

KARNATAKA LOKAYUKTA

No. Compt/Uplok/BD-5416/2012/ARE-6

M.S.Building,
Dr. B. R. Ambedkar Veedhi,
Bangalore.

Date: 13/01/2017.

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

Sub: Complaint filed by Sri.K.R.Siddalinga Kumar – S/o.
K.G.Rajanna, 4th Main Road, K.R.Extension, Tiptur,
Tumkur District -reg.

A complaint was registered on the basis of complaint filed by one Sri. K.R.Siddalinga Kumar – S/o. K.G.Rajanna, 4th Main Road, K.R.Extension, Tiptur, Tumkur District (hereinafter referred to as complainant for short) against Sri. Venkateshiah – Commissioner, City Municipal Council, Tiptur, Tumkur District (hereinafter referred to as respondent for short respectively) alleging that, being Public/Government servant, has committed misconduct, an investigation has been taken up u/s 9 of the Karnataka Lokayukta Act, 1984.

2. According to the complainant: The owner of the property bearing No. 590-591 situated in third cross of K.R.Extension Tiptur Town, had obtained construction permission from CMC, Tiptur to construct a residential house. However, the owner of the said property had constructed shopping complex

and a nursing home on the said property against the sanction plan and without leaving set back. The Municipal Officers even after complaining have not taken any action.

3. Report was called for from SP, KLA, Tumkur and he has submitted report dated 01/12/2015 stating that the owner of the prosperities had put up construction of the building in violation of sanction plan without leaving set back and an additional floor was also constructed. Sri. Eshwarappa the then Revenue Officer, Ramasheshu the then AEE, Sri. Venkateshaiah and Sri. Narasimhamurthy, the then Commissioner, CMC, had not taken action against the illegal constructions in violation of sanction plan and without leaving set back and they are responsible for not taking action and steps required to be taken under provisions of Karnataka Municipalities Act.
4. The above said officials indicted were impleaded as R2 to R5 and they have submitted their reply to the Investigation report.
5. The investigation report and reply offered by respondents the following facts are noticed:
 - i. Permission dated 31.03.2010 was issued by R4 Sri. Venkateshaiah while working as Commissioner of CMC Tiptur for construction of residential house consisting of ground, first and second floor on property bearing Nos. 590/591 of K.R. Badeevane in Tiptur.



- ii. Since construction was in violation of sanction plan and building bye laws, on 21.08.2012 R4 had directed R3 – the then AEE to inspect and submit report and accordingly R3, the then AEE submitted report dt. 01.09.2012 about construction made in violation of sanction plan and an additional floor found constructed.
- iii. On the basis of report dated 01.09.2012 of R3, the then AEE, notice dated 04/12-09-2012 was issued by R4, the then Commissioner to the owner to show cause as to why construction put up in violation of sanction plan and without leaving set back should not be removed.
- iv. R4, the then Commissioner issued an office order dt. 21/11/2012 directing R3, the then AEE to take steps against unauthorized construction.
- v. The owner of the property had filed OS 405/2012 and had obtained prohibitory order against Commissioner, CMC, Tiptur, from proceeding further. R4, the then commissioner, reported the said fact to DC Tumkur vide letter dated 04.12.2012 since representation in this regard was also submitted by complainant to DC and the Project Director, DUD Cell, Tumkur had asked R4, the then commissioner to take action vide letter dated 08.11.2012.
- vi. R4, the then commissioner in CMC at Tiptur was transferred and was relieved on 27.01.2013 and since post of Commissioner was kept vacant one Sri. Vijayakumar, Sri. Chandrashekhar, then working as Assistant Commissioners and Sri. Ramashesh, were placed in charge during the periods 23.01.2013 to 14.02.2013, 14.02.2013 to 30.08.2013 and 31.08.2013 to 21.10.2013 respectively and

- thereafter R5 Sri. Narasimhamurthy succeeded as Commissioner and worked as Commissioner from 21.10.2013 to 22.07.2014.
- vii. During the tenure of R5 as Commissioner the owners had filed WP 466602/603/2013 (LB-RES) seeking direction against Tumkur Planning Authority and Commissioner CMC to consider their representation dated 22.05.2013 to **approve/sanction for establishment of nursing home under special circumstances.** The writ petition came to be disposed of on 27.11.2013 giving direction to consider the application of the owner, if filed, within two months in **accordance with law as the writ petitioners had sought for an opportunity to approach the jurisdictional Planning Authority with regard to their grievance. There was no order directing either Planning Authority or the Commissioner CMC accord permission to run nursing home in the building constructed for residential purpose as a special case or otherwise.** The order was specific to consider the application in accordance with law.
- viii. The Assistant Director Town and County Planning, Tumkur with reference to orders in WP 46602-03/2013(LB-RES) and representation of owners of property dated 17.01.2014 and complaint Dt. 24.01.2014 of Sri. K.R. Siddalingakumra, addressed letter dated 25.02.2014 to Commissioner CMC, Tiptur, also being member/Secretary of Local Planning Authority (R5, was working as Commissioner) informing that rules do not permit to accord permission to run Nursing Home in the building in question as for according permission under special circumstance the building must have been situated on a site measuring 750sq meters and road adjoining should be of width of 12 meter and where as the building in question is situated on the site measuring

362.72 sq. meters and width of the road adjoining is only 9 meter. **In this regard Asst. Director, Town & Country Planning, Tumkur has submitted his report dated 20/11/2014 with relevant enclosures with reference to letter dated 11/11/2014 of office of Karnataka Lokayukta.**

ix. R5, the then Commissioner working during the period from 23.10.2013 to 22.07.2014, passed an order granting permission to use the building (constructed by obtaining permission for being used for residential purpose) for being used for Nursing Home on the footing that in view of orders in WP 46602-03/2013 dt. 27.11.2013 and letter Dt. 25.02.2014 of Asst. Director, Town and Country Planning, Tumkur, there is reference to consider it as a special circumstance. **However, there is no mention much less direction either in the order dt. 27.11.2013 of WP 46602-03/2013 or in the letter dt. 25.02.2014 of Asst. Director, Town and Country Planning, Tumkur.**

x. OS 465/2012 instituted by the owner against Commissioner, CMC, Tiptur came to be decreed on 31.10.2014 and final order passed there in reads:-

“Suit is decreed with costs.

The defendant, his servants, his agents, are permanently restrained from interfering with the peaceful possession and enjoyment of suit property.

The plaintiff is directed to construct the building as per terms and conditions of license”

6. Since the Misconduct was prima facie made out against Respondent No.2, Sri.Eshwarappa- the then Revenue Officer

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and Respondent No.5 Sri. Narasimhamurthy - the then Commissioner, a separate report u/s 12(3) is sent to the government in that regard.

7. In view of the above, prima facie show that owners of property 590+591/1 of K. R Extension in Tiptur having obtained construction permission to construct ground, first and second floor building for residential purpose had constructed an additional floor without obtaining permission and had constructed the building without leaving required set back and were issued with notice dt. 4/12.09.2012 for removal of illegal construction put up in "violation" of building bye laws. It is also prima facie made out that the building constructed by obtaining construction permission for residential purpose is being allowed on account of illegal order issued by respondent No.5 for being used for running Nursing home.
8. Hence, this report is made under Section 12(1) of the Karnataka Lokayukta Act, to the competent authority to direct the concerned officers presently working in CMC at Tiptur to take steps in accordance with provisions of Karnataka Municipal Act against the building constructed in violation of building bye-laws as well as construction of additional floor without their being construction permission in respect of which action was initially initiated by issuing notice dated 04/12-09-2012 itself. since, the decree in OS 405/2012 dated 31/10/2014 as well as pendency of RA 17/2015 filed by CMC Tiptur do not

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preclude the authorities to take action under the provisions of Karnataka Municipalities Act.

- 9 Further, as per Section 12(2) of Karnataka Lokayukta Act, 1984, the Competent Authority shall intimate the action taken or proposed to be taken on this report.

Copies of connected records are enclosed.

S. B. Adi .13-1-12.
[JUSTICE SUBASH B ADI]
Upalokayukta
Karnataka State, Bengaluru

