

KARNATAKA LOKAYUKTA

No.UPLOK-1/DE/26/2015/ARE-11

Multistoreyed Building
Dr. B.R. Ambedkar Veedhi,
Bengaluru -560 001.
Date:18/02/2021

MODIFIED RECOMMENDATION

Sub: Departmental Inquiry against Sriyuthas:

1) Sri. Srikantegowda N.R, Executive Engineer, 2) Sri. K.P. Mahadevaiah, Assistant Executive Engineer, 3) Sri. Shashidhar, Assistant Engineer, BBMP, Bengaluru.

Ref: (1) Letter of recommendation dated 20/05/2020.

(2) Government letter No. ನಅಇ 528 ಎಂಎನ್‌ಯು 2014 dated 05/01/2015 and 04/07/2020 of the Under Secretary to Government, Urban Development Department (BBMP), Government of Karnataka.


1. Vide letter of recommendation referred to at (1) above, it was recommended to impose penalty of **imposing penalty of reducing the pay in the time scale of pay by four lower stages with cumulative effect of DGO-2** Sri.K.P.Mahadevaiah, Assistant Executive Engineer, Bruhath Bengaluru Mahanagara Palike, Gandhinagar Sub-Division, Bengaluru.
2. The Administrative Department vide letter referred to at (2) above, have requested for sending modified recommendation as against DGO No.2 Sri.K.P.Mahadevaiah, Assistant Executive Engineer, Bruhath Bengaluru Mahanagara Palike, Gandhinagar Sub-Division, Bengaluru, on the ground that the proposed penalty as per recommendation cannot be imposed against DGO No.2, as he has retired on 29/02/2020 from service.


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3. Hence, in modification of the recommendation made as against DGO No.2 vide the letter of recommendation referred to at (1) above, it is recommended **“withholding 10% of pension for 10 years”** against DGO No-2 Sri.K.P.Mahadevaiah, Assistant Executive Engineer, Bruhath Bengaluru Mahanagara Palike, since he has already retired on **29/02/2020**.

Action taken in the matter is to be intimated to this authority.


(Justice B.S.Patil)
Upalokayukta
State of Karnataka
Bengaluru.


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BEFORE THE ADDITIONAL REGISTRAR, ENQUIRIES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NUMBER: UPLOK-1/DE/26/2015/ARE-11

ENQUIRY REPORT Dated: 18/05/2020

Enquiry Officer: V.G.Bopaiah
Additional Registrar Enquiries-11
Karnataka Lokayukta, Bengaluru.

Delinquent Official number-1 : Sri.Srikante Gowda. N.R.
(Name written by him as
N.R.Srikantaiah Gowda on the note
sheet on 19/11/2016)

Discharged duties as Executive
Engineer, Bruhath Bengaluru
Mahanagara Palike, Gandhinagara
Sub-Division, Bengaluru, in the year
2009.

Retired on superannuation on
30/09/2013.

Delinquent Official number-2 : Sri.Mahadevaiah K.P. (Name
written by him as
K.P.Mahadevaiah on the note
sheet on 19-11-2016)

Discharged duties as Assistant
Engineer, Bruhath Bengaluru
Mahanagara Palike, Gandhinagara
Sub-Division, Bengaluru, in the year
2009.

Retired on superannuation on
28/02/2020.

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Delinquent Official number-3 : Sri.Shashidhar.
(Name written by him as
R.K.Shashidhar on the note sheet on
19/11/2016)

Discharged duties as Assistant
Engineer, Bruhath Bengaluru
Mahanagara Palike, Gandhinagara
Sub-Division, Bengaluru.

Due for retirement on
superannuation on 31/01/2021.

1. In the year 2009 delinquent official number-1 to delinquent official number-3 were discharging duties as Executive Engineer, Assistant Engineer and Assistant Engineer respectively in Bruhath Bengaluru Mahanagara Palike (in short, "B.B.M.P"), Gandhinagar Sub-Division, Bengaluru.
2. Background for initiating the present inquiry against delinquent officials 1 to 3 needs to be narrated in brief. News item appeared in "Vijaya Karnataka" Kannada daily news paper on 13/11/2009 reporting that BBMP demolished the buildings at "Ittamadu" area within the limits of BBMP and without any lawful excuse not demolished "Terrace Garden Apartment" located in the said area. After taking cognizance of the said news item, the matter came to be registered in Compt/Uplok/BCD/ 579/2009/CE and thereafter, in exercise of the powers conferred upon under section 7(2) of The Karnataka Lokayukta Act, 1984, Hon'ble Upalokayukta, Karnataka authorised the Chief Engineer (hereinafter will be referred to as "Investigating Officer") attached to Technical Audit Cell, Karnataka

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Lokayukta, Bengaluru to conduct investigation and to submit report. On 13/11/2009 the Investigating Officer visited Ittamadu area and noticed progress of demolition of buildings adjacent to Terrace Garden Apartment without demolishing the said apartment. It came into light that Vrushabhavathi storm water drain of the width of fifteen feet was entering the said apartment from northern side and during construction of the said apartment the builder diverted the original alignment of the storm drain and covered the said original alignment area which, was done without any legal sanction and approval. At the entry point of diversion of storm water drain it was noticed that width of the storm water drain was reduced to 1.20 meters. Sri. Munikrishna who then was working as Superintending Engineer attached to storm water drain was present at the spot who informed the Investigating Officer that BBMP intends to demolish about forty five houses in a length of about six hundred and fifty meters in order to allow the drain water to flow but failed to produce any documents in support of the said say. Delinquent official number 1 also has not produced any document authorising him for demolition of forty five houses. Sri Ramakrishna who was then discharging duties as Additional Commissioner, BBMP (South) was present at the spot who informed that BBMP is yet to ascertain whether Bengaluru Development Authority (in short, "BDA") had accorded permission to the builder of Terrace Garden Apartment to divert the storm water drain. The Investigating Officer could find out that in order to save a portion of Terrace Garden Apartment, if BBMP intends to take the alignment detouring the said apartment on the eastern side, the same is not feasible. The

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Investigating Officer could come to know that without proper working plan BBMP had commenced the work of demolition of forty five houses. On being questioned, delinquent official number 1 informed that no order in writing has been issued by the authority which is competent to issue. It thus emerged that without any lawful authority delinquent officials 1 to 3 commenced demolition process of forty five houses on 12/11/2009. It came into light that earlier to 12/11/2009 notices by any mode are not caused to the owners of the houses whose houses are targeted for demolition. It emerged during investigation that the area in which Terrace Garden Apartment is constructed has been subjected to the jurisdiction of BBMP in the year 1996 and no efforts are bestowed by BBMP to restore the then existed original storm water drain. During investigation, Sri Ananatha Swamy who then was working as Chief Engineer, BBMP denied the news item and informed the Investigating Officer that for want of adequate machinery Terrace Garden Apartment could not be demolished on 12/11/2009 and that process of demolition of the said apartment will be carried out on 13/11/2009 after ascertaining whether competent authority permitted the builder to divert the drain. The said say of Sri Ananatha Swamy was found not convincing. Residents of houses which are demolished have stated that pending disposal of their applications for regularisation of houses BBMP officers have demolished the houses. At the conclusion of investigation, the Investigating Officer arrived at conclusion that mere according of permission by BDA to the builder of Terrace Garden Apartment to divert drain does not mean that before according sanction if any BDA worked

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out at the relevant issues and therefore, in case it is found that sanction has been accorded by BDA the same is neither a reason nor an excuse for BBMP to align more storm water drain on a technically feasible path. The Investigating Officer also arrived at a conclusion that without conducting adequate preliminary surveys and without preparing working plans and without obtaining proper sanction from the competent authority delinquent officials 1 to 3 started demolition activities. The Investigating Officer also expressed that without any adequate ground works the concerned senior officers orally permitted delinquent officials 1 to 3 to carry out demolition activities. The Investigating Officer further expressed that as regards deliberate diversion of storm water drain inside Terrace Garden Apartment separate investigation is necessary to unearth the said serious irregularity.

3. On the basis of the report of the Investigating Officer, Hon'ble Upalokayukta-1, Karnataka, prima facie found that position of storm water drain is not found mentioned in the sanctioned plan issued on 5-2-1990 to Terrace Garden Apartment and that officers of BBMP, BDA and Deputy Commissioner, Bengaluru Urban District, failed to respond to find out whether permission has been accorded for diversion of storm water drain which was running over the area on which Terrace Garden Apartment has been constructed. Hon'ble Upalokayukta-1, Karnataka, prima facie found that delinquent officials 1 to 3 failed to produce records concerning alignment of storm water drain, particulars of the owners of the houses whose houses are demolished and equally delinquent officials 1 to 3 failed to furnish records which compelled for demolition of forty five houses and thus demolition process was

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not transparent. With these set of facts, Hon'ble Upalokayukta-1, Karnataka, prima facie found that delinquent officials 1 to 3 have committed misconduct within the purview of Rule 3(1) (i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 and accordingly, in exercise of the powers conferred upon under section 12(3) of The Karnataka Lokayukta Act, 1984, recommended the competent authority to initiate disciplinary proceedings against delinquent officials 1 to 3 and to conduct departmental inquiry against delinquent officials 1 to 3 and to entrust the inquiry to the Hon'ble Upalokayukta, Karnataka, under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

4. Subsequent to the report dated 29-9-2014 under section 12(3) of The Karnataka Lokayukta Act, 1984, Government Order bearing number ನಅಇ ಎಂಎನ್‌ಯು 2014, ಬೆಂಗಳೂರು, ದಿನಾಂಕ 05-01-2015 has been issued by the Under Secretary to the Government of Karnataka, Department of Urban Development (BBMP) entrusting the inquiry against delinquent officials 1 to 3 to the Hon'ble Upalokayukta, Karnataka, under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.
5. Subsequent to the Government Order number ನಅಇ ಎಂಎನ್‌ಯು 2014, ಬೆಂಗಳೂರು, ದಿನಾಂಕ 05 01 2015 Order number Uplok-1/DE/26/2015, Bengaluru, dated 20-1-2015 has been ordered by the Hon'ble Upalokayukta-1, Karnataka, nominating the Additional Registrar, Enquiries-11, Karnataka Lokayukta, Bengaluru, as Inquiry Officer to frame charges and to conduct departmental inquiry against delinquent officials 1 to 3.


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6. Articles of charge dated 9-2-2015 at Annexure-I which includes statement of imputation of misconduct at Annexure-II framed by the then Additional Registrar, Inquiries-11, Karnataka Lokayukta, Bengaluru, is the following;

“ANNEXURE-I

CHARGE :

That you DGO No. 1) Sri. Srikante Gowda N.R., Executive Engineer, Bruhat Bengaluru Mahanagara Palike, Gandhinagara Sub-Division, Bangalore, you DGO No. 2) Sri.Mahadevaiah K.P., Assistant Executive Engineer, Bruhat Bengaluru Mahanagara Palike, Gandhinagara Sub-Division, Bangalore and you DGO No. 3) Sri.Shashidhar, Assistant Engineer, Bruhat Bengaluru Mahanagara Palike, Gandhinagara Sub-Division, Bengaluru while discharging your duties:

1. You DGO Nos. 1 to 3 had taken up the demolition work, in large scale, you didn't had proper action (working) plan, before starting / taking up the demolition work;
2. You DGO Nos. 1 to 3 have started the demolition work, without actually preparing an alignment, clearly showing the properties to be demolished and without obtaining the written permission from your higher officers.
3. You DGO Nos. 1 to 3 did not serve any notices to the residents (affected people of the Ittamadu). BBMP and you DGOs have not displayed any map, showing the proposed alignment, of the Drain & in turn the properties or the structures, which the BBMP, propose to demolish, in order to make the way, for the Drain...

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4. Authorities of B.D.A have sanctioned plan for 'Terrace Garden Apartment' on 5/2/1990 and they have issued commencement certificate during the year 1991 and occupancy certificate on 14/9/1993;
5. The position of storm water drain (Rajakaluve) is neither marked in the plan nor there is any mention about it in the sanctioned plan;
6. You DGO Nos. 1 to 3 have failed to respond to find out whether permission for diversion of Rajakaluve was given by the B.D.A;
7. Owners of the apartment have filed O.S.7577/2009 against B.B.M.P. to direct B.B.M.P. to deviate Rajakaluve from the proposed plan;
8. You DGO Nos. 1 to 3 failed to produce records concerning drain alignment, list of properties on the drain along with details of owners at the time of spot inspection and you should have brought the record to the spot, when large scale demolition was in progress;
9. You DGO Nos. 1 to 3 failed to furnish records/explanation for taking up demolition work hastily without making necessary preparations, action plans and your act was not transparent in taking up the demolition work.

and thereby you DGO Nos. 1 to 3 failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a


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Government Servant and thus you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct)Rules 1966.

ANNEXURE-II
STATEMENT OF IMPUTATION OF MISCONDUCT:

An investigation was taken up under Section 7(2) of the Karnataka Lokayukta Act, 1984, On the basis of news published on 13/11/2009 in Vijaya Karnataka news paper about alleged misconduct against officers of B.B.M.P.,

2. According to the news reported in Vijaya Karnataka, while demolishing other buildings constructed on Vrishabhavati Rajakaluve, officers of B.B.M.P have intentionally spared the building "Terrace Garden Apartment", which has been constructed on Vrishabhavathi Rajakaluve in Ittamadu.
3. The complaint was entrusted to Chief Engineer, Karnataka Lokayukta at Bangalore to investigate the report. The Chief Engineer got the investigation conducted and submitted report stating that demolition work of buildings constructed on Rajakaluve was in progress and, with regard to "Terrace Garden Apartment", there was confusion amongst the officers of B.B.M.P. and there was no clarity whether to demolish a portion of apartment in order to make the way for the drain or to take an alignment detouring the apartment, and there was no convincing explanation by the officers present at spot to spare the apartment from demolition.
4. As the said report showed the names of officers of B.B.M.P. investigation has been taken up against 1) Sri. Srikantegowda -

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Executive Engineer, 2) Sri. Mahadevaiah- A.E., and 3) Sri. Shashidhar – Asst. Engineer (hereinafter referred as DGO Nos. 1 to 3 respectively) besides Jr. Engineers – not shown with name in the said report, invoking section 9 of Karnataka Lokayukta Act and their replies were called for on the said report of Chief Engineer. For that, they have submitted their reply.

5. DGO No. 1 to 3 stated that BDA has sanctioned plan on 05/02/1990 and Occupancy Certificate has been issued on 14/09/1993 for the said apartment. Its constructed area is included in B.B.M.P. from 01/10/1996 and number of families are residing in the flats of this apartment. Only after ascertaining whether the B.D.A. had given permission to divert the drain, further action for demolition of apartment can be taken. Admitted that they did not furnish information at the time of visit of officers of Lokayukta, but, it has been furnished later. Letter was written to B.D.A to furnish information, whether permission was given for diverting the Secondary drain, but the BDA has replied that the file concerning sanction of plan is not available. There is an order by the Court in O.S. 2156/10, not to clear the encroached portion.
6. After receiving the reply from DGO Nos. 1 to 3, the Chief Engineer of T.A.C. was entrusted to investigate further. The Chief Engineer, got the investigation conducted through the Sri.G.A.Balaji, Executive Engineer-II, Karnataka Lokayukta at Bangalore (hereinafter referred as Investigation Officer i.e., I.O. for short), on the instructions of said Chief Engineer and I.O. has given report to Chief Engineer of Karnataka Lokayukta at Karwar, who, in turn, has submitted report of I.O after concurring with it.

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7. The report of the I.O. is that, records show that DGO Nos. 1 to 3 i.e.,
1) Sri. Srikante Gowda N.R., Executive Engineer, Bruhat Bengaluru Mahanagara Palike, Gandhinagara Sub-Division, Bangalore, 2) Sri.Mahadevaiah K.P., Assistant Executive Engineer, Bruhat Bengaluru Mahanagara Palike, Gandhinagara Sub-Division, Bangalore and, 3) Sri.Shashidhar, Assistant Engineer, Bruhat Bengaluru Mahanagara Palike, Gandhinagara Sub-Division, Bengaluru committed misconduct.

(i) DGO Nos. 1 to 3 had taken up the demolition work, in large scale, they didn't had proper action (working) plan, before starting / taking up the demolition work;

(ii) DGO Nos. 1 to 3 have started the demolition work, without actually preparing an alignment, clearly showing the properties to be demolished and without obtaining the written permission from your higher officers.

(iii) Authorities of B.D.A have sanctioned plan for ' Terrace Garden Apartment' on 5/2/1990 and they have issued commencement certificate during the year 1991 and occupancy certificate on 14/9/1993;

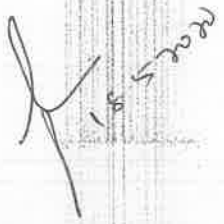
(iv) The position of storm water drain (Rajakaluve) is neither marked in the plan nor there is any mention about it in the sanctioned plan;

(v) The DGO Nos. 1 to 3 have failed to respond to find out whether permission for diversion of Rajakaluve was given by the B.D.A;

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- (vi) Owners of the apartment have filed O.S. 7577/2009 against B.B.M.P. to direct B.B.M.P. to deviate Rajakaluve from the proposed plan;
- (vii) DGO Nos. 1 to 3 failed to produce records concerning drain alignment, list of properties on the drain along with details of owners at the time of spot inspection and they should have brought the record to the spot, when large scale demolition was in progress;
- (viii) DGO Nos.1 to 3 failed to furnish records/explanation for taking up demolition work hastily without making necessary preparations, action plans and their act was not transparent in taking up the demolition work.
2. After receiving the report, DGO Nos. 1 to 3 were impleaded and the comments of the DGO Nos. 1 to 3 were called for on the complaint and report of I.O. For that, DGO Nos. 1 to 3 have submitted their replies. Their replies is same as submitted by them for earlier report of Chief Engineer. The DGO Nos.1 to 3 have not produced documents to show that demolition was taken up with written permission from the Competent Authority and after issuing notice to the concerned owners. They have also admitted that they did not have list of owners and the information at the time of demolition work when the officers of Lokayukta visited the spot on 13/11/2009.
3. In view of the facts stated above and the material on record, replies of the DGO Nos. 1 to 3 have not been found convincing to accept or drop the proceedings against them.



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4. The facts supported by the material on record prima facie show that the DGO Nos. 1 to 3, being Public/Government servants, have failed to maintain absolute devotion to duty and also acted in a manner unbecoming of Government servants and thereby committed misconduct and made themselves liable for disciplinary action.
5. Since said facts and material on record prima-facie show that the DGO Nos. 1 to 3 have committed misconduct, recommendation U/s 12(3) of Karnataka Lokayukta Act, was made to the Competent Authority to initiate disciplinary proceedings against DGO Nos. 1 to 3 and to entrust the enquiry to this Institution under Rule 14-A of Karnataka Civil Service (Classifications, Control and Appeal) Rules, 1957.
6. The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against the DGO Nos. 1 to 3 and to submit report. Hence the charge".
7. In response to due service of articles of charge, delinquent officials 1 to 3 entered appearance before this authority on 28-5-2015. In the course of first oral statement of delinquent officials 1 to 3 recorded on 28/05/2015 they pleaded not guilty. Subsequently, delinquent officials 1 to 3 have engaged Advocate for their defence.
8. In the course of written statement dated 25/05/2015 signed by delinquent officials 1 to 3 and their advocate it is contended that Government Order has no application to the case on hand. It is contended that proceedings initiated is without jurisdiction. It is contended that in the absence of direction for demolition of Terrace Garden Apartment the alleged misconduct cannot be

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traced. It is contended that the matter would not fall within the domain of Lokayukta Institution. It is contended that there are no grounds for demolition of Terrace Garden Apartment. It is contended that suo-motu cognizance in the absence of complainant in FORM – I supported by the affidavit in FORM-II is without any jurisdiction. It is contended that allegations are vague. It is contended that in the absence of complaint in FORM-I investigation conducted by the Investigating Officer is without any authority of law. It is contended that delinquent officials 1 to 3 have offered their reply to the notice dated 18/11/2009 of the Chief Engineer attached to Technical Audit Cell, Karnataka Lokayukta, Bengaluru and thereafter, the matter has been closed and therefore subsequent proceedings cannot sustain for the reason that one cannot be vexed twice. It is contended that Government Order and articles of charge cannot sustain as laid down in the decision reported in 1989 (2) SCC page 132, decision in R.G.Jaisinghani V/S Union of Indian and others reported in AIR 1967 SC page 1427, decision in Tata Cellular V/S Union of India and others reported in AIR 1966 SC page 11 and the decision in R.Venkitaraman V/S Union of India reported in AIR 1979 SC page 49. It is contended that delinquent official number 1 retired from service and therefore proceedings against him are hit by Rule 214 and Rule 214(a) of The Karnataka Civil Services Rules. It is contended that in the absence of separate and independent statement of imputation of misconduct articles of charge cannot sustain as laid down in the decision in Surathchandra Chakraborty V/S The State of West Bengal reported in AIR 1971 SC page 752 and the decision in Kemchand V/S Union of India

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and the decisions in AIR 1984 SC page 505, page 1361 and the decision in AIR 1985 SC page 504. It is contended that before taking up of the work of demolition delinquent officials 1 to 3 have obtained permission from the higher authorities and prepared working plan. It is contended that BDA has issued sanctioned plan, commencement certificate, completion certificate and occupancy certificate to Terrace Garden Apartment and therefore there was no occasion to delinquent officials 1 to 3 to indulge in demolition of the said apartment.

9. The disciplinary authority has examined the Investigating Officer Sri. B.R. Anil Kumar as PW1, Sri. G. A. Balaji who was working as Executive Engineer, Technical Audit Cell, Karnataka Lokayukta, Bengaluru from October 2011 to June 2014 as PW2. During evidence of PW1 a single sheet of paper cutting of Kannada newspaper "Vijaya Karnataka" is marked as per Ex P1, his original report dated 17/11/2009 in thirteen sheets with three annexures shown as Annexure -A, Annexure-B and Annexure-C is marked as per Ex P2. During evidence of PW2 original reply dated 11/12/2009 in five sheets of delinquent official number 2 in COMPT/UPLOK/BCD 579/2009/ARE-8 is marked as per Ex P3, original reply dated 11/12/2009 in five sheets of delinquent official number 1 COMPT/UPLOK/BCD/579/2009/ARE-8 is marked as per Ex P4, original reply dated 11/12/2009 in five sheets of delinquent official number 3 in COMPT/UPLOK/BCD/579/2009/ARE 8 is marked as per Ex P5, original note sheet in five sheets from paragraph numbers 12 to 23 in COMPT/UPLOK/BCD/579/2009/ARE-8 is marked as per Ex P6, original sketch in a single sheet of the Surveyor, BBMP (South),

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Bengaluru is marked as per Ex. P7, office copy of the letter dated 18/11/2019 in three sheets of the Chief Engineer attached to Technical Audit Cell, Karnataka Lokayukta, Bengaluru addressed to delinquent officials 1 to 3 is marked as per Ex P8 and xerox copy of note sheet in seven sheets maintained in the office of BBMP is marked as per Ex P9.

10. During second oral statement of delinquent official 1 to 3 recorded on 28/07/2016 they have stated that they would get examined themselves as defence witnesses and that they do not intend to examine defence witness.
11. Thought delinquent officials 1 to 3 have stated during their second oral statement that they do not intend to examine defence witness, one defence witness Sri Anantha Swamy H.C is examined as DW1. During his evidence attested copy of note sheet in eleven sheets maintained in the office of BBMP is marked as per Ex D1, attested copy of letter dated 10/11/2009 in a single sheet of Additional Commissioner (South), BBMP addressed to the Deputy Commissioner, Bengaluru Urban District is marked as per Ex D2, attested copy of the letter dated 16/11/2009 in a single sheet of the Additional Commissioner (South), BBMP addressed to the Commissioner, BDA is marked as per Ex D3, attested copy of the letter dated 14/12/2009 in a single sheet of the Assistant Commissioner (South), BBMP addressed to the Commissioner, BDA is marked as per Ex D4, attested copy of the letter dated 10/11/2009 in a single sheet of the Additional Commissioner (South), BBMP addressed to the Commissioner, BDA is marked as per Ex D5, attested copy of the letter dated 16/11/2009 in a single sheet of the Additional Commissioner (South), addressed to the

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Deputy Commissioner, Bengaluru Urban District is marked as per Ex D6, attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 issued to M.V. Sudha under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex D7, attested copy of a notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to R. Mohan Naidu under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex D8, attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Krishna under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex P9, attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Chandrashekhar under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex D10, attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to B.S. Prabha under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex D11, attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Kempanna under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex D12, attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Manjula. R.J under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex D13, attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to M.H.Shankar under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per

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Ex D14 , attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to T.V. Rangappa under section 308 of The Karnataka Municipal Corporations Act, 1976 is marked as per Ex D15, xerox copy of the mahazar dated 10/11/2009 in a single sheet drawn by delinquent official number 3 is marked as per Ex D16, xerox copy of list in a single sheet point out the names of persons who encroached the storm water drain is marked as per Ex D17, attested copy of sketch in a single sheet is marked as per Ex D18 and attested copy of a colour photograph of Ex D18 is marked as per Ex D19.

12. Delinquent official number 3 got himself examined as DW2. Memo dated 17/12/2016 signed by delinquent officials 1 to 3 is filed stating that delinquent official number 1 is examined as DW1 and after cross examination of DW1 the matter was posted for further evidence of delinquent officials 2 and 3 if any. It is further stated in the said memo that delinquent official number 1 has led evidence on behalf of delinquent officials 2 and 3 and therefore delinquent officials 2 and 3 adopt the evidence of delinquent official number 1 who is examined as DW1. It needs to be mentioned that delinquent official number 1 is not examined as DW1. The witness who is examined as DW1 is Anantha Swamy H.C. who is not delinquent official number 1. Delinquent official number 3 is examined as DW2. Note sheet dated 19/11/2016 shows that on the said day delinquent official number 3 is examined as DW2 and the matter was thereafter posted for evidence of delinquent officials 1 and 2 and not for evidence of delinquent officials 2 and 3 as mentioned in the above memo. It

18-5-2016

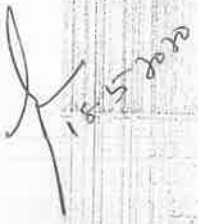
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needs to be noted the delinquent officials 1 and 2 have not got examined themselves as defence witnesses.

13. Incriminating circumstances which appeared in the evidence of PW1 and PW2 and put to delinquent officials and their answers are recorded. They have stated that encroached buildings are demolished and have not produced documents before PW1 on the day of inspection conducted by PW1. They have stated that they have discharged duties in obedience of the order of their higher officers.
14. In the course of written argument the Presenting Officer has contended that evidence of PWs 1 and 2 and Exs P2 and P6 establishes that without proper action plan delinquent officials 1 to 3 took up demolition work. It is contended that evidence of DW1, DW2 and Exs D1 to D19 cannot be believed.
15. In the course of written argument signed by the Advocate for delinquent officials 1 to 3 it is contended that evidence on record does not establish the charge and that evidence led by delinquent officials 1 to 3 makes it clear that charge is not proved. It is contended that as found in the evidence of DW1 and page number 1 of the note sheet marked through DW1 preparation for demolition commenced since July 2008. It is contended that Ex P1 shows that survey was conducted. It is contended that Ex D18 points out unauthorised structures. It is contended that Exs D7 to D15 point out that notices are caused to the owners of unauthorised buildings. It is contended that order was passed by the Chief Engineer (South), BBMP for demolition of unauthorised structures. It is contended that during evidence DW2 (delinquent official number 3) has stated that decision was taken for

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demolition in the meeting convened by the Additional Commissioner, BBMP. It is contended that on 11/11/2009 public notice was caused notifying the process of demolition. It is contended that finding of PW1 that delinquent officials 1 to 3 were not in possession of action plan cannot be accepted. It is contended that DW1 was the higher officer of delinquent officials 1 to 3 and that Ex P9 and Ex D1 which are one and the same establishes that all the concerned orders are recorded to have been issued by the higher officers. It is contended that as found in paragraph number 20 at page number 7 of Ex P2 that explanation of delinquent officials 1 to 3 are accepted which negatives the charge that demolition work was started without obtaining permission from the higher officers. It is contended that section 288 - D of The Karnataka Municipal Corporations Act, 1976 has empowered powers to the Commissioner of BBMP for removal of unauthorised structures built in contravention of the provisions of section 288-A of The Karnataka Municipal Corporations Act, 1976. It is contended that Exs D2 to D5 would show that correspondences are made in respect of Terrace Garden Apartment and that no reference was found touching storm water drain passing through the said apartment. It is contended that BBMP has no powers to accord sanction for deviation of storm water drain. It is contended that in Writ Petition number 33857/2009 filed by the residents of Terrace Garden Apartment order to maintain status quo has been passed with direction to approach the Civil Court and in pursuance of the same one of the residents filed suit in O.S. number 7577/2009 against BBMP in which order of temporary injunction has been

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passed and thereafter Legal Cell of BBMP initiated steps to see that order of temporary injunction is stayed. It is contended that situation was under tense on the day on which the Investigating Officer conducted spot inspection and therefore one cannot expect delinquent officials 1 to 3 to keep voluminous records at the spot. It is contended that delinquent officials 1 to 3 produced the relevant map and also sanctioned plan issued to Terrace Garden Apartment. It is contended that PW1 has not visited BBMP office to find out the records. It is contended that PW1 lost sight of that Ex P19 was displayed. It is contended that detailed action plan has not been systematically executed.

16. In tune with the articles of charge points which arise for consideration are the following:

Point number 1:- Whether it stands established that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009 delinquent officials 1 to 3 started demolition work of unauthorised buildings at Ittamadu within the jurisdiction of BBMP without preparing proper alignment pointing out the buildings to be demolished and equally without obtaining permission in writing from the computer authority empowered to accord permission_ and thereby delinquent_officials 1 to 3 are guilty

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of misconduct within the purview of Rule 3(1)(i) to (iii) of The
Karnataka Civil Services (Conduct) Rules, 1966?

Point number 2:- Whether it stands established that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during investigation conducted by the Investigating Officer touching demolition of unauthorised buildings at Ittamadu within the limits of BBMP, delinquent officials 1 to 3 failed to respond the query of the Investigating Officer touching the aspect whether BDA had accorded permission for diversion of storm water drain which was passing below the basement level of Terrace Garden apartment and thereby delinquent officials 1 to 3 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966?

Point number 3:- Whether it stands established that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, delinquent officials 1 to 3 have failed to provide

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documents before the Investigating Officer on 13/11/2009 during investigation concerning the drain alignment and list of buildings which are built unauthorisedly encroaching the storm water drain within the limits of Ittamadu within the jurisdiction of BBMP and thereby delinquent officials 1 to 3 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966?

Point number 4:- Whether it stands established that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, delinquent officials 1 to 3 demolished the unauthorised buildings in Ittamadu area within the limits of BBMP in a hasty manner and failed to maintain transparency and thereby delinquent officials 1 to 3 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966?

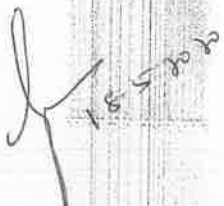
17. Matters in controversy as summarised in point numbers 1 to 4 supra are interlinked with each other and therefore let me dwell upon to consider point numbers 1 to 4 together.

18. Evidence of PW1 (Investigating Officer) that on the order in writing of the Hon'ble Lokayukta issued on 13/11/2009 he visited the area called Ittamadu where he noticed demolition process of buildings by the officers of BBMP is not under challenge. His

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evidence that Sri Ramakrishna who then was working Additional Commissioner (South), BBMP, DW1, Sri Munikrishna who then was working as Superintending Engineer attached to the wing of storm water drain and delinquent officials 1 to 3 were present is not under challenge. His evidence that he noticed demolition of some buildings is not under challenge. His evidence that officers of BBMP were found demolishing the unauthorised buildings to facilitate free flow of drain water is not under challenge. His evidence that on being questioned by him, DW1 has not accurately stated as to whether the said are is owned either by the Government or by BBMP or by individuals is not under challenge. This portion of his evidence is not controverted by DW1 during his evidence.

19. Evidence of PW1 that he noticed storm water drain of the breadth of five meters towards north of Terrace Garden Apartment is not under challenge. His evidence that he noticed diversion of the said storm water drain is not under challenge. His evidence that remaining portion of storm water drain was flowing towards south is not under challenge. His evidence that houses which were built towards south of Terrace Garden Apartment were found demolished is not under challenge.
20. Evidence of PW1 would show that he questioned delinquent official number 1 about the proposal for diversion of storm water drain and the particular number of houses which obstructed flow of water. This portion of his evidence is not under challenge. This portion of evidence of PW1 shows that with the intention of gathering the required information he questioned delinquent official number 1. It is in the evidence of PW1 that he asked

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delinquent official number 1 to produce the map showing the dimension of the area. This portion of his evidence is not under challenge. It is in the evidence of PW1 that he asked delinquent official number 1 as to whether any alignment is prepared. This portion of evidence of PW1 is not under challenge. Evidence of PW1 that delinquent official number 1 has not produced these documents is not under challenge. The above portion of evidence of PW1 is put to delinquent officials 1 to 3 during questionnaire. Delinquent officials 1 to 3 have stated during questionnaire that those documents are not produced. Evidence of PW1 touching diversion of storm water drain from the edge of Terrace Garden Apartment when put to delinquent officials 1 to 3 during questionnaire they have admitted the said evidence of PW1.

21. It is in the evidence of PW1 that he questioned delinquent official 1 as to whether prior notices are caused to the owners of the buildings. He has stated that delinquent official number 1 and also Sri Ramakrishna who then was working as Additional Commissioner (South), BBMP responded that there is no need to cause notices.
22. It is in the evidence of PW1 that upon perusal of the map shown to him at the spot he found that after closing the storm water drain Terrace Garden Apartment is built. This portion of his evidence is not under challenge. PW1 has stated that on being questioned about the reason behind not initiating action in respect of Terrace Garden Apartment, Sri Ramakrishna who was working as Additional Commissioner (South), BBMP responded that BDA or the Deputy Commissioner might have accorded permission for

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diversion of storm water drain and that report will be placed after ascertaining the same. This portion of evidence of PW1 establishes that without ascertaining the said fact delinquent officials 1 to 3 proceeded for demolition of the houses without focussing at demolition of Terrace Garden apartment. This attitude establishes that delinquent officials 1 to 3 intended that Terrace Garden apartment should remain not touched. This attitude establishes that delinquent officials 1 to 3 have failed to maintain transparency.

23. PW1 has stated that officers of BBMP produced the copy of the approved plan of Terrace Garden apartment approved in the year 1989 in which storm water drain was not shown. Production of copy of the said approved plan of Terrace Garden Apartment at the spot leads to draw inference that delinquent officials 1 to 3 intended to safeguard the said apartment. It thus shows that delinquent officials 1 to 3 made use of the said copy of the approved plan as shield to cover up their latches. Evidence of PW1 that on being asked by him whether any specific plan has been formulated touching demolition process delinquent officials have not furnished information is not under challenge. It needs to be expressed that delinquent officials 1 to 3 had no impediment to keep the relevant records with them. Evidence of PW1 that on being asked for production of the order of the officers of BBMP delinquent officials have not produced those documents is not under challenge. Evidence of PW1 that there was no pre-arrangement for the process of demolition is not under challenge.
24. During cross examination PW1 has stated that order has been issued to delinquent officials 1 to 3 by their higher officers for

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demolition of buildings is not know to him. It needs to be remembered that the said order must be within the knowledge of delinquent officials 1 to 3 and as such burden to proof of this fact is on them. It is brought out during cross examination of PW1 that he asked for production of documents but delinquent officials have not produced documents. Suggestion posed to PW1 that map is prepared and after measuring the houses intended to be demolished maps are affixed on those houses in token whereof mahazar has been drawn has been denied by him. Suggestion posed to PW1 that houses which are intended to be demolished are marked by the officers of BBMP has been denied by him.

25. Ex P9 and Ex D1 are copies of note sheet maintained in the office of BBMP in respect of demolition process. Ex P9 and Ex D1 are one and the same. It is suggested to PW1 during his cross examination that in the office note dated 10/11/2009 of the note sheet maintained in the office of BBMP it is ordered by the Chief Engineer, BBMP that the apartment may be demolished at second stage and that action has to be initiated against the houses. The said suggestion is denied by PW1. The said order dated 10/11/2009 as found in Ex P9 and Ex D1 needs to be excerpted which reads:

“ ದಿನಾಂಕ: 09-11-2009 ರಂದು ಮಾನ್ಯ ಅಪರ ಆಯುಕ್ತರು (ದಕ್ಷಿಣ), ಮುಖ್ಯ ಅಭಿಯಂತರರು (ದಕ್ಷಿಣ) ಹಾಗೂ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು (ಪದ್ಮನಾಭ ನಗರ) ವಿಭಾಗ ರವರುಗಳು ಮತ್ತು ಬೃಹತ್ ನೀರುಗಾಲುವೆ ಅಭಿಯಂತರರುಗಳೊಂದಿಗೆ ಸದರಿ ರಾಜಕಾಲುವೆಯ ಒತ್ತುವರಿ ತೆರುವುಗೊಳಿಸುವ ಬಗ್ಗೆ ಸ್ಥಳ ಪರಿಶೀಲಿಸಿ ಅನಂತರ ಅಪರ ಆಯುಕ್ತರು (ದಕ್ಷಿಣ) ರವರ ಕಛೇರಿಯಲ್ಲಿ ಸಭೆ ನಡೆಸಿ ತೀರ್ಮಾನಿಸಿದಂತೆ ದಿನಾಂಕ: 12-11-2009 ರಂದು ಕಾರ್ಯಾಚರಣೆಯನ್ನು

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ಹಮ್ಮಿಕೊಳ್ಳಲು ಹಾಗೂ ಕಾರ್ಯಾಚರಣೆಯನ್ನು ಸುಗಮವಾಗಿ ನಡೆಸಲು ಪೋಲೀಸ್ ಇಲಾಖಾ ಸಹಕಾರವನ್ನು ಮತ್ತು ಬಿ.ಎಂ.ಟಿ.ಎಫ್ ರವರ ಸಹಾಯವನ್ನು ಕೋರಿರುವುದನ್ನು ತಮ್ಮ ಅವಗಾಹನೆಗೆ ತರಲಾಗಿದೆ”.

26. It is seen that the said note dated 11/11/ 2009 found in sheet number 7 of Ex P9 and Ex D1 is signed by delinquent official number 1 but not by the Chief Engineer, BBMP and therefore denial of the above suggestion by PW1 is well founded. No order in writing to that effect passed either by the Chief Engineer, BBMP or by the Additional Commissioner (South), BBMP is made available by delinquent officials 1 to 3. The said note is not signed either by the Chief Engineer (South), BBMP or by the Additional Commissioner (South), BBMP. At this juncture, section 288 -D of The Karnataka Municipal Corporations Act, 1976 needs to be looked into which reads :

“288.D.Commissioner may without notice remove encroachment - Notwithstanding anything contained in this Act, the Commissioner may, without notice, cause to be removed -

- (a) any wall, fence, rail, step, booth or other structure or fixture which is erected or set up in contravention of the provisions of section 288 A ;
- (b) any stall, chair, bench, box, ladder, bale or any other thing whatsoever, placed or deposited in contravention of section 288 B ;
- (c) any article, whatsoever, whatsoever hawked or exposed for sale in any public place or in any public street in contravention of section 288 C and any vehicle, package,


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box, board, shelf or any other thing in or on which such
article is placed, or kept for the purpose of sale.”

The portion as excerpted hereinabove makes it clear that except the Commissioner, BBMP no other officer of BBMP is conferred upon with the powers of ordering demolition of unauthorised structures. In other words, the Commissioner, BBMP alone is conferred upon with the powers of passing order of demolition of unauthorised structures under section 288 D of The Karnataka Municipal Corporations Act, 1976. Therefore, defence formulated in paragraph numbers 21 and 22 of the written statement dated 25/05/2015 of delinquent officials 1 to 3 that they were authorised by their higher officers cannot be accepted which necessarily has to rest on the ground. For the said reason suggestion posed to PW1 during cross examination that subsequent to the order of higher officers action initiated for demolition has no substratum to adhere.

27. It is brought out during cross examination of PW1 that correspondences by BBMP in respect of Terrace Garden Apartment are not made available at the spot. It is brought out during cross examination of PW1 that he orally asked delinquent officials 1 to 3 for production of documents prior to placing the investigation report. Suggestion posed to PW1 that delinquent officials 1 to 3 are not orally called upon for production of documents has been denied by him.

28. Investigation report at Ex P2 of PW1 is marked during his evidence. Ex P2 depicts the latches and irregularities committed by delinquent officials 1 to 3. Ex P2 shows the observations of


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PW1 and final conclusion arrived at by PW1 finding fault with delinquent officials 1 to 3. Observations and conclusions arrived at by PW1 as found in Ex P2 are not assailed in its true letter and spirit during cross examination of PW1 and therefore I have no hesitation whatsoever to concur with his observations and conclusion.

29. During evidence PW2 has stated that PW1 sent the file to him on 12/09/2012 with instructions to examine Ex P2 and also Exs P3 to P5. It is his evidence that on the basis of Exs P3 to P5 he expressed his opinion in the note sheet at Ex P6. It is in his evidence that on the basis of records he has given his report at Ex P6. He has stated that upon perusal of Ex P7 he could not find permission either by the Deputy Commissioner, Bengaluru Urban District or by the officers of BDA. With reference to Ex P8 PW2 has stated that PW1 caused notice to delinquent officials 1 to 3 calling upon reply in respect of Ex P2. Ex P3 is the original reply dated 11/12/2009 of delinquent official number 2 in response to Ex P8. Ex P4 is the original reply dated 11/12/2009 of delinquent official number 1 in response to Ex P8. Ex P5 is the original reply dated 11/12/2009 of delinquent official number 3 in response to Ex P8. Contents of Exs P3 to P5 are one and the same. Reference to sections 288 A, 288 B, 288 C and 288 D of The Karnataka Municipal Corporations Act, 1976 and section 95 of The Karnataka Land Reforms Act, 1964 is made as found in Exs P3 to P5. Reference is also found made to the note sheet dated 10/11/2009 of Ex P9 and Ex D1 as excerpted hereinbefore. Contentions put forward in Exs P3 to P5 will not lend assurance to the defence of

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delinquent officials 1 to 3. Evidence of PW2 is that on the basis of the note sheet dated 10/11/2009 found in Ex P9 and Ex D1 he accepted the explanation found in Exs P3 to P5. It appears that without proper application of mind, particularly, without appreciating section 288 D of The Karnataka Municipal Corporations Act, 1976 PW2 has deposed that he accepted the explanation at Exs P3 to P5. His evidence will not lend assurance to the defence put forward by delinquent officials 1 to 3.

30. During evidence DW1 has referred to Exs D1 to D19. Though he has stated that he has concurred with paragraph numbers 21 to 29 these paragraphs relate to the correspondence touching diversion of storm water drain which was passing through the basement of Terrace Garden Apartment and as such the said portion of his evidence will not lend assurance to the defence. Exs D2 to D6 which are the attested copies of the letter dated 10/11/2009, 16/11/2009, 14/12/2009, 10/11/2009 and 16/11/2009 respectively written by the Joint Commissioner (South), BBMP touching Terrace Garden Apartment. Exs D3, D4 and D6 are subsequent to demolition and therefore these documents are of no relevance. It is seen in Ex D2 that original of the same which is addressed to the Deputy Commissioner, Bengaluru Urban District is received in the office of the Deputy Commissioner, Bengaluru Urban District on 16/11/2009. Nothing had prevented the staff of the office of the Additional Commissioner (South) BBMP to place the original of Ex D2 on 10/11/2009 before the Deputy Commissioner, Bengaluru Urban District. Ex D5 is the attested copy of the letter dated

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10/11/2009 of the Additional Commissioner (South), BBMP addressed to the Commissioner, BDA. It shows that original of Ex D5 is received in the office of the Commissioner, BDA on 16/11/2009. Nothing had prevented the staff attached to the office of the Additional Commissioner(South), BBMP to place the original of Ex D5 before the Commissioner, BDA on 10/11/2009. It needs to be expressed that BBMP officers could have waited for the response to the originals of Ex D2 and Ex D5. It is apparent that without waiting for the response of the Deputy Commissioner, Urban District, Bengaluru and the Commissioner, BDA delinquent officials 1 to 3 have hurriedly proceeded for demolition of the houses on 13/11/2009 which unerringly points out that delinquent officials 1 to 3 have not made up mind to initiate action against Terrace Garden Apartment. It is not found in the evidence of DW1 and DW2 that there was order of stay in Writ Petition number 33857/ 2009 and in O.S. number 7577/2009 on 13/11/2009. The day on which order to maintain status quo is passed in Writ Pctition number 33857/2009 and the day on which order of temporary injunction is passed in O.S. number 7577/2009 is not found either in the evidence of DWs 1 and 2 or in the written argument filed on behalf of delinquent officials 1 to 3. Though it is contended in the written argument filed on behalf of delinquent officials 1 to 3 that delinquent officials 1 to 3 informed the Legal Cell of BBMP to take steps to vacate the order of temporary injunction the same does not find place in Ex P9 and Ex D1. Whether Writ Petition number 33857/2009 and O.S. number 7577/2009 are filed earlier to 12/11/2009 or subsequently is not specified by delinquent officials 1 to 3. Exs

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D7 to D15 are referred to during evidence of DW1. Nothing had prevented delinquent official number 3 to equally cause notice under section 308 of The Karnataka Municipal Corporations Act, 1976. Since the Commissioner, BBMP had not passed order permitting demolition of the buildings, Exs D16 to D19 as stated by DW1 are of no assistance to the defence. In these circumstances, evidence of DW1 is of no assistance to lend assurance to the defence. It is in his cross examination that Terrace Garden Apartment is constructed encroaching the storm water drain.

31. During evidence DW2(delinquent official number 3) has stated that he was conferred upon with the powers of approval of residential buildings, enforcement of progressive works and removal of unauthorised buildings. It is not his evidence that powers of the Commissioner, BBMP under section 288 D of The Karnataka Municipal Corporations Act, 1976 were delegated to him. DW2 has stated that along with the Assistant Executive Engineer and others he conducted joint inspection and asked the residents of the locality to produce records. Though he has stated that the residents of the locality called upon to produce records which are found in Ex D 7 to D 15 that portion of his evidence cannot be believed for the reason that Exs D7 to D15 are dated 10/10/2009. It is in his evidence that storm water drain was not found in the approved plan touching Terrace Garden Apartment. He has stated that in connection with the approved plan of Terrace Garden Apartment the Additional Commissioner (South), BBMP addressed letter to the Deputy Commissioner, Bengaluru

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Urban District. His evidence that as found in Ex P9 the Chief Engineer (South), BBMP ordered not to proceed against Terrace Garden Apartment until the receipt of clarification cannot be believed for the reason that the said note dated 11/11/2009 is by delinquent official number 1 but not by the Chief Engineer (South), BBMP. His evidence that decision to demolish the buildings on 12/11/2009 has no legal sanctity. The said decision was not by the Commissioner, BBMP who alone was empowered under section 288 D of The Karnataka Municipal Corporations Act, 1976. The Commissioner, BBMP has not delegated the powers either to the Chief Engineer, BBMP or to the Additional Commissioner (South), BBMP and therefore, evidence of DW2 that demolition work executed was under the direction of the Chief Engineer (South) BBMP and Additional Commissioner (South), BBMP points out that demolition houses was without lawful authority. Cross examination of DW2 shows that there was no order of stay by the Court which points out that delinquent officials 1 to 3 had no impediment to bring it to the notice of the Commissioner, BBMP to permit demolition of Terrace Garden Apartment. Evidence of DW2 shows that documents are not produced before PW1 on 12/11/2009.

32. Regarding the provisions of Rule 214 (2)(b) of The Karnataka Civil Services Rules in respect of delinquent official number 1 as stated in the written statement, delinquent official number 1 has not attempted to ventilate the said grievance before the competent authority which issued Government Order ನಆಇ 528 ಎಂಎನ್ಯು 2014 ಬೆಂಗಳೂರು, ದಿನಾಂಕ 05-01-2015. Before filing of written statement

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delinquent official number 1 has not initiated any steps before this authority to bring the same to the notice of the competent authority which issued the above Government Order. Without resorting to the said remedy written statement is filed which operates as estoppel.

33. In the presence of the materials on record as discussed above I am not inclined to accept the defence put forward in the course of written statement and equally not persuaded to accept the contentions urged in the course of written statement filed on behalf of delinquent officials 1 to 3.

34. Upon meticulous appreciation of the evidence on record I hold that the charges as summarised in point numbers 1 to 4 supra are proved and being of this view I proceed with the following:

R E P O R T

Charge against delinquent official number 1 that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 2 that during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 3 that during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub Division, Bengaluru in the month of November 2009, delinquent officials 1 to 3 started demolition of unauthorised buildings at Ittamadu within the

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jurisdiction of BBMP without preparing proper alignment pointing out the buildings to be demolished and equally without obtaining permission in writing from the competent authority empowered to accord permission and thereby delinquent officials 1 to 3 are guilty of misconduct within the purview of Rule 3(1) (i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 is proved.

Charge against delinquent official number 1 that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 2 that during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 3 that during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, during investigation in COMPT/UPLOK/BCD/579/2009 conducted by the Investigating Officer touching demolition of unauthorised buildings at Ittamadu within the limits of BBMP, delinquent officials 1 to 3 failed to respond the query of the Investigating Officer touching the aspect whether BDA had accorded permission for diversion of storm water drain which was passing below the basement level of Terrace Garden apartment and thereby delinquent officials 1 to 3 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966 is proved.

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Charge against delinquent official number 1 that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 2 that during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 3 that during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, delinquent officials 1 to 3 have failed to provide documents before the Investigating Officer on 13/11/2009 during investigation in COMPT/UPLOK/BCD/579/2009 concerning the drain alignment and list of buildings which are built unauthorisedly encroaching the storm water drain within the limits of Ittamadu within the jurisdiction of BBMP and thereby delinquent officials 1 to 3 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 is proved.

Charge against delinquent official number 1 that during the tenure of delinquent official number 1 as Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 2 that during the tenure of delinquent official number 2 as Assistant Executive Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, charge against delinquent official number 3 that during the tenure of delinquent official number 3 as Assistant Engineer, BBMP, Gandhinagara Sub-Division, Bengaluru in the month of November 2009, delinquent officials 1 to 3

X
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UPLOK-1/DE/26/2015/ARE-11 demolished the unauthorised buildings in Ittamadu area within the limits of BBMP in a hasty manner and failed to maintain transparency and thereby delinquent officials 1 to 3 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 is proved.

Delinquent official number 1 retired on superannuation on 30/09/2013.

Delinquent official number 2 retired on superannuation on 28/02/2020.

Delinquent official number 3 is due for retirement on superannuation on 31/01/2021.

Submit this report to Hon'ble Upalokayukta-1, Karnataka in a sealed cover forthwith along with the connected records.


(V.G. Bopaiah)

Additional Registrar, Enquiries-11,
Karnataka Lokayukta, Bengaluru.

ANNEXURE

List of witnesses examined on behalf of the disciplinary authority:-

PW1:- Sri. B.R. Anil Kumar.

PW2:- Sri. G.A. Balaji

List of witnesses examined on behalf of delinquent officials

1 to 3:-

DW1:- Sri. Anantha Swamy H.C

DW2:- Sri. R. K. Shashidar (delinquent official number 3)

List of documents marked on behalf of the disciplinary authority:-

- Ex P1 A single sheet of paper cutting of Kannada newspaper "Vijaya Karnataka".
- Ex P2 Original report of PW1 dated 17/11/2009 in thirteen sheets with three annexures shown as Annexure -A, Annexure-B and Annexure-C.
- Ex P3 Original reply dated 11/12/2009 in five sheets of delinquent official number 2 in COMPT/UPLOK/BCD 579/2009/ARE-8.
- Ex P4 Original reply dated 11/12/2009 in five sheets of delinquent official number 1 COMPT/UPLOK /BCD/579/2009/ARE-8.
- Ex P5 Original reply dated 11/12/2009 in five sheets of delinquent official number 3 in COMPT/UPLOK /BCD/579/2009/ARE 8.
- Ex P6 Original note sheet in five sheets from paragraph numbers 12 to 23 in COMPT/UPLOK/BCD/ 579/2009/ARE-8.
- Ex P7 Original sketch in a single sheet of the Surveyor, BBMP (South), Bengaluru.

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- Ex P8 Office copy of the letter dated 18/11/2019 in three sheets of the Chief Engineer attached to Technical Audit Cell, Karnataka Lokayukta, Bengaluru addressed to delinquent officials 1 to 3.
- Ex P9 Xerox copy of note sheet in seven sheets maintained in the office of BBMP.

List of documents marked on behalf of delinquent officials

1 to 3:-

- Ex D1 Attested copy of note sheet in eleven sheets maintained in the office of BBMP.
- Ex D2 Attested copy of letter dated 10/11/2009 in a single sheet of Additional Commissioner (South), BBMP addressed to the Deputy Commissioner, Bengaluru Urban District.
- Ex D3 Attested copy of the letter dated 16/11/2009 in a single sheet of the Additional Commissioner (South), BBMP addressed to the Commissioner, BDA.
- Ex D4 Attested copy of the letter dated 14/12/2009 in a single sheet of the Assistant Commissioner (South), BBMP addressed to the Commissioner, BDA.
- Ex D5 Attested copy of the letter dated 10/11/2009 in a single sheet of the Additional Commissioner (South), BBMP addressed to the Commissioner, BDA.
- Ex D6 Attested copy of the letter dated 16/11/2009 in a single sheet of the Additional Commissioner (South), addressed to the Deputy Commissioner, Bengaluru Urban District is marked as per Ex D6.

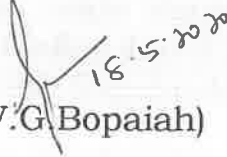
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- Ex D7 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 issued to M.V. Sudha under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D8 Attested copy of a notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to R. Mohan Naidu under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D9 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Krishna under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D10 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Chandrashekhar under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D11 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to B.S. Prabha under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D12 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Kempanna under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D13 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to Manjula. R.J under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D14 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to M.H.Shankar under section 308 of The Karnataka Municipal Corporations Act, 1976.

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- Ex D15 Attested copy of the notice dated 10/10/2009 in a single sheet issued by delinquent official number 3 to T.V. Rangappa under section 308 of The Karnataka Municipal Corporations Act, 1976.
- Ex D16 Xerox copy of the mahazar dated 10/11/2009 in a single sheet drawn by delinquent official number 3.
- Ex D17 Xerox copy of list in a single sheet point out the names of persons who encroached the storm water drain.
- Ex D18 Attested copy of sketch in a single sheet.
- Ex D19 Attested copy of a colour photograph of Ex D18.



(V.G. Bopaiah)

Additional Registrar, Enquiries-11,
Karnataka Lokayukta, Bengaluru.