

KARNATAKA LOKAYUKTA

No.Compt/Uplok/BCD-2430/2013/DRE-1 Multi Storied Buildings,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001
Date : 12/5/2020

**REPORT UNDER SECTION 12(1) OF
THE KARNATAKA LOKAYUKTA ACT, 1984**

Sub:- complaint filed by Smt.Pragathi K Venkatesh
Babu, No.147, 2nd Main, 3rd Cross,
Chamarajpet, Bangalore.

1. On the basis of the complaint filed by Smt.Pragathi K Venkatesh Babu, No.147, 2nd Main, 3rd Cross, Chamarajpet, Bangalore, investigation was taken up under Sec.9 of Karnataka Lokayukta Act, against (1) Sri.R.Suresh, Assistant Executive Engineer, Sri Rama Mandira Sub-Division, BBMP, Bangalore, (2) Smt.Bhooprada, Assistant Engineer, Ward No.98, BBMP, Bangalore, and (3)Sri.B.C.Sananda Ganesh, Assistant Engineer, Ward No.108, BBMP, Bangalore.
2. The allegations in the complaint are that, the respondents have failed to take any action against the buildings constructed in violation of the building bye-laws as per Karnataka Municipal Corporation Act, 1972. It is alleged that the buildings in the following properties have been constructed illegally, but no action has been taken in this regard. (Sl.No.7 to 12 mentioned in the complaint are repetition of Sl.No.1 to 6).

1. Property No.1022, 1st Main Road, 4th Block, Rajajinagar, Bangalore.- Owner Sri.Prashanth R.Dondle (Ward No.108).
 2. Property No.0052, 59th 'C' Cross, 4th M-Block, Rajajinagar, Bangalore. -Owner Sri.D.Shivakumar, (Ward No.108).
 3. Property No.42/7, (Old No.1050/G), 18th A-Main Road, 5th Block, Rajajinagar, Bangalore. - Owner Smt.Surekha M. Shah (Ward No.108).
 4. Property No.22, (Old No.918), 2nd Main Road, 4th Block, Rajajinagar, Bangalore. - Owner Sri.K.Gopinath (Ward No.108).
 5. Property No.631, 632, 9th Main Road, 1st Cross, Prakash Nagar, Bangalore. - Owner Sri.P.Ganesh (Ward No.98).
 6. Property No.45, 51st Cross, 4th Block, Rajajinagar, Bangalore. - Owner Smt.Shantha Bai, (Ward No.108).
3. The complainant has produced the copies of information furnished under RTI Act. The said documents include notices issued under Sec.321(1) to (3) of K.M.C.Act to the following persons:

Sl. No.	Name	Property No.	Ward No.
1	Smt.M.Parameshwari	648/649/44	98
2	Smt.Jayalakshmi & Sri.Ramalingam	1794/30, 1794/29-1	98
3	Smt.M.Parameshwari	633/120	98
4	Smt.Pooja Kamath	1236/B(34/1)	98
5	Smt.B.Prabhavathi	1791/26	98
6	D.Shivakumar	0052	108
7	Smt.Surekha M Shah	42/7 (old 1050/G)	108
8	Sri.K.Gopinath	22 (old 918)	108
9	Sri.P.Surendra	14 (old 95)	108
10	Sri.P.Ganesh	118 (631)	98
11	Smt.Shantha Bai	45	108
12	Sri.Prakash V Shanai	726/6	108
13	The Rajajinagar Parents Association	117/36/1	108
14	Sri.K.B.Mohan Raj	20	97

15	Sri.P.Krishna	28	98
16	Sri.Prashanth R Dondle, Proprietor, Sri.Panchajanya Chits Pvt. Ltd.	33 (old 1022)	108

4. The respondent No.1 and 3 have filed separate comments taking similar defense. It is contended that properties, 1, 2, 3, 4 and 6 referred to in the complaint, come within Ward No.108. It is further stated that with regard to property of Sri.Prashanth R.Dondle, after passing of confirmation order dt.10/10/2012, he has challenged the said order before the Karnataka Appellate Tribunal in Appeal No.1208/12. It is further contended that with respect to the properties of Sri.D.Shivakumar and Smt.Surekha M Shah confirmation orders under Sec.321(3) of K.M.C.Act were passed on 10/10/12 and for removal of the portion of the building constructed illegally, order has been passed under Sec.462 of K.M.C.Act. It is further stated that after passing of the confirmation order under Sed.321(3) of K.M.C.Act, on 5/9/12, a suit has been filed in O.S.No.6611/2012 before the Civil Court. It is further stated that, as regards the property of Smt.Shantha Bai, confirmation order dt.28/8/12 under Sec.321(3) of K.M.C.Act, and order under Sec.462 of K.M.C.Act on 17/9/12 have been passed. It is further stated that an appeal has been filed before K.A.T in Application No.891/12. It is further stated that, since machinery, materials and men are not available in Sub-Division for removal of unauthorized constructions, estimate has been prepared and forwarded to the higher authorities.

5. The respondent No.2 in her comments has stated that, with respect to the property of Sri.P.Ganesh, provisional order has been passed on 1/8/12 and confirmation order has been passed on 17/8/12. It is further stated that caveats have also been filed in all the Courts. It is further stated that, on 17/9/2012 order has been passed by Executive Engineer under Sec.462 of K.M.C.Act. She has further stated that on 7/10/13, she has submitted estimate and job code for administrative approval and technical sanction for the purpose of removal of unauthorized constructions.
6. The respondents have also produced documents in support of their contentions.
7. The complainant has filed rejoinder reiterating the complaint allegations.
8. In response to the notice issued to the respondents to submit report with regard to the steps taken for removal of unauthorized construction made in the properties, other than those pertaining to which appeals were pending before the K.A.T, the respondent No.1 to 3 have filed separate reports. In the report dt.2/3/2016, the respondent No.1 has stated that suit in O.S.6611/2012 and Appeal No.891/12 were dismissed during 2014 itself.
9. In the report dt.6/3/18, the Assistant Executive Engineer, Sri Rama Mandira Sub-Division, BBMP, contended that appeals have been filed by Sri.S.Vijaya, Sri.Bharath Kumar and

Sri.Gopinath in Rev.Apl.No.117/2015, 13/15, and 6/15 respectively and further action would be taken after disposal of the above Revision Applications.

10. In the letters dt.5/11/18 and 20/12/18, the Assistant Executive Engineer, Sri Rama Mandira Sub-Division, BBMP, had submitted that for the purpose of removal of unauthorized constructions, estimate has been submitted to the Competent Authority and after approval of the same, by inviting tender as per K.T.P.P.Act, 2000, steps will be taken for removal of illegal buildings.
11. In the letter dt.4/12/19, the Assistant Executive Engineer, Sri Rama Mandira Sub-Division, BBMP, has submitted that the estimate and job code have been sent to the Competent Authority for administrative approval and technical sanction, on 2/12/16 and after receipt of approval order, by inviting tender under K.T.P.P.Act, further steps will be taken. A copy of the office note in this regard has been produced. Perused the records.
12. From the comments and the documents produced by the respondents it can be made out that, with regard to the constructions made in violation of building licence and plan, provisional order under Sec.321(1) of K.M.C.Act, and confirmation order under Sc.321(3) of K.M.C.Act after issuance of notice under Sec.321(2) of K.M.C.Act, have been passed with respect to following persons on the following dates.

Sl. No.	Name of the owner	Date of P.O under Sec.321(1)	Notice under Sec.321(2)	Date of C.O. under Sed.321(3)	Order under Sec.462
1	Prashanth R Dondle	21/8/12	21/8/12	10/10/12	-
2	D.Shivakumar	21/8/12	21/8/12	10/10/12	17/10/13
3	Smt.Surekha M Shah	21/8/12	21/8/12	30/8/12	17/10/13
4	Sri.K.Gopinath	7/8/12	7/8/12	5/9/12	-
5	Smt.Shantha Bai	13/8/12	13/8/12	28/8/12	-
6	Sri.Ganesh	1/8/12	1/8/12	17/8/12	17/9/12

13. In all the above cases, confirmation orders have been passed under Se.321(3) of K.M.C.Act, interalia issuing directions as below confirming the provisional order made under Sed.321(1) of K.M.C.Act.:

“ನಿಯಮಾವಳಿಗಳಿಗೆ ವಿರುದ್ಧವಾಗಿ ನಿರ್ಮಿಸಿರುವ ಕಟ್ಟಡವನ್ನು 3 ದಿನದಲ್ಲಿ ಕೆಡವಿ ಹಾಕಬೇಕೆಂದು ಆದೇಶಿಸಿದೆ.”

14. Further in the above three cases, orders under Sec.462 of K.M.C.Act, 1976 has been passed wherein interalia directions have been issued as below:

“ಮಂಜೂರಾದ ನಕ್ಷೆ ಉಲ್ಲಂಘಿಸಿ ಅನಧಿಕೃತವಾಗಿ ನಿರ್ಮಾಣ ಮಾಡಿರುವ ಕಟ್ಟಡದ ಭಾಗಗಳನ್ನು ಈ ಕೂಡಲೇ ತೆರವುಗೊಳಿಸಲು ಆದೇಶಿಸುತ್ತೇನೆ.

ಕಟ್ಟಡದ ಅನಧಿಕೃತ ಭಾಗಗಳನ್ನು ತೆರವುಗೊಳಿಸಲು ವೆಚ್ಚವಾಗುವ ಸಂಪೂರ್ಣ ಮೊತ್ತ ಹಾಗೂ ಶೇ.25 ರಷ್ಟು ಆಡಳಿತಾತ್ಮಕ ವೆಚ್ಚವನ್ನು ಸಹ ಕರ್ನಾಟಕ ಪೌರ ನಿಗಮಗಳ ಕಾಯ್ದೆ 1976 ರ ಪ್ರಕರಣ 463 ರಂತೆ ಕಟ್ಟಡದ ಮಾಲೀಕರಿಂದಲೇ ವಸೂಲಿ ಮಾಡಲು ಅದಕ್ಕೆ ಕ್ರಮ ವಹಿಸತಕ್ಕದ್ದು. ಹಾಗೇನಾದರೂ ಕಟ್ಟಡದ ಮಾಲೀಕರು ವೆಚ್ಚ ಭರಿಸಲು ವಿಫಲರಾದಲ್ಲಿ ಅಥವಾ ನಿರಾಕರಿಸಿದಲ್ಲಿ ಈ ಬಗ್ಗೆ ವಿವರವಾದ ವರದಿಯನ್ನು ಸಂಬಂಧಪಟ್ಟ ಕಂದಾಯಾಧಿಕಾರಿಗಳಿಗೆ

ಸಲ್ಲಿಸಿ ಕರ್ನಾಟಕ ಪೌರ ನಿಗಮಗಳ ಕಾಯ್ದೆ 1976 ರ ಪ್ರಕರಣ 470 ರಂತೆ ವಸೂಲು ಮಾಡಲು ಸೂಕ್ತ ಪ್ರಸ್ತಾವನೆ ಸಲ್ಲಿಸತಕ್ಕದ್ದು.”

15. From the documents produced by the complainant, it can be made out that the notices under Sec.321(2) of K.M.C.Act, have been issued not only to the above 6 owners of the properties, but also to the owners of the other properties as stated in the above table after passing provisional order under Sec.321(1) of K.M.C.Act.
16. Sec.321 of Karnataka Municipal Corporation Act reads as below:-

321: Demolition or alteration of buildings or well-work unlawfully commenced, carried on or completed. – (1) If the Commissioner is satisfied-

- i) That the construction or reconstruction of any building or hut or well.-
 - (a) Has been commenced without obtaining his permission or where an appeal or reference has been made to the Standing Committee, in contravention of any order passed by the Standing Committee; or
 - (b) Is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based; or
 - (c) Is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-laws; or
- ii) That any alterations required by any notice issued under Section 308, have not been duly made; or
- iii) That any alteration of or addition to any building or hut or any other work made or done for any purpose into, or upon any building or hut, has been commenced or is being carried on or has been completed in breach of Section 320,

he may make a provisional order requiring the owner of the building to demolish the work done, or so much of it as, in the opinion of the

Commissioner, has been unlawfully executed, or make such alternations as may, in the opinion of the Commissioner, be necessary to bring the work into conformity with the Act, rules, by-laws, directions or requisitions as aforesaid, or with the plans or particulars on which such permission or orders was based and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building or well or hut.

- (2) The Commissioner shall serve a copy of the provisional order made under sub-section(1) on the owner or builder of the building or hut or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.
 - (3) If the owner or builder fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order, with any modification he may think fit and such order shall then be binding on the owner.
 - (4) If the construction or reconstruction of any building or hut is commenced contrary to the provisions of Section 300 or 314 and the Commissioner is of the opinion that immediate action should be taken, then, notwithstanding anything contained in this Act, a notice to be given under sub-section (2) shall not be of less duration than twenty-four hours and shall be deemed to be duly served if it is affixed in some conspicuous part of the building or hut to which the notice relates and published by proclamation at or near such building or hut accompanied by beat of drum, and upon such affixation and publication, all persons concerned shall be deemed, to have been duly informed of the matters stated therein.
17. Therefore it can be made out that inspite of an order under Sec.321(3) of K.M.C.Act, to demolish the unauthorized constructions made in violation of the building bye-laws and plans, no further steps have been taken except obtaining orders under Sec.462 of K.M.C.Act, from Executive Engineer which reads as below:

462. Time for complying with order and power to enforce in default. - (1) Whenever by any notice, requisition or order made under this Act or under any rule, bye-law or regulation made under it, any person is required to execute any work, or to take any measures or do anything, a reasonable time shall be named in such

notice, requisition or order within which the work shall be executed, the measures taken, or the thing done.

(2) If such notice, requisition or order is not complied with within the time so named, then whether or not a fine is provided for such default and whether or not the person in default is liable to punishment or has been prosecuted or sentenced to any punishment for such default, the Commissioner may cause such work to be executed, or may take any measure or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order as aforesaid.

(3) If no penalty has been specially provided in this Act for failure to comply with such notice, the said person shall, on conviction, be punished with fine not exceeding fifty rupees for such offence.

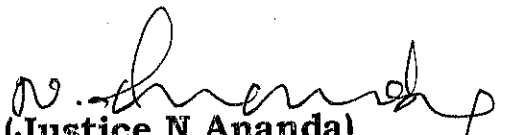
18. From the perusal of the confirmation order under Sec.321(3) of K.M.C.Act, it can be made out that the unauthorized constructions have been ordered to be removed within 3 days. Under Sec.462 of K.M.C.Act, the Executive Engineer, Rajajinagar has passed the orders to demolish the buildings constructed in violation of the plan and to recover the expenses from the owners of the buildings. But admittedly till today no report has been submitted for having complied with the orders passed under Sec.462 of K.M.C.Act, which were admittedly passed during 2012-13.
19. With regard to the properties of Sri.Prashanth R Dondle, Sri.Gopinath and Smt.Shantha Bai, it has been contended that appeals before K.A.T, in Appeal No.1208/2012, Appeal.891/2012 and suit in O.S.6611/2012 before Civil Court were pending. But in the report dt.2/3/2016 the respondent.1 has categorically stated that Appeal No.891/12 and also suit in O.S.6611/2012 have been dismissed during 2014 itself.

20. In the letter dt.6/3/18 a reference has been made to the appeals which were pending before KAT in Rev.Apl.No.117/15, 13/15 and 6/15.
21. From the copies of orders obtained through the website of K.A.T, it is noticed that Rev.Apl.No.13/15 which was filed by Sri.K.Gopinath has been disposed off as 'withdrawn unconditionally'. Rev.Apl.No.117/15 and 6/15 do not pertain to the properties mentioned in the complaint or comments of the respondents. The said appeals have been filed by one Sri.S.Vijay and Sri.M.Bharath Kumar respectively. Even the appeal filed by Sri.Vijay has been disposed off as 'withdrawn unconditionally'. Therefore as regards, the properties referred to in the complaint and the documents produced along with the complaint, no appeals or orders passed by any Competent Authority not to enforce the orders passed under Sec.321(3) and 462 of K.M.C.Act have been produced before this institution.
22. On the other hand as stated above from the letters dt.5/11/18, 20/12/18 and 4/12/19, it can be made out that, according to the present Assistant Executive Engineer, the estimate for machinery, materials and men has been forwarded for administrative approval and technical sanction on 2/12/2016 for the purpose of removal of unauthorized constructions. Therefore, it also becomes clear that till today unauthorized constructions have not been removed. The respondents on record have not offered any explanation as to why even in the cases ^{where} ~~whether~~ the orders under Sec.321(3) of K.M.C.Act, were

not challenged, no steps were taken for removal of unauthorized buildings immediately, during their tenure as Assistant Executive Engineers and Assistant Engineers, Sri Rama Mandira Sub-Division, BBMP, Bangalore.

23. In the above stated facts and circumstances exercising the powers conferred under Section 12(1) of Karnataka Lokayukta Act this recommendation is made to the competent authority to take expeditious steps for removal of unauthorized construction as per provisions of K.M.C.Act, 1976.
24. The Competent Authority shall intimate or cause to be intimated to this Authority about the action taken on the report within one month thereafter as stipulated under Section 12(2) of Karnataka Lokayukta Act, 1984.

Connected records are enclosed herewith.


(Justice N Ananda)
Upalokayukta-1 12/5
State of Karnataka, Bengaluru

