

KARNATAKA LOKAYUKTA

No: Compt/LOK/BCD/384/2020/ARE-13 MS Building,
Dr.B.R.Ambedkar Veedhi,
Bengaluru, Dated: 05/04/2021

REPORT U/SEC.12(1) OF KARNATAKA LOKAYUKTA ACT, 1984

Sub: Complaint filed by the complainant P. Ramakantha Shetty, No.865, Perody Garden, Vijaya Bank Layout, Bannerughatta Road, Bengaluru-reg.

1. On the complaint filed by Sri. P. Ramakantha Shetty, No.865, Perody Garden, Vijaya Bank Layout, Bhannerughatta Road, Bengaluru (hereinafter referred to as 'complainant') against the Joint Commissioner, BBMP, Bommanahalli Zone, Bengaluru (hereinafter referred to as 'respondent' – for short) investigation was undertaken.

2. The brief facts of the Complainant's allegations are as follows,

The complainant states that, originally the land measuring 03 Acres 23 Guntas in Sy.No.11 of Kodichikkanahalli Village, Begur

Hobli, Bangalore South Taluk was owned by one Venkatanarayanappa. The said Venkatanarayanappa, had two children namely Ramachandraiah and Vishwanatha. After the death of Venkatanarayanappa, his two children viz., Ramachandraiah and Vishwanatha, automatically succeeded to the said land. He further submits that the revenue authorities effected the mutation proceedings vide MR No.3 of 1983-84, Revenue Authorities accepted a mutual oral division of the property by consent of both Ramachandraiah and Vishwanatha and mutation was carried out, under which 01 Acre 38 Guntas of land in Sy.No. 11 was allotted to the share of Vishwanatha and he was put in possession of the property. Bifurcation of the larger extent was also shown in proceedings ADLRBMPR No.36 of 1986.

3. He further states that, Sri. Vishwanath has sold the land measuring one Acre 38 guntas in Sy.No.11/2A, of Kodichikkanahalli Village, Begur Hobli, Bangalore South Taluk in favour of A. Srinivasa Raju under the registered Sale Deed dated 14/03/1996. Till then the same was an agricultural land and after Srinivas Raju came to be the owner of the said property, he applied for conversion of the said land. The land was converted by the Deputy Commissioner, Bangalore vide conversion order No.ALN; SR(S)269/2000-01, dated 21/09/2000-01 and was permitted to use one acre land out of 01 acre 28 guntas for residential purpose.

4. He further states that, on 19/07/2003, Sale Deed came to be executed by A Srinivas Raju in favour of N.Kumar in respect of land in Sy.No.11/2A, measuring 10 guntas out of one Acre of converted land situated at Kodichikkanahalli Village and N. Kumar came to be the absolute owner of the property. Sri. N. Kumar got his name entered to the said property. Thereafter on 24/11/2011, Sale Deed came to be executed by N. Kumar in favour of P. Ramakantha Shetty complainant herein in respect of 10 Guntas of aforesaid land in Sy.No.11/2A(portion) of Kodichikkanahalli Village. By virtue of the aforesaid document the complainant Ramakanatha Shetty came to be the absolute owner of the aforesaid and his name was entered in the Books of BBMP in the existing khatha vide **Khatha No. 350/310/315/11/2A.**

5. The complainant further states that, on 29/04/2002, General Power of Attorney was executed by Srinivasa Raju appointing N. Usha Devi as General Power of Attorney to deal with adjacent land measuring 12856.25 square feet in Sy. No.11/2A(portion) of Kodichikkanahalli Village convertd land). As General Power of Attorney, Usha Devi acted under the powers vested in her and on 29/10/2004, Sale Deed was executed by Srinivasa Raju represented by General Power of Attorney, Usha Devi in favour of G.V. Padmavathi Rani and N. Madhusudan Rao, in respect of land measuring 12856.25 square feet in No.11/2A of Kodichikkanahalli Village. By virtue of the said sale deed, G.V. Padmavathi Rani and

N. Madhusudan Rao became absolute owners of the property conveyed to them. Khatha was transferred in their name in the books of BBMP vide **Khatha No.384/343/347/11/2A on 11/10/2010.**

6. He further states that, on 13/04/2011, Sale Deed was executed by G.V. Padmavathi Rani and N. Madhusudan Rao in favour of M/s M.V. Builders and Developers in respect of the said land measuring 12856.25 square feet in Sy.No.11/2A of Kodichikkanahalli Village. By virtue of the same, M/s M.V. Builders and Developers became the absolute owner, having marketable right, title and interest over the property.

7. He further states that, on 29/10/2004, Sale Deed came to be executed by A. Srinivas Raju represented by General Power of Attorney G.V. Padmavathi Rani in favour of N. Usha Devi and Smt. Jagadambika Nair, in respect of land measuring 9867 square feet in Sy.No.11/2A of Kodichikkanahalli Village adjacent to the land measuring 12856.25 square feet. By virtue of the same, Usha Devi and Jagadambika Nair became owners of the said portion of the land conveyed to them. Khatha was transferred in their name in the books of BBMP on 11/10/2010 vide **Khatha No.466/426/429/11/2A.** Further on 21/04/2011, Sale Deed came to be executed by N. Usha Devi and Smt.Jagadambika P Nayar in favour of M/s M.V. Builders and Developers represented by

Managing partner K Kiran Kumar in respect of land measuring 9867 square feet in Sy. No.11/2A of Kodichikkanahalli Village, Begur Hobli, Bangalore South Taluk. By virtue of the same, M/S M.V. Builders and Developers became absolute owners of the said property conveyed to them. He further states that, on 29/04/2011 khatha No. 384/343/347/11/2A for 12856.25 sq. feet land purchased from Smt. Usha Devi & Jagadambika Nair, both by M/s. M.V. Builders and Developers, were amalgamated and transferred to M/s M.V. Builders & Developers as per U/s. 147 & section 3,2,8 & 9 of KMC Act and merged the khatha for 22723.25 sq.ft and assigned the khatha No.384/343/347/11/2A in the Register of BBMP.

8. He further states that, both Ramakantha Shetty and M.V. Builders and Developers who owned adjoining lands, decided to develop the land jointly. M/s M.V. Builders and Developers being partnership firm, decided to reconstitute partnership firm of M/S. M.V. Builders and Developers on 22/02/2012. Accordingly the Partnership Re-constitution Deed was executed.

9. He further states that, M/s M.V. Builders & Developers has paid land development charges of Rs. 12,49,554/- on 09/03/2012 to the BBMP. And M/s M.V. Builders & Developers decided to develop Multistoried Building in the same land and applied for plan for construction of 79 flats consisting BF+GF=4 upper floors and BBMP has issued the plan vide **No. BBMP/ADDL.DIR/JD/South LP No.**

004/2012-2013 dated 19/12/2012. Based on the same M/s M.V. Builders & Developers constructed 79 flats, with car parking space at basement and sold entire 79 flats to different buyers. Now the purchasers of 79 flats invested nearly about 80 crores, towards the cost of flats and furnished the flats, by taking loans from the Banks. The Buyers most of them are salaried employees. After construction of the building the BBMP has issued occupancy certificate vide their letter **No. JDTP(S)/ADTP/OC/04-2018-19 dated : 03/05/2018.**

10. He further states that, though the respondent/DGO, knew all these facts he has illegally cancelled the Khatha standing in the name of complainant without issuing any notice/summons to him vide order No.3256/2015-16 dated 22-10-2016. He has observed that the khatha was illegal.

11. The Respondent has filed his comments to the complaint of the complainant. He states that the khatha No.350/310/315/11/2A of Kodichikkanahalli Village measuring 10890 Sq. feet is owned by Sri. P. Ramakanath Shetty. The property bearing khatha No.466/426/429/11/2A of Kodichikkanahalli Village measuring 9867 Sq. feet was owned by Usha Devi and Jagadambika Nair. He further states that the property bearing khatha No.384/343/347/11/2A measuring 12856.25 was owned by Padmavathi Rani and Madhusudan Rao. The property bearing No. 466/426/429/11/2A of Kodichikkanahalli Village measuring 9867

Sq. feet owned by Usha Devi and Jagadambika Nair and property bearing No.384/343/347/11/2A measuring 12856.25 was owned by Padmavathi Rani and Madhusudhan Rao. Both these properties were sold to M/s M.V. Builders and developers and the total extent of land sold was 22723.25 Sq. feet. He further states that the property bearing No. 384/343/347/11/2A measuring 22723.25 and property bearing khatha No. 350/310/315/11/2A measuring 10890 Sq.feet were amalgamated and the entire extent of the land was 33615.25. The sanctioned plan was also granted for the construction of multistoried building i.e residential flats.

12. The Respondent further states that out of these three properties amalgamated, the two properties bearing khatha No.350/310/315/11/2A and khatha No. 466/426/429/11/2A were the subject matter of the proceedings before the Joint Commissioner, Bommanahalli zone, BBMP in case No. 3256/2015-16. The Joint Commissioner by order dated : 22/10/2016 has cancelled the amalgamation of the above referred two khaths. Due to the cancellation of amalgamation of the said two khathas the property amalgamated i.e. the amalgamation of three properties does not exist. Hence the Respondent submits that the question of giving separate khathas to the 79 flats owners does not arise.

13. The complainant was called upon to furnish his Rejoinder to the comments of the Respondent. He has categorically denied the contentions taken up by the Respondent. He submits that the three properties were legally amalgamated and a new khatha was given for the entire extent of land measuring 33615.25. The BBMP has issued the sanctioned plan on 19/12/2012. As per the sanctioned plan the flats were constructed. He further states that the BBMP has issued the occupancy certificate on 3/05/2018.

14. The complainant further states that, the Respondent has passed an illegal order in proceedings bearing No. 3256/2015-16 dated 22/10/2016. He further states that the Respondent has failed to comply with the provisions of section 114A of the Karnataka Municipal Corporations Act 1976. The Respondent ought to have taken action within three years from the date of amalgamation. The order of the Respondent is time barred and illegal. The complainant further states that the principles of natural justice were not followed and no notice was issued to the complainant with regard to the proceedings initiated by the Respondent, bearing No. 3256/2015-16 dated 22/10/2016. The complainant states that no opportunity was provided to the complainant and the Respondent has passed an illegal order.

15. The material on record disclose that:-

It is pertinent to note that there are three properties and the said properties are as follows,

<u>Khatha No</u>	<u>Area</u>
1) 350/310/315/11/2A	10890 Sq. feet
2) 466/426/429/11/2A	9867 Sq. feet
3) 384/343/347/11/2A	12856.25 Sq. Feet

16. Initially property bearing No. 466/426/429/11/2A 9867 Sq. feet and 384/343/347/11/2A for 12856.25 Sq. feet were amalgamated by order of the BBMP on 29/4/2011. Thereafter the property owned by Sri.P. Ramakanth Shetty bearing No. 350/310/315/11/2A measuring 10890 Sq.feet was also amalgamated with the said two properties on 15/03/2012. Thereafter the complainant and M/s. M.V. Builders have obtained sanctioned plan on 19/12/2012. The BBMP after verifying all the records has issued the sanctioned plan for the construction of 79 flats. Accordingly the complainant and M/s. M.V. Builders have constructed 79 flats. Thereafter the BBMP has issued occupancy certificate on 03/05/2018.

17. It is pertinent to note that quite surprisingly the Respondent has initiated the proceedings U/s 114 A of the Karnataka Municipal Act 1976 and cancelled the amalgamation of two plots bearing No.

350/310/315/11/2A and 466/426/429/11/2A. The occupancy certificate was granted on 3/5/2018. But the Joint Commissioner, Bommanahalli zone, BBMP has initiated the proceedings in case No.3256 of 2015-16 and he has passed an order on 22/10/2016 and amalgamation of two plots has been cancelled. However the Respondent has not issued notice to the aggrieved persons before initiating the proceedings U/s 114A of the KMC Act 1976. On perusal of the order, it is observed that the Respondent has observed that the address available is insufficient and accordingly no notice was issued to the complainant and M/s M.V. Builders. The relevant portion of the order dated :22/10/2016 is as follows.

ದಿನಾಂಕ:20/08/2016 ರಂದು ಪ್ರಕರಣವನ್ನು ಕೋಗಿಸಲಾಗಿ 1) ಶ್ರೀ ಎಲ್.ಕೆ ಸತ್ಯನಾರಾಯಣ ಜಿನ್ ಲೇಟ್ ಕೃಷ್ಣರಾವ್ ಖಾತೆ ನಂ.229/234/19/2/223 2) ಅಸ್ಲಾಂ ಖಾನ್ ಜಿನ್ ಪಜ್ಜ ಖಾನ್ ಖಾತೆ ನಂ. 98/969/737/315/17/1 ರ ಖಾತೆಗೆ ಸಂಬಂಧಿಸಿದ ಎಲ್ಲಾ ದಾಖಲೆಗಳನ್ನು ಸಲ್ಲಿಸುತ್ತಾ ಖಾತೆಯನ್ನು ರದ್ದುಪಡಿಸದಂತೆ ಕೋರಿಯತ್ತಾರೆ ಹಾಗೂ ಬಾಕಿ ಉಳಿದ ಖಾತೆಗಳ ಬಗ್ಗೆ ಸಹಕಂದಾಯ ಅಧಿಕಾರಿ ಬೊಮ್ಮನಹಳ್ಳಿ/ಅರಕೆರೆ /ಹೆಚ್.ಎಸ್.ಆರ್ ಉಪ ವಲಯ ರವರು ಸದರಿ ಅಕ್ರಮ ಖಾತೆದಾರರಿಗೆ ನೋಟೀಸ್ ಜಾರಿ ಮಾಡಲು ವಿಳಾಸವು ಪರಿಪೂರ್ಣವಾಗಿಲ್ಲವೆಂದು ವರದಿಯನ್ನು ನೀಡಿರುತ್ತಾರೆ. ಅದರಂತೆ ಕಡತದಲ್ಲಿ ಖಾತೆದಾರರು ಸಲ್ಲಿಸಿರುವ ದಾಖಲೆಗಳಂತೆ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶವನ್ನು ಮಾಡಲಾಗಿದೆ.

18. The Respondent has cancelled the Khathas and amalgamation without providing an opportunity for the complainant and M/s. M.V. Builders.

19. In this regard the Hon'ble Supreme Court in **SUSHIL KUMAR MEHTA Vs GOBIND RAM BOHRA (DEAD) THROUGH HIS LRS- (1990) 1 SCC 193**, the proposition of law laid down therein is, that if a decree is passed without jurisdiction, then it is a nullity and such a plea can be set up whenever and wherever the decree is sought to be enforced, even at the stage of execution or in collateral proceedings as well.

20. The Hon'ble High Court of Karnataka, Bangalore in Writ Petition No. 59321/2013(S-TR) has also laid down the same ratio. It has been held that if a decree or order is passed without jurisdiction, then it is a nullity and such a plea can be set up whenever and wherever the decree or order is sought to be enforced, even at the stage of execution or in collateral proceedings as well.

21. Now coming to section 114A of KMC Act 1976,

Section 114 A reads as follows,

114A. Review by the Commissioner.- Where the Commissioner, either suo-motu or otherwise, after such enquiry as he considers necessary is

satisfied that any transfer of title under section 114 was got recorded in the Corporation register by fraud, misrepresentation, or suppression of facts or by furnishing false, incorrect or incomplete material, he may within a period of three years from the date of such recording of transfer of title reopen the case and pass such order with respect thereto as he thinks fit:

Provided that, no such order shall be made except after giving the person likely to be affected thereby a reasonable opportunity of being heard.

22. The power to cancel khatha or amalgamation order beyond the period of three years from the date of transfer of khatha is not permissible. The BBMP cannot act contrary to section 114A of the KMC Act 1976 and it cannot cancel the khatha beyond the period of three years from the date of transfer of khatha. In this case it is pertinent to note that the plot bearing No. 466/426/429/11/2A and plot bearing No. 384/343/347/11/2A were amalgamated by order dated:29/04/2011. As per section 114A, if at all the BBMP wanted to cancel the amalgamation khatha, it should have been done within three years from 29/04/2011. That too after providing an

opportunity to the aggrieved persons. However the Respondent has cancelled the khatha after the lapse of five years and without providing an opportunity to the aggrieved persons. The proviso to section 114A specifically provides that no such order shall be made except after giving the person likely to be affected there by a reasonable opportunity of being heard. In this case the Respondent has not complied with both the conditions imposed in section 114A of the KMC Act. The cancellation of khatha should be made within 3 years from the date of transfer of khatha. In this case it has been made after the lapse of 5 years from the date of amalgamation i.e 29/04/2011. Secondly the Respondent has not provided an opportunity to the complainant and others who are affected by this order. Hence the order passed by the Respondent is without jurisdiction. The order is a nullity and such a plea can be set up whenever and wherever the order is sought to be enforced, even at the stage of execution or in collateral proceedings as well. Hence the order of the Respondent is a nullity and in this regard necessary recommendations have to be issued to the Respondent to issue individual khataha certificates to the 79 flats owners.

23. Therefore, acting under Sec.12(1) of the Karnataka Lokayukta Act, 1984 recommendation is hereby made to the Competent Authority, to redress the grievance of the complainant and issue individual khathas to the owners of 79 flats of Perody MVB County,

Ward No. 188, Kodichikkanahalli Village, Bommanahalli zone, BBMP, Bengaluru.

24. Further, as required under Section 12(2) of Karnataka Lokayukta Act, 1984, Competent Authority shall intimate the action taken or proposed to be taken on this report, within **two months** from the date of receipt of this report.

B.S. Patil 5/4/21

(JUSTICE B.S.PATIL)
UPALOKAYUKTA-2,
Karnataka State.

(Signature)