

KARNATAKA LOKAYUKTA

No. Compt/Uplok/BCD-3637/2018/ARLO-1 M.S. Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru, dated 27/09/2019.

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

Sub: Report u/s 12(1) of the Karnataka Lokayukta Act, 1984 to remedy the hardship caused due to the demolition of the compound wall of the public park situated at 18th main road, 2nd division, 4th stage, BTM layout by taking action for the reconstruction of the compound wall of the said public park - reg.

An investigation was taken up under Section 9 of the Karnataka Lokayukta Act, on the basis of complaint filed by Sri. Jagadish.B.M S/o Bheemappa V.M. R/at No. 826, 18th main, BTM 4th stage, 2nd block, Bengaluru (hereinafter referred to as 'complainant' for short) against 1) Sri. Narayana Swamy, Assistant Executive Engineer, ward No. 175, BBMP, Bommanahalli Sub Division, Kodichikkanahalli main road, Bilekanahalli, Bengaluru and 2) Sri. Murali, Assistant Engineer, Ward no. 175, BBMP, Bommanahalli Sub Division, Kodichikkanahalli main road, Bilekanahalli, Bengaluru (hereinafter referred to as 'Respondent no.1 and 2' for short).

2. The substance of the complaint is that on 26/09/2018 the compound wall of public park situated at 18th main road, 2nd division, 4th stage, BTM layout has been demolished for extension of 18th 'A' main road. Adjacent to the said park,

- there is a government kharab land measuring 6 acres 20 guntas that can give a straight connection to the 18th main road. But the respondents are attempting to connect the main road with a curve road by demolishing the compound wall of the park area, which has been opposed by the complainant's association. The respondents have demolished the compound of the public park illegally and without proper cause by misusing their power. Therefore the complainant has requested to take action against the respondents for destruction of the public property.
3. The complainant has produced copies of the representations addressed to various authorities for redressing their grievance by constructing the road in the Government karab area adjacent to the park and to protect the park with compound for safe public usage.
 4. Comments were called from the Respondents 1 & 2 and report was called from the Executive Engineer, Bommanahalli zone.
 5. Respondents 1 & 2 have submitted comments of even dt. 16/02/2019 stating that the compound wall in question is adjoining graveyard and is 7ft/2.4 mtrs in height. Because of the pressure on the wall due to the filling of quarry behind it with soil, the compound wall to an extent of 14.5mtrs had become dilapidated; some portion of it was in a about to fall condition and the remaining portion had developed crack. Therefore in order to avoid any mishap, the dilapidated portion of the compound wall measuring 14.5mtr was removed on behalf of the Corporation. The Respondent no.1 & 2 have stated that the Corporation has

powers under section 338 of the KMC Act to remove the dilapidated portion to avoid danger to the public. The Respondents have stated that they have not committed any dereliction of duty. Further the respondents have stated that steps would be taken on behalf of the corporation for the reconstruction of the said wall.

6. The Executive Engineer, Bommanhalli zone has submitted his report dt. 26/06/2019 stating that the compound wall in question was constructed several years ago during the period of Bomanahalli Municipality. As the wall was in a dilapidated condition because of the pressure due to the filling of soil in the quarry behind it, portion of the wall to an extent of 14.50 metres was removed in view of public interest. It is stated that the Respondents have submitted a report to him stating that the proposal for reconstruction of the compound wall has been included in the estimate for the year 2018-19 and steps are being taken for the reconstruction of the said compound wall. Further it is stated that the report submitted by the concerned engineers is satisfactory.
7. On perusal of the complaint, comments, report of the Executive Engineer and documents, the respondents No.1 and 2 have not disputed that the compound wall of the park in question has been removed/demolished by them. The demolition of the wall by the respondents has been confirmed by the report of Executive Engineer. The respondents No.1 and 2 have stated that the said wall was in a dilapidated condition and hence it has been removed in public interest. They have relied upon section 338 of the Karnataka Municipal Corporation Act, 1976 to state that

the Corporation has power to remove building which is in dilapidated condition in the public interest. Section 338 of the Karnataka Municipal Corporation Act, 1976 is as follows;

338. Building unfit for human habitation.- (1) *If any building or portion thereof, intended for or used as a dwelling place appears to the Commissioner to be unfit for human habitation he may apply to the Standing Committee to prohibit the further use of such building for such purpose, and the Standing Committee may, after giving the owner and occupiers thereof a reasonable opportunity of showing cause why such order should not be made, make a prohibitory order as aforesaid.*

(2) *When any such prohibitory order has been made, the Commissioner shall communicate the purport thereof to the owner and occupier of the building and on expiry of such period as is specified in the notice, not being less than thirty days after the service of the notice, no owner or occupier shall use or suffer it to be used for human habitation until the Commissioner certifies in writing that the causes rendering it unfit for human habitation have been removed to his satisfaction or the Standing Committee withdraws the prohibition.*

(3) *When such prohibitory order has remained in operation for three months, the Commissioner shall report the case to the Standing Committee which shall thereupon consider whether the building should not be demolished. The Standing Committee shall give the owner not less than thirty days' notice of the time and place at which the question will be considered and the owner shall be entitled to be heard when the question is taken into consideration.*

(4) *If upon such consideration the standing committee is of opinion that the building has not been rendered fit for human habitation and that steps are not being taken with due diligence to render it so fit and that the continuance thereof is a nuisance or dangerous or injurious to the health of the public or to the inhabitants of the neighbourhood, it shall record a decision, to that effect with the grounds of the decision, and the Commissioner shall, in pursuance of the*

said decision by notice, require the owner to demolish the building.

(5) If the owner undertakes to execute forthwith the works necessary to render the building fit for human habitation and the Commissioner considers that it can be so made fit, the Commissioner may postpone the execution of the decision of the Standing Committee, for such time not exceeding six months, as he thinks sufficient for the purpose of giving the owner an opportunity of executing the necessary works.

8. Section 338 of the KMC Act, 1976 provides for procedure and powers of Commissioner in respect of any building or portion thereof intended for or used as a dwelling place, which appears to be unfit for human habitation. As per section 2(1-A) of the KMC Act, the word building includes a wall. Further section 322 of the KMC Act provides as follows:

322. Precautions in case of dangerous structures.-

(1) If any structure be deemed by the Commissioner to be in a ruinous state or dangerous to passersby or to the occupiers of neighbouring structures, the Commissioner may, by notice require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

(2) If immediate action is necessary, the commissioner may himself, before giving such notice or before the period of notice expires, fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in section 470.

(3) If in the Commissioner's opinion the said structure is imminently dangerous to the inmates thereof, the Commissioner shall order the immediate evacuation thereof and any persons disobeying may be removed by any police officer.


9. Thus in case of a dangerous/dilapidated structures or building or wall that pose a danger to passersby or to the occupiers of neighbouring structures or general public, action could be taken in respect of it either for its repair or removal of the causes rendering it unfit or for its removal or demolition to avoid the danger as per law. The Executive Engineer also has stated in his report dt.26/06/2019 that as the wall was in a dilapidated condition because of the pressure due to the filling of soil in the quarry behind it, portion of the wall to an extent of 14.50 metres was removed in view of public interest. Further he has stated that the report submitted by the concerned engineers to him in this regard is satisfactory.

However, though the respondents 1 & 2 have stated in the copy of their letter dt.24/11/2018 (enclosed to the complaint) and in their comments of even dt. 16/02/2019 that steps will be taken for the reconstruction of the compound wall, it appears that no steps have been taken even on the date of the report of the Executive Engineer, Bommanahalli zone i.e., on 26/06/2019, as even in the said report also it has been stated that the respondents have submitted report stating that proposal for reconstruction of the compound wall has been included in the estimate for the year 2018-19 and steps are being taken for the reconstruction of the compound wall. No supporting documents have been furnished in this regard. Therefore there is prima facie material to infer that no such steps have been taken for the reconstruction of the compound wall in question. It is not in dispute that

hardship will be caused to the public due to the demolition of the compound wall of public park in question.

10. Accordingly, recommendation u/s 12(1) of the Karnataka Lokayukta Act, 1984 is made to the Competent Authority to remedy the hardship caused due to the demolition of the compound wall of the public park situated at 18th main road, 2nd division, 4th stage, BTM layout by taking action for reconstruction of the compound wall of the said public park.
11. Further, as per Section 12(2) of Karnataka Lokayukta Act, 1984, the Competent Authority is required to intimate this Authority within one month from the date of receipt of this report, the action taken or proposed to be taken on this report.

Connected records are enclosed.


(Justice N. Ananda)
Upalokayukta -1, 27/8
State of Karnataka.

