lokayukta Act and comments of the Respondent were called. Assistant Executive Engineer, Mathikere Sub-Division, BBMP, Bangalore has submitted reply on behalf of commissioner BBMP. The complainant has filed rejoinder.

3. Asst. Exe. Engineer, Mathikere Sub-Division, BBMP in his comments has stated that, earlier the complainant had filed a petition before the Commissioner, BBMP on 08-10-2003 stating that H.V.N. Krishna was constructing building contrary to the sanctioned plan and after verifying the building, the portion of the building constructed contrary to the sanctioned plan, was ordered to be demolished and provisional order was also served on the owner of the building and then Sri.H.V.N.Krishna filed original suit in O.S. No.7980/2003 on the file of City Civil Court Bangalore and the Court by order dated 07-11-2003 directed the defendant to maintain status-quo. The Asst. Exe. Engineer has further stated that, the Civil Court has disposed off the matter on 23/04/2011 observing that *"In the result, in view of my observations made above and for the reasons stated therein, suit filed by the plaintiff against the defendant is hereby decreed. Consequently permanent injunction is issued against the defendant, his agents, men or anybody acting under him from demolishing any portion of suit schedule residential building or in any way interfering with the plaintiff lawful possession over the schedule property **except in accordance with law**".* Assistant Executive Engineer has further stated that since there is permanent injunction against the Commissioner, BBMP from entering the property or demolishing the property, no action was taken to demolish the portion constructed contrary to the sanctioned plan.

4. After verifying the allegations made in the complaint and the reply given by Asst. Exe. Engineer, Mathikere Sub Division BBMP, on behalf of the Respondent, and also the documents produced by the parties, it is evident that, the owner of the building at No. 431/3, 3rd "C" Main Road, Gokula 1st Stage, 2nd Block, Bangalore has constructed 2nd floor of the building without the sanctioned plan and the officers of BBMP after verifying the building had directed him to demolish that portion of the building, which is constructed in violation of the sanctioned plan. The material on record discloses that Sri. H.V.N.Krishna did not demolish the illegal portion of the building constructed by him. The material on record further discloses that the owner of the building Sri. H.V.N. Krishna had approached Civil Court by filing a original suit in O.S. NO. 7980/2003, seeking permanent injunction against BBMP from demolishing the building and the court has decreed the suit and granted permanent injunction restraining the BBMP from demolishing the building without following due process of Law. Now, the officers of BBMP by taking advantage of the court order are evading to demolish the portion of the building constructed illegally and contrary to the sanctioned plan. The copy of the orders passed by the Civil Court Bangalore in O.S. No. 7980/2003 makes it clear that the Court has proceeded on the basis that here is no second floor constructed on the building in question and in the light of that, the Court has issued an order of Permanent Injunction

restraining the BBMP, who is the defendant in the suit from demolishing any portion of the suit schedule residential property or in any way interfering with the lawful possession over the suit schedule property except in accordance with law. In this connection, it is useful to extract the relevant portion of the discussion in the judgment referred to Paragraph 9 of the judgement, which reads as hereunder:

"It is the case of the plaintiff that he has not put up any second floor construction in the schedule property, but the construction put up by him is strictly in accordance with the approved plan Ex.P7 and the residential building put up by him is ground floor and first floor only. It is pertinent to note here that according to the approved plan Ex.P7 plaintiff is expected to leave set back on eastern side, western side and on the southern side and there is no set back to be left towards northern side of the proposed construction. That being so, on inspection of the property and construction made by the plaintiff in the schedule property the Defendant Corporation issued provisional order referred above at Ex.D2 & 3 dated 10-11-03 alleging that the plaintiff has left set back on the rear side of 5 feet as per the set back sanctioned under the plan Ex.P7 and there is no deviation in this regard but in the remarks column they have mentioned that he has constructed open staircase in the set back area and it is unauthorized one. Further in the provisional order Defendant Corporation has mentioned that on the left side set back is not expected to leave but he has left set back of 3 feet and there is no deviation as such. Further according to show cause notice and provisional order on the right side of the construction as per the approved plan Ex.P7 plaintiff is expected to leave set back of 3 feet 3" feet whereas he has

not left any set back and put up construction abutting to his right side edge of the property and there is 100% deviation. However, in the remarks column Corporation has mentioned that the set back left by the plaintiff is interchanged left and right set backs. In other words according to the approved plan plaintiff is expected to leave set back of 3 feet 3" feet on the left side, whereas he has not left, but on the other hand left set back on the right side measuring 3 feet 3" feet which is not permitted. Lastly in the show cause notice referred above, Defendant Corporation has contended that plaintiff has put up ground and first floor construction, but in the remarks column he has started raising of ground walls to cast second floor unauthorisedly. It is pertinent to note here that in order to prove the allegations of second floor construction started by the plaintiff in the schedule property, there are no documents except mentioning in the provisional order at Ext.D2 & D3. If really the plaintiff has started construction of second floor unauthorisedly, then the Defendant Corporation would have taken very well exact measurements of the second floor construction put up unauthorisedly and produced those documents before the court, but for the reasons best known to them they have not done any efforts. On the other hand, it is specifically admitted in the cross-examination by DW-1 that there is no second floor construction put up by the plaintiff. That being so, the contents of provisional order at Ex.D2 & 3 in this regard falls to the ground".

5. It is useful to extract the operative portion of the order, which reads as hereunder:

"In the result, in view of my observations made above and for the reasons stated therein, suit filed

by the plaintiff against the defendant is hereby decreed. Consequently permanent injunction is issued against the defendant, his agents, men or anybody acting under him from demolishing any portion of suit schedule residential building or in any way interfering with the plaintiffs lawful possession over the schedule property except in accordance with law. Having regard to the circumstances of the case, both parties are directed to bear their own costs. Draw decree accordingly."

6. Therefore, as observed by me earlier, the Civil Court proceeded on the basis that there is no 2nd floor put up on the building in question. Since it is brought on record by the Complainant and photographs relied upon by him clearly establishes that there is 2nd floor put up on the building in question and the since there is no sanctioned plan for putting up of the 2nd floor, unauthorized construction put up on the building in question without sanctioned plan cannot be allowed to remain. Therefore, in the light of the decree for injunction, passed by the Court, by means of its judgement/decreed in O.S.No.7980/2003 dated 07-11-2003, what is required to be done by the BBMP is to take fresh steps in terms of the provisions contained in Section 321 of the KMC Act and take fresh steps to demolish the offending portion of the building which has been put up without sanctioned plan. However, before such steps are taken, it is needless to mention that the concerned authorities/engineers or the Commissioner himself or such persons who may be delegated by the Commissioner shall

inspect the spot and prepare a mahazar pointing out the offending portion of the construction of the building and thereafter pass an order in accordance with law and in terms of Section 321 of the KMC Act. If a fresh decision is taken and an order is made for demolition of the building which has been constructed in contravention of the sanctioned plan and the license granted, it would be in compliance with the operative portion of the order made by the City Civil Court in O.S.No. 7980/2003 referred to above, as the Civil Court has proceed on the basis that there is no 2nd floor construction and the Hon'ble Court has observed accordingly. The Hon'ble Court has also reserved liberty to take steps in accordance with law. While taking afresh steps if the notice is issued to the Complainant and the owner of the building and thereafter an order is made in terms of Section 321 of the Act, it would amount to complying with the terms of the order. The order passed by the Civil Court reserves liberty to the Bruhat Bengaluru Mahanagara Palike to take steps in accordance with law.

7. In the reply dated 28-04-2015 filed by the Assistant Executive Engineer of Bruhat Bengaluru Mahanagara Palike, it is stated, in view of the permanent injunction granted by the City Civil Court nobody could enter upon the building, etc. The letter dated 28-04-2015 written by the Assistant Executive Engineer, Mathikere Sub-Division, Bruhat Bengaluru Mahanagara Palike also indicates that 2nd floor of

the building was put up in contravention of the building plan. It is useful to extract the relevant portion of the said reply filed by Assistant Executive Engineer, Mathikere Sub-Division, BBMP before the Lokayukta office (i.e., Additional Registrar of Enquiries-1, Karnataka Lokayukta, Bengaluru), which reads as hereunder:

“ಶ್ರೀಯುತ ಹೆಚ್.ವಿ.ಎನ್. ಕೃಷ್ಣ ರವರು ದಿನಾಂಕ: 11/11/2009ರಂದು ಅನಧಿಕೃತ ಭಾಗಗಳನ್ನು ತೆರವುಗೊಳಿಸುತ್ತೇನೆಂದು ಪತ್ರ ನೀಡಿರುತ್ತಾರೆ. (ಪತ್ರದ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ-4ರಂತೆ ಲಗತ್ತಿಸಿದೆ. ಆದಾದನಂತರ, ಕಟ್ಟಡದ ಮಾಲೀಕರು ದಿನಾಂಕ: 7/12/2003ರಂದು ರಜಾದಿನ ಯಾವುದೇ ಪೂರ್ವಾನುಮತಿ ಪಡೆಯದೇ ನ್ಯಾಯಾಲಯದ ಯಥಾಸ್ಥಿತಿ ಕಾಪಾಡಿಕೊಳ್ಳುವಂತೆ ಆದೇಶವಿದ್ದರೂ ಕಟ್ಟಡದ ತಾರಸಿ (ಭಾವಣಿ)ಯನ್ನು ಅಳವಡಿಸಿರುತ್ತಾರೆ. ಆ ಬಗ್ಗೆ ಕಂಟ್ರೋಲ್ ರೂಂನಿಂದ ಸಿಬ್ಬಂದಿ ಬಂದು ಕೆಲಸವನ್ನು ನಡೆಸದಂತೆ ಸೂಚನೆ ನೀಡಿದ್ದರೂ ಅವರ ಆದೇಶ ತಿರಸ್ಕರಿಸಿ 2ನೇ ಮಹಡಿಗೇ ತಾರಸಿ ಹಾಕಿರುವುದು ಕಂಡುಬಂದ ಕಾರಣ ಕಟ್ಟಡದ ಮಾಲೀಕರಿಗೆ ಪತ್ರ ಸಂಖ್ಯೆ: ಸ.ಕಾ.ನಿ.ಅ/ಪಿಆರ್/215/2003-04, ದಿನಾಂಕ: 10/12/2003ರಂದು ತಿಳುವಳಿಕೆ ಪತ್ರ ನೀಡಿ (ಪತ್ರದ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ-5ರಂತೆ ಲಗತ್ತಿಸಿದೆ). ಕಟ್ಟಡದಲ್ಲಿ ಯಾವುದೇ ರೀತಿಯ ಕೆಲಸವನ್ನು ಮಾಡಬಾರದೆಂದು ಹಾಗೂ ಯಥಾಸ್ಥಿತಿ ಕಾಪಾಡಲು ಅಂದಿನ ಉಸ್ತುವಾರಿ ಇಂಜಿನಿಯರ್ ರವರು ತಿಳಿಸಿರುತ್ತಾರೆ. ಇದಾದ ನಂತರದಲ್ಲಿ ಕಟ್ಟಡ ಮಾಲೀಕರು ಕೆಲಸವನ್ನು ಮುಂದುವರಿಸಿದ್ದರಿಂದ, ಯಶವಂತಪುರ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ಕಟ್ಟಡದ ಮಾಲೀಕರು ನ್ಯಾಯಾಲಯದಿಂದ ಯಥಾಸ್ಥಿತಿ ಕಾಪಾಡುವಂತೆ ಆದೇಶವಿದ್ದರೂ, ಕಾಮಗಾರಿಗಳನ್ನು ನಿರ್ವಹಿಸುತ್ತಿರುವುದರಿಂದ, ಇವರು ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಅಂದಿನ ಉಸ್ತುವಾರಿ ಇಂಜಿನಿಯರ್ ದೂರು ನೀಡಿರುತ್ತಾರೆ (ಪತ್ರದ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ-6ರಂತೆ ಲಗತ್ತಿಸಿದೆ). ಈ ವಿಷಯವನ್ನು ಕಾನೂನು ಕೋಶದ ಮುಖ್ಯಸ್ಥರಿಗೂ ಸಹಾ ಪತ್ರದ ಮುಖಾಂತರ ತಿಳಿಸಿರುತ್ತಾರೆ”.

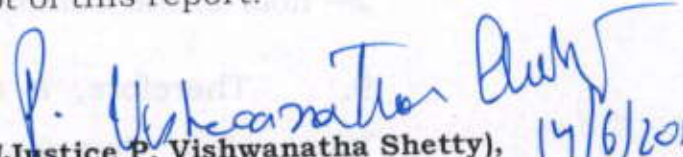
8. Prima-facie it appears, the Assistant Executive Engineer concerned has not understood the observation made by the Civil Court in O.S.No. 7980/2003. As noticed by me earlier, the Civil Court proceeded in the judgement, that there is no 2nd floor put up on the building in question. Further, the injunction order restraining the BBMP from demolishing the building except in accordance with law,

means the authorities of the BBMP are required to follow the law. In other words, if there is any portion of the building constructed in contravention of the building plan granted, the same has to be noticed with a clarity in the notices to be issued and final order is required to be passed in terms of Section 321 of KMC Act and take steps one required to be taken for demolition of the 2nd floor of the building constructed in contravention of the building by-laws. Prima-facie it appears to me that it is not permissible for the authorities of the BBMP to rely upon the judgement of Civil Court to protect the owner of the building who without sanctioned plan has proceeded to construct 2nd floor of the building.

9. Therefore, a direction needs to be issued to the Respondent Commissioner, BBMP under Section 12(1) of the Karnataka Lokayukta Act 1984, either to inspect the building in question personally if convenient, or get it inspected by responsible officer of the BBMP and to verify as to whether 2nd floor of the building has been put up or any construction is put up in contravention of the building plan and the license granted ^{and 2} to make an order directing to demolish the 2nd floor of the building or such other portion of the building constructed in contravention of the building plan and the license.

10. Therefore, by invoking the power vested in me under Section 12(1) of the Karnataka Lokayukta Act, the

Commissioner, BBMP, who is the Respondent in this complaint, is directed to inspect the property No. 431/3, 3rd 'C' Main road, Gokula 1st Stage, 2nd Block, Bengaluru, personally, if convenient, or get it inspected by responsible officer of the BBMP and to verify as to whether 2nd floor of the construction of the building has been put up or any construction is put up in contravention of the building plan and the license granted and to make an order directing to demolish the building on the 2nd floor of the building or such portion of the building constructed in contravention of the building plan and the license. The report shall be submitted with regard to the action taken **within one month** from the date of receipt of this report.


(Justice P. Vishwanatha Shetty),
Lokayukta,
Karnataka State. 17/6/201

AS*