

KARNATAKA LOKAYUKTA

No.Uplok/BD-3722/2017/DRE-1 Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru 560 001.
Dated: 30/7/2020

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

Sub: Complaint filed by Smt.Mallamma W/o.Late
Mudukanavara Shivanandappa, 7th Ward,
Megalapete, Harappanahalli Town, Davangere
District,.

1. On the basis of complaint filed by Smt.Mallamma W/o.Late Mudukanavara Shivanandappa, 7th Ward, Megalapete, Harappanahalli Town, Davangere District, against (1) Sri.Basavaraja I, Chief Officer, Town Municipal Council, Harappanahalli, Davangere, and (2) Sri.Mudakavvanavar Shankar, Member of Town Municipal Council, 7th Ward, Megalapete, Harappanahalli, Davangere District, an investigation under Section 9 of the Karnataka Lokayukta Act, 1984 was taken up.
2. The brief averments of the complaint are that, the properties of the complainant bearing No.381, Door No.370, 371 and 372 which are in her possession are adjacent to the property of Sri.Diddigi Nagappa and the father of the 2nd respondent. It is contended that there exists a common wall between her property and the property of the father of the 2nd respondent. It is alleged that the father of the 2nd respondent at the instigation of the 2nd respondent was putting up construction by demolishing the said common

wall thereby obstructing her from enjoying her natural rights.

3. Comments were called for from the respondents. The 1st respondent Sri.Basavaraja I, the then Chief Officer, Town Municipal Council, Harappanahalli, in his comments dt.25/1/2018 submitted that he has issued notices to both the parties and as per the spot inspection conducted on 16/1/18, it was prima facie found that neither of the parties have put up construction in accordance with approved plan. He had sought time to submit further report on the subject matter of the complaint.
4. The 2nd respondent in his comments dt.8/3/2018 has denied all the complaint allegations.
5. On 31/7/2018, the said Sri.Basavaraja I, the then Chief Officer, T.M.C, Harappanahalli submitted the report as below:

“ಪ್ರಯುಕ್ತ. ಮೇಲ್ಕಂಡಂತೆ ಸ್ಥಳ ತನಿಖೆಯಲ್ಲಿ ಕಂಡುಬಂದಿರುವ ಮಾಹಿತಿಗನುಗುಣವಾಗಿ ಉಭಯತ್ರರರಿಬ್ಬರೂ ಸಹ ಕಟ್ಟಡ ನಿರ್ಮಾಣಕ್ಕೆ ಅಂದರೆ ದೂರುದಾರರು ಪರವಾನಿಗೆಯನ್ನು ಪಡೆದಿರುವುದಿಲ್ಲ ಹಾಗೂ ಎದುರುದಾರರು ನೆಲ ಅಂತಸ್ತಿಗೆ ಪರವಾನಿಗೆ ಪಡೆದಿದ್ದು, ಮೊದಲನೇ ಅಂತಸ್ತಿನ ಕಟ್ಟಡಕ್ಕೆ ಪರವಾನಿಗೆಯನ್ನು ಪಡೆದಿರುವುದಿಲ್ಲ ಹಾಗೂ ಹುದುವಿನ ಗೋಡೆಯ ವಿಚಾರವಾಗಿ ದೂರುದಾರರು ಸಲ್ಲಿಸಿರುವ ಕರಾರು ಪತ್ರದಂತೆ ಎದುರುದಾರರು ದೂರುದಾರರೊಂದಿಗೆ ಯಾವುದೇ ಕರಾರು ಮಾಡಿಕೊಂಡಿರುವುದಿಲ್ಲ. ಆದರೆ ದೂರುದಾರರು ವಾರಸುದಾರರಲ್ಲದವರಿಂದ ಹುದುವಿನ ಗೋಡೆಯ ಕರಾರು ಪತ್ರ ಮಾಡಿಕೊಂಡಿರುವುದರಿಂದ, ಸದರಿ ಕರಾರು ಪತ್ರವನ್ನು ಮಾನ್ಯ ಮಾಡಲು ಅವಕಾಶ ಇರುವುದಿಲ್ಲ ಹಾಗೂ ಎದುರುದಾರರು ತಮ್ಮ ನೆಲ ಅಂತಸ್ತಿನ ಕಟ್ಟಡವನ್ನು ಹುದುವಿನ ಗೋಡೆಯಿಂದ ಸುಮಾರು 15 ಅಡಿ ಜಾಗವನ್ನು ಬಿಟ್ಟು ಕಟ್ಟಿರುವುದರಿಂದ. ದೂರುದಾರರು ದೂರಿರುವ ಅಂಶವನ್ನು ಪರಿಗಣಿಸಲು ಯಾವುದೇ ದಾಖಲೆಗಳು ಇರುವುದಿಲ್ಲ. ಮೇಲ್ನೋಟಕ್ಕೆ ಉಭಯತ್ರರು ಕಟ್ಟಡ ನಿರ್ಮಾಣದ ನಿಯಮಾವಳಿಗಳನ್ನು ಉಲ್ಲಂಘನೆ ಮಾಡಿ, ಕಟ್ಟಡ ಕಟ್ಟಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ”.

6. Therefore, in the above report Sri.Basavaraja I, the then Chief Officer, TMC, Harappanahalli, submitted that neither the complainant nor the 2nd respondent had taken licence for construction of buildings in question. It was categorically

reported that both the complainant and the 2nd respondent have put up construction in violation of Rules pertaining to construction of building. But despite repeated directions from 7/9/2018, to submit report regarding the steps taken against the concerned towards construction of buildings in violation of Building Rules, so far, no action taken report has been submitted either by Sri.Basavaraja I, the then Chief Officer, TMC, Harappanahalli, who has submitted the above report or by the subsequent Chief Officers of TMC, Harappanahalli.

7. Sec.107(1) of the Karnataka Municipalities Act, provides for levy of penalty on unlawful building which reads as below:

107. Levy of penalty on unlawful building.- (1) Whoever unlawfully constructs or reconstructs any building or part of a building,-

(i) on his land without obtaining permission under this Act or in contravention of any condition attached to such permission; or 1964: KAR. ACT 22] Municipalities 695

(ii) on a site belonging to him which is formed without approval under the relevant law relating town and country planning; or

(iii) on his land in breach of any provision of this Act or any rule or byelaw made thereunder or any direction or requisition lawfully given or made under this Act or such rules or bye-law;

shall be liable to pay every year a penalty, which shall be equal to twice the property tax leviable on such building so long as it remains as unlawful construction without prejudice to any proceedings which may be instituted against him in respect of such unlawful construction:

Provided that such levy and collection of penalty shall not be construed as regularisation of such unlawful construction or reconstruction.

8. Therefore as per the above provision, when an unlawful building is constructed within the meaning of above provision, the Municipality shall impose penalty which shall be equal to twice the property tax. Further the Municipality

shall initiate proceedings against the owner of such property in respect of such unlawful construction.

9. Sec.187(9) of Karnataka Municipalities Act further empowers the Municipal Commissioner or the Chief Officer to pass provisional order and then confirmation order regarding demolition of such unlawful construction which reads as below:

Sec.187 (9) (a) If the Municipal Commissioner or Chief Officer is satisfied,—

(i) that the construction, reconstruction or erection of a building,—

(A) has been commenced without obtaining the permission of the municipal council; or

(B) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which the permission was granted; 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 subsection (8) have not been duly made,

he may make a provisional order requiring the owner or the builder to demolish the work done, or so much of it as, in the opinion of the Municipal Commissioner or Chief Officer, has been unlawfully executed, or make such alterations as may, in the opinion of the Municipal Commissioner or Chief Officer, be necessary to bring the work into conformity with this Act, rules, bye-laws, direction or requisition as aforesaid, or with the plans or particulars on which such permission 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.

(b) The Municipal Commissioner or Chief Officer shall serve a copy of the provisional order made under clause (a) on the owner of the building together with a notice requiring him to show cause within a reasonable time not being less than three days, to be specified in the notice why the order should not be confirmed.

- (c) If the owner fails to show cause to the satisfaction of the Municipal Commissioner or Chief Officer, he may confirm the order, with any modification he may think fit to make and such order shall then be binding on the owner.
- (d) If within a reasonable time mentioned in the order made under clause (c), the owner does not comply with it, the Municipal Commissioner or Chief Officer may take any measures or do anything which may, in his opinion, be necessary for giving due effect to the order.
- (e) The Municipal Commissioner or Chief Officer may recover any reasonable expenses incurred under clause (d) from the person to whom the order was addressed in the same manner as tax on building under this Act, and may in taking measures utilise any materials found on the property concerned or may sell them and apply the sale proceeds towards the payment of the expenses incurred.
10. But in the case on hand despite directions, the successive Chief Officers have failed to take any action as per the above statutory provisions.
11. In the above stated facts and circumstances, exercising the powers conferred under Sec.12(1) of Karnataka Lokayukta Act, recommendation is made to the competent authority to initiate action against unlawful construction as per proviso to Sec.107(1) and 187(9) of the Karnataka Municipalities Act, 1964.
12. 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.

B.S. Patil 30-7-20
(Justice B.S.Patil)

Upalokayukta,

State of Karnataka, Bengaluru

B.S.
30/7/20 20

