



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF FEBRUARY, 2024

BEFORE

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THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 20056 OF 2019 (LB-BMP)

BETWEEN:

KAVITA PODWAL,
D/O LATE SHRI K.V.M. PODUVAL,
AGED ABOUT 52 YEARS,
NO.11, MAKARA JYOTI
NARAYANA REDDY LAYOUT,
BEHIND ATLANTA SCHOOL,
DODDANEKUNDI,
BANGALORE-560 037.

...PETITIONER

(BY SMT. KAVITA PODWAL, PARTY-IN-PERSON)

AND:

- 1 . THE BBMP,
(REPRESENTED BY ITS COMMISSIONER)
CORPORATION CIRCLE, HUDSON CIRCLE
BENGALURU-560 002.
- 2 . THE JOINT COMMISSIONER
MAHADEVAPURA ZONE, BBMP
BENGLAURU-560 048.
- 3 . THE EXECUTIVE ENGINEER
HOODI SUBZONE, BBMP
BENGALURU-560 048.
- 4 . THE ASSISTANT EXECUTIVE ENGINEER
HOODI SUBZONE, BBMP
BENGALURU-560 048.





- 5 . THE ASSISTANT ENGINEER FOR WARD-85
HOODI SUBZONE, BBMP
BENGALURU-560 048.
- 6 . DEPUTY DIRECTOR TOWN PLANNING
MAHADEVAPURA ZONE, BBMP
BENGLAURU-560 048.
- 7 . SHRI SAGHIR AHMED,
AGED MAJOR
R/AT NO.3/1 A, MOSQUE ROAD,
FRAZER TOWN,
BENGLAURU-560 005.

...RESPONDENTS

(BY SMT. SARITA KULKARNI, ADVOCATE FOR R1 TO R6;
SRI. H.E. RAMESH ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE DEMOLITION OF HER DWELLING HOUSE AS ILLEGAL. ORDER FOR RESTORATION OF HER DWELLING HOUSE, HER DIGNITY, SELF RESPECT AND REPUTATION, HER FUNDAMENTAL RIGHT TO LIVE WITH SAFETY, HER RIGHT TO PRIVACY AND HER RIGHT TO SLEEP WHICH IS REQUIRED FOR HER HEALTH AND BASIC LIVELIHOOD ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 13.12.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner – party-in-person is before this Court seeking for the following reliefs:

- a) *Declare the demolition of her dwelling house as illegal.*
- b) *Order for restoration of her dwelling house, her dignity, self respect and reputation, her*



fundamental right to live with safety, her right to privacy and her right to sleep which is required for her health and basic livelihood.

- c) Alternatively to compensate her with Rupees One Crore for the illegal action of having suspended her guaranteed fundamental rights for the last three years and the trauma she has undergone for the fault of the government officials.*
- d) Quash the impugned order of the R-1 Commissioner Bruhat Bengaluru Municipal Corporation Order No.P.S.(4) 1034/16-17 dated 24.1.2018 appended as Annexure-A.*
- e) Direct the respondent-authorities to restore the dwelling house of the petitioner situated at house No.11, Makara Jyoti, Narayan Reddy Layout, Behind Atlanta School, Doddanekundi, Bengaluru-37 in its original shape.*
- f) Alternatively direct the respondents to pay Rupees Thirty Five Lakhs (Rs.35 lakhs) towards construction of her dwelling house illegally demolished by the Respondent BBMP without following the procedure established under law.*
- g) direct the R-4 and 5 who entered her house to compensate the petitioner with an amount of Rupees Twenty Lakhs (Rs.20,00,000) for the theft and damage caused to the property of the petitioner as the illegal demolition was undertaken on a dwelling house filled with household items, including valuables, electronic items, kitchen items, wardrobes, interiors etc and important documents of property and person which are earned out of her salary of 25 years service with the central government;*
- h) Direct the Respondent BBMP to pay her rent of Rs.20000/- per month which she is incurring from April 2016 onwards with an annual increase of 10% totaling to Rupees Eight Lakhs (Rs.800000/-) that she has incurred so far;*



- i) *Pass such other orders so as to ensure that the R-1 who is a Senior IAS Officer and the custodian of the Bruhat Bengaluru Mahanagara Palike and whose entire action is illegal and an attempt to interfere in the smooth flow of justice does not ever indulge in such brazen activities and he works with fear of law;*
- j) *Take stringent action of Respondent BBMP Nos.1 to 6 for deliberate and malafide disobedience of the Constitution of India, the Karnataka Municipal Corporation Act, its rules and bye-laws of which they are the creation so that in future such acts are not repeated by any government officials;*
- k) *Direct the jurisdictional police to investigate the matter with regard to the money flow from the R-7 to several site owners when according to his affidavit he is having annual income of Rs.50,000/- and fabrication of documents on government land done by R-7 in connivance with the R-2;*
- l) *Set up an enquiry to investigate the role of the Respondent BBMP, the Revenue Officials and the Police who are encouraging the real estate mafia and due to which the petitioner has been suffering for the last six years. such enquiry will bring out the force behind the R-7 who is the financier in the entire scheme of things;*
- m) *Pass such other or further order(s) that may be deemed fit and proper in the circumstances of the case.*

2. The petitioner's vendor Dr.Suryakumar Sharma is stated to have purchased site No.11 bearing Khata No.471/2 & 476/1B from his vendor situate in a layout approved by the HA Sanitary Board on



30.01.1991. Dr.Sharma is stated to have obtained a plan sanction bearing licence No.108/1995-96 to demolish the old mud building and put up construction of a RCC ground floor in the said site, in furtherance of which Dr.Sharma had commenced construction.

3. Before the construction could be completed, Dr.Sharma sold the aforesaid property to the petitioner vide a registered sale deed dated 17.01.2005 wherein the property has been described as Property bearing No. HASB Khata No.471/2C, property No. 88 measuring East to West 15 ft, North to South 40 ft and HASB No.476/1B measuring East to West 25 ft North to South 40 ft, totally measuring East to West 40 ft North to South 40 ft, situate at Doddanekkundhi Village, K.R.Pura Hobli, Mahadevapura C.M.C Ward 29, Bangalore East Taluk, Bangalore. The said site is stated to have been



bounded, East by site No.10, West by site No.12, North by 20 feet wide road and South by LRD property.

4. On purchase of the said site, the petitioner applied for and obtained electricity connection to the property on 13.11.2006 and thereafter had been making payments of necessary electricity charges.

5. In April 2013, the complaint alleging that the house was broken into, the electricity meter and other items were stolen was lodged in FIR No.228/2013 before the jurisdictional police categorically giving details as RR No.7SM135881 and consumer No.1120403, due to the damage which had been caused on account of the break-in, by the petitioner. While the petitioner was in the process of repairing the house, respondent No.7 had filed a suit in O.S. No.26414/2013 seeking for injunction restraining the



petitioner from interfering with his possession. Though an ex parte order of status-quo was passed, upon contest by the petitioner, vide order dated 21.11.2013 the said order came to be vacated and the application filed under Order 39 Rule 1 and 2 came to be dismissed.

6. Thereafter respondent No.7 filed a complaint on 21.10.2013 alleging that the petitioner was illegally putting up construction, as regards which the aforesaid suit in O.S. No.26414/2013 had been filed on 21.10.2013 alleging that somebody was putting up construction on the property belonging to him in Sy.No.88 without any right and had called upon the Corporation authorities to take action in relation thereto.
7. A notice came to be issued on 22.10.2013 by the BBMP to the petitioner under Section 308 of then Karnataka Municipal Corporation Act, 1976 [KMC



Act' for short] calling upon her to produce all the documents including plan sanction within three days from the date of receipt of notice.

8. In the suit in O.S. No.26414/2013 the petitioner having filed her statement of objections and application under Order 39 Rule 4 of CPC to vacate the exparte order of status-quo, the matter was taken up for hearing.
9. In the meanwhile, respondent No.7 filed another suit in O.S. No.7737/2013 on 23.10.2013. In the said suit, the trial Court vide order dated 26.10.2013 granted exparte order of injunction and issued notice to the petitioner returnable by 9.12.2013. In the meanwhile, after hearing both parties, the trial court seized of O.S. No.26414/2013 dismissed the application under Order 39 Rule 1 and 2 of CPC and



vacated the exparte status-quo order vide its reasoned order dated 21.11.2013.

10. The petitioner claims that on 25.11.2013 she got a call from the Junior engineer of BBMP calling upon her to produce property documents. Since the petitioner was in her office, she had asked her husband who works as a Scientist in ISRO to provide the documents. Her husband went to the office of the BBMP and handed over the documents to the Jr. Engineer and to the Asst. Executive Engineer [AEE].
11. The petitioner contends that, it is only thereafter on 28.11.2013 that a notice dated 18.11.2013 under Section 321(1) and 321(2) of the KMC Act was dispatched to the petitioner. In this regard, she relies on the postal receipt that is found on the said notice which she has obtained under the Right to Information Act. Thus, she submits that the notice having been dispatched on 28.11.2013, the date on



the notice being 18.11.2013 is of no relevance and is motivated and malafide manner of working of the concerned AEE and Jr. Engineer.

12. She submits that even before provisional order and notice dispatched on 28.11.2013 was served on the petitioner, the AEE has confirmed the provisional notice issued under Subsection (1) and (2) of Section 321 vide his order dated 29.11.2013 without providing any opportunity to the petitioner to reply to the said notice. The submission made by party-in-person in this regard is that the notice was back dated in order to overcome the documents which had been submitted by the petitioner since the documents furnished by the petitioner would indicate the plan sanction issued by the HA Sanitary Board, the predecessor of the BBMP and as such, would establish that the construction of the petitioner is proper and correct.



13. The party in person submits that even the notice dispatched on 28.11.2013 has not been received by the petitioner since the address shown is not proper and complete. The address shown in the notice is Smt.Kavitha, Karthiknagar, Doddanekkundi, Sy.No.88, Bangalore-560037 whereas the postal receipt indicates Smt.Kavitha, New Thippasandra, Bangalore- 560075. Thus, she submits that she was not aware of the provisional order which had been issued.

14. It is on account of no acknowledgment having been issued to the husband of the petitioner when he visited the office on 26.11.2013 to handover the documents, that she visited the BBMP office on 30.11.2013, met AEE, Jr.engineer, who though orally acknowledged the receipt of documents, initially did not issue an acknowledgment but on insistence of the petitioner the acknowledgment came to be issued on 30.11.2013.



15. In the letter dated 29.11.2013 acknowledged to have been received on 30.11.2013 it is clearly stated that copy of the Sale deed is of the year 2005, copy of the sale deed in favour of the vendor of the petitioner is of the year 1991, copy of the katha, copies of electricity bill, tax paid receipts as also the FIR filed by the petitioner were enclosed and acknowledged to have been received.

16. Her submission is that though the said documents were acknowledged to have been received on 30.11.2013, the concerned officers did not bring to the notice of the petitioner the issuance of provisional order or the confirmatory order even though according to the officers of the Corporation, the confirmatory order has been passed on 28.11.2013. In this regard, she submits that confirmatory order is also back dated to 29.11.2013 since relevant documents had been submitted on 30.11.2013 and if the said reply and documents were



taken into consideration, then the order dated 29.11.2013 could not have been passed.

17. In this regard, she submits that the action on part of the respondents is completely malafide and at the behest of the plaintiff in O.S. No.26414/2013.

18. On 3.12.2013 the petitioner received a caveat from respondent No.7, where respondent No.7 refers to the confirmatory order dated 29.11.2013 which would indicate that the said order dated 29.11.2013 being to the knowledge of respondent No.7 had not been brought to the knowledge of the petitioner, thereby establishing the collusion between respondent No.7 and the officers of the Corporation.

19. The Suit which had been filed in O.S. No.7737/2013 where an ex parte order of injunction had been granted was withdrawn on 5.12.2013. On 7.12.2013 the petitioner met the officers of the BBMP, brought



to their notice the caveat which was received by the petitioner and suspecting some malafides had informed the respondents about the trouble being faced by her from landsharks and respondent No.7 as also as regards the the collusion between respondent No.7 and the officers of BMMP and that she had not received any of the notices mentioned in the caveat by her.

20. She had further brought to the notice of the BBMP officials about the proceedings initiated by and against respondent No.7 and had called upon the officers of the Corporation to inform her as to what is the violation done by her, if any and if the same would fall within the SAKRAMA scheme, so that she could regularize the same. Nothing was heard thereafter. In the meanwhile, the petitioner completed repair of compound wall.



21. On 11.02.2014 a notice was received by her addressed to her mother's house and not to the property in question asking her to stop any further construction wherein it was stated that a complaint regarding ownership of the property had been received and until a decision was given by Joint Commissioner in that regard, no construction activities were to take place failing which suitable legal action would be initiated against her. The petitioner brought to the notice of the Corporation officials that the repair work of the compound wall has been completed and that she was not carrying on any construction.

22. On 10.09.2014 it is alleged that the suit for bare injunction in O.S. No.26414/2013 was converted to a suit for declaration and possession which came to be decreed in favour of respondent No.7 on 3.01.2015 as regards which an appeal was filed in RFA No.372/2015.



23. In the meanwhile, respondent No.7 is stated to have filed W.P. No.18596/2015 seeking for a direction from this Court to take action on the confirmatory order dated 29.11.2013. On receipt of summons, the petitioner approached the BBMP seeking for clarification as to whether any order has been passed since the confirmatory order has not been received by her at any point of time and even provisional order dated 20.11.2013 had been dispatched on 28.11.2013 and as such, no confirmatory order could have been passed on 29.11.2013.
24. The petitioner also filed W.P. No.3147/2016 challenging the said orders on the ground that principles of natural justice have been violated. Both W.P. No.18596/2015 and 3147/2016 were clubbed together and disposed of on 7.04.2016. By disposing of W.P. No.18956/2015 directing respondent-authorities to conclude the proceedings initiated under Section 462 and insofar as the orders under



Sub-section (1),(2) and (3) of section 321 are concerned, liberty was reserved to the petitioner to challenge the same before the Karnataka Appellate Tribunal.

25. On 21.01.2016 the petitioner received a letter calling upon the petitioner to make payment of Rs.2.04 lakhs towards the demolition which was brought to the notice of Court in W.P. No.18956/2015 which came to be stayed by order dated 25.01.2016. Upon dismissal of the W.P. No.18596/2015 and 3147/2016 the petitioner filed Writ Appeal on 25.04.2013 wherein by afternoon, an order of stay of demolition had been passed, before the respondent officials had started the demolition activities, despite the orders having been brought to the notice of the officers of the BBMP, the demolition work was commenced and it is in that background that when the same was brought to the notice of the Writ Appeal court, liberty was reserved to the petitioner to



approach the Commissioner of the BBMP to place all the said facts on record and direction was issued to the Commissioner to pass necessary orders therein after ascertaining the veracity of the allegations made by the petitioner.

26. The further submission of Smt.Kavitha, petitioner-party in person is that The Division Bench in **Kavita Podwal -vs- BBMP¹**, on the application filed by the petitioner, in IA-2 of 2016 had clearly observed that it is a classic case of misguided authoritarian misadventure undertaken by the Corporation and in that background certain guidelines were issued by this Court as general directions in terms of para 19 thereof which is reproduced hereunder for easy reference:

***19.** The first and the second prayers in the instant application, are for directions to rebuild applicant's demolished premise or in the alternative to reimburse the cost of repairs, respectively. Consideration of these prayers, require factual assessment of alleged damage. The third prayer, is*

¹ 2017 SCC OnLine Kar 6907 : W.A. No.967-968/2016



for a direction to make available the mahazar and copies of the note sheets etc., and the same is reasonable and deserves to be granted. Before we proceed to pass orders on this application, we are constrained to observe that, in our view, this is a classic case of misguided and authoritarian misadventure undertaken by the respondent-authority. Time has come to convey certain clear guidelines. Accordingly, we issue following general directions to the BBMP:

(i) In a notice/provisional order, the name and address of the owner/khatedar shall be clearly mentioned;

(ii) The identity of the property and the boundaries shall be delineated in an unambiguous manner;

(iii) BBMP shall record specific findings with regard to alleged deviations;

(iv) All notices and orders shall be served strictly in accordance with law;

(v) Reasonable time shall be specified in provisional order and granted to the property owner to file his reply;

(vi) Before, confirming a provisional order, the officer concerned shall record his satisfaction that the provisional order was served to the owner/khatedar;

(vii) Reasons for confirming the provisional order shall be clearly recorded by the officer concerned;

(viii) Reasonable time for compliance shall be clearly mentioned in the final order;

(ix) No demolition shall be undertaken without recourse to Section 462 of the Act; and

(x) These directions shall be strictly complied with.



27. Relying on the guidelines she submits that this Court having clearly come to a conclusion that it was a classic case of misguided authoritarian misadventure, had directed the Commissioner, BBMP to comply with the order dated 28.04.2016 and directed the petitioner to file a representation by 02.05.2016 and the Commissioner to dispose the same expeditiously within a period of eight weeks. The Commissioner was also directed to make available the certified copy of the mahazar drawn at the spot before commencing demolition, CD containing the video coverage, if any, after collecting applicable fee in accordance with law and had further directed that after hearing the parties if the Commissioner, BBMP comes to a conclusion that the demolition of the applicant's dwelling house is illegal, he shall quantify the damages and pay the same within two weeks from the date of the order.



28. She submits that in pursuance of the order dated 01.08.2017 the petitioner submitted a representation to the Commissioner which has been disposed of by way of impugned order dated 24.01.2018. The Commissioner though has framed several issues, has not considered all of them in the right perspective resulting in injustice being meted out by the petitioner. She submits that instead of looking into the building plan which is sanctioned in favour of the petitioner, the Commissioner has wrongly applied himself to the layout plan, on account of the layout plan not having been produced has come to a conclusion that the construction put up by the petitioner was without any basis.
29. Though the Commissioner refers to the notice under Section 308 being issued, calling upon the petitioner to produce certain documents and refers to a notice dated 18.11.2013 issued under Subsection (1) and (2) of Section 321, the Commissioner does not take



into account the specific contention of the petitioner that the said notice dated 18.11.2013 was in fact posted on 28.11.2013, and as such without giving adequate opportunity, the confirmatory order under Subsection (3) of Section 321 was passed on 29.11.2013. This contention of the petitioner has not even been adverted to by the Commissioner. If the same would have been adverted to, the Commissioner could not have come to the conclusion that proper notice under Section 321(1) and (2) had been issued and that confirmatory order under Subsection (3) of Section 321 was proper.

30. The finding of the Commissioner is that despite issuance of notice under Section 308, the petitioner went ahead with the construction is ill founded inasmuch as no construction was made by the petitioner subsequent thereto except repair of the sump tank and compound wall there being no construction which had been subsequently put up,



the electricity connection having been issued much earlier has not been taken into consideration by the Commissioner to come to a conclusion that the construction was still going on.

31. The fact that a notice had been issued on 21.01.2016 to the address where the building was constructed would indicate that the petitioner was staying in the said address and as such the question of any construction being ongoing would not arise. The construction had been completed much earlier which has not been taken into consideration by the Commissioner.
32. On the basis of the above, she submits that the above writ petition is required to be allowed.
33. Ms.Saritha Kulkarni, learned counsel for the Corporation would support the order passed by the Commissioner by contending that:



33.1. Notice had been issued under Section 308 followed by provisional order and notice under Section 321(1) and (2) followed by confirmatory order under Section 321(3). The petitioner having challenged the said notices by filing W.P. No.3147/2016 and this Court having directed the petitioner to approach the KAT, the petitioner not having done so, would amount to acquiescence on part of the petitioner to the orders passed which cannot now be challenged.

33.2. The petitioner not having challenged notice and orders under Sub-Section (1),(2) and (3) of Section 321 the question of raising the same before this Court now would not arise. The petitioner has not produced the layout plan sanction, the HA Sanitary Board had no jurisdiction to sanction any layout. Be that as it may the original layout plan has not been produced by the petitioner. In the absence thereof, it cannot be said that there is a layout



plan which has been sanctioned, bifurcating the plot of the petitioner in a legal manner, such being the case the petitioner cannot claim to be owner of any particular site. Even the building plan is stated to have been issued by the HA Sanitary Board which had no authority to do so, on the basis of which no construction could have been carried out either by the predecessor or the petitioner. The plan sanction being illegal, without any basis or authority the petitioner cannot claim any benefit thereunder.

33.3. Even if all these aspects are taken into consideration, there are no merits in the claim of the petitioner. The petitioner has not been able to place anything on record to indicate that her rights as regards the property are legitimate and in absence thereof the construction being illegal and action taken by the BBMP is proper and correct.



33.4. The petitioner has also suffered a decree in O.S. No.26414/2013 as regards which an appeal in RFA No.372/2015 has been filed. Thus, even the Civil Court having come to a conclusion that the petitioner has no title on the property and having declared the title of respondent No.7, the Corporation has taken this into account, the order dated 3.09.2015 passed in RFA No.372/2015 has only stayed the direction of the trial court to handover the possession of the premises and this Court has categorically observed that the said order would not come in the way of BBMP taking any action against the petitioner if the construction put up by her is illegal or not in accordance with law.

33.5. Thus, the petitioner cannot even claim any benefit of Interlocutory order passed in RFA No.372/2015 taking into account all the aspects viz. layout plan sanction being invalid, the building plan sanction being invalid, original of



the layout plan not being produced, the petitioner having suffered a decree in the suit filed by respondent No.7 declaring the respondent No.7 as the owner, the interim order in RFA No.372/2015 permitting the BBMP to take such action as is necessary, BBMP has done so, which cannot be found fault with.

33.6. On these grounds, she submits that the petition is liable to be dismissed.

34. Sri. Ramesh H. E., learned counsel for respondent No.7 adopts the arguments of Ms. Saritha Kulkarni. Additionally, he submits that the dispute between the petitioner and respondent No.7 is pending in RFA No.372/2015. The Respondent No.7 having succeeded in the said suit, the petitioner has no valid title over the property and as such, the action taken by the officials of the Corporation is proper and correct.



35. Heard Smt.Kavitha Pudwal, the petitioner- party in person, Ms.Saritha Kulkarni, learned counsel for respondents No.1 to 6 and Sri.Ramesh.H.E, learned counsel for respondent No.7. Perused papers.
36. The points that would arise for consideration are:
- i. Whether the notices issued by the Corporation under Section 308, provisional order and notice under Subsection (1) and (2) of Section 321 as also the confirmatory order under Subsection (3) of Section 321 have been properly issued and served on the petitioner?**
 - ii. Whether the Corporation can on the ground that the plan has been sanctioned by an authority who is not competent to do so contend that the layout approved is illegal and or the building plan sanction is illegal?**
 - iii. Whether the officers of the Corporation could have carried out demolition work without issuing a notice under Section 462 of the KMC Act?**
 - iv. Whether the officers of the Corporation have acted in a malafide manner without following due procedure of law causing harm and injury to the petitioner?**
 - v. Whether the petitioner is entitled for any compensation, if so what amount?**

**vi. What order?**

37. I answer the above points as under.
38. **ANSWER TO POINT NO.1: Whether the notices issued by the Corporation under Section 308, provisional order and notice under Subsection (1) and (2) of Section 321 as also the confirmatory order under Subsection (3) of Section 321 have been properly issued and served on the petitioner?**

38.1.The order of the Commissioner referred to various documents and the said documents not being in order in the writ petition or in the objections filed, Smt.Saritha Kulkarni, learned counsel for BBMP was directed to file memo of documents as per the Commissioner's order dated 24.01.2018, so that it would be clear from them as to what are the documents that the Commissioner has relied upon while passing the impugned order.

38.2.Upon receiving instructions and tabulating the documents, a memo dated 29.11.2023 has been so filed enclosing all the documents.



38.3.A perusal of the said list of documents would indicate that a notice under Section 308 of the KMC Act is stated to be issued on 22.10.2013 to Ms. Kavitha, Sy.No88, Karthik Nagar, (LRD Layout), Ward No.85, Doddanekkundi, Bengaluru. In the said notice, the name and number of one Basavaraj and name and number of Smt.Kavitha are found. The said notice does not bear the signature of either Basavaraj or Kavitha who is the petitioner herein. The said notice also does not bear any registered post receipt for having despatched the notice nor is the acknowledgement of the said notice have been received by the petitioner been annexed thereto.

38.4.In the impugned order passed by the Commissioner, the Commissioner has referred to the document as a notice calling upon the petitioner to produce documents of the property namely Katha, Katha extract, tax paid receipt,



sale deed, etc. and while referring to the judgement and decree in RFA No.372/2015, where the City Civil Court has observed that the petitioner has not produced the approved plan and her contention that the vendors obtained approved plan as per the written statement is far from the truth and has come to a conclusion that there are no documents which the petitioner has produced without even concluding whether Section 308 notice has been served on the petitioner or not.

38.5. In the above background it being clear that the said notice under Section 308 dated 22.10.2013, not bearing the signature of the petitioner or alleged watchman Basavaraj and no particular document having been produced by the Corporation to evidence service of notice, Section 308 notice has never been served on the petitioner as contended by her. The submissions made by her that if at all the



notice had been served on her, she would have produced all the documents as produced along with the Writ Petition are sustainable and acceptable.

38.6.The Commissioner has referred to document No.9 to be the notice issued under Subsection (1) and (2) of Section 321 of KMC Act. Document No.9 produced along with the memo dated 18.11.2013 indicates the same to be a consolidated notice cum provisional order addressed to Smt.Kavitha, Karthiknagar, Doddanekkundi, Sy.No.88, Bangalore-37. This notice is stated to have been pasted on the construction site by the petitioner and in regard thereto photographs have been produced. A perusal of the photographs would indicate that there is an overwriting on the date whereas in document No.9, there is no such overwriting.

38.7.It is not stated by the concerned officers as to why the provisional order and notice under



Section 321(1) and (2) could not be personally served on the petitioner except to state that it was pasted on the wall of the house of the petitioner and the photographs taken and communication was made to the petitioner.

38.8. The subject matter of notice resulting in a serious matter of demolition of the building, I am of the considered opinion that though the Rules may permit service of notice by way of affixture that would have to be used as a last resort. There ought to have been an attempt made by the officers of the Corporation to serve the notice in person or through registered post acknowledgement due and it is on failure thereof and the concerned officer being unable to serve notice on the petitioner, that the methodology of affixture could be used.

38.9. In the present matter, though the Commissioner in paragraph 10 of his order has noted that the petitioner was staying at



No.143, Shivanandanagar, Near BEML Hospital, New Tippasandra post, Bengaluru-75, but has not made any note of the attempts made if any on part of the officers of the Corporation to serve the petitioner on that address even though the respondent officers were aware of the address of the petitioner.

38.10. In paragraph 10, it is further noted that mobile number of the petitioner was available with the respondent officers, thus it was for the respondent officers to have verified the address of the petitioner and served the notice at that address instead of pasting it on the wall of the premises allegedly under construction.

38.11. The Commissioner has also noted in paragraph 10 that notice under Section 308 of the KMC Act could not be served on the petitioner in person and that the address mentioned in the notice as LRD layout is adjacent to the property in question and on that ground, the



Commissioner has come to a conclusion that the notice has been served though the notice had been sent to a different address than that of the property in dispute/belonging to the petitioner.

38.12. In document No.9 which has been produced, there is a postal receipt indicating that the said notice was posted at Mahadevapura post office on 28.11.2013 at 12.12 hours to Kavitha, New Thippasandra-560 075. Though the full address is not available in the receipt, it is clear that even after the alleged pasting of the notice on the wall of the premises allegedly under construction, the provisional order cum show cause notice dated 18.11.2013 was posted to the address of the petitioner as available with the respondent on 28.11.2013. This address according to the petitioner is the address of her mother and not the address of the petitioner where she is residing. Be that as it may, this



aspect may not be gone into in detail at present since apparently the notice has been posted only on 28.11.2013 at 12.12 hours. The confirmatory order under subsection (3) Section 321 has been passed on 29.11.2013 in terms of document No. 10. even as regard this document, there is overwriting of the date initial date being 26.11.2013 has been subsequently changed to 29.11.2013.

38.13. The time period granted to the petitioner vide notice dated 18.11.2013 was seven days which expired on 25.11.2013 and apparently on 26.11.2013 an order was kept ready by the respondent officers. Noticing that the notice has not been dispatched to the petitioner and only pasted on the wall, a feeble attempt seems to have been made by the offices to dispatch the notice by RPAD on 28.11.2013 and the order already passed dated 26.11.2013 has been now changed to 29.11.2013. These facts which are



apparent on the face of the record have not been gone into by the Commissioner instead the Commissioner has mis-applied his mind to various litigations between the petitioner and Respondent No.7 and on that basis has drawn a conclusion that notice was served on the petitioner and or that the petitioner did not have the plans.

38.14. This confirmatory order dated 29.11.2013 is again addressed to Smt.Kavitha, Karthiknagar, Doddanekkundi, Sy.No.88, Bengaluru-37. This is neither addressed to the property in question nor to the address which apparently the Corporation had on its record as stated in paragraph 10 of the order of the Commissioner. This confirmatory order has also not been served on the petitioner in person or by post. Thus, from a perusal of the above, it is clear that notice under Section 308, provisional order cum show cause notice under Subsection (2) of



Section 321 and confirmatory order under Subsection (3) of Section 321 of the KMC Act have not been served on the petitioner.

38.15. This aspect also assumes importance for the reason that respondent No.7 had filed a complaint on 21.10.2013 alleging that the petitioner was illegally putting up construction, a suit in O.S. No.26414/2013 had been filed by Respondent No.7 on 21.10.2013 and notice under Section 308 has been issued by the Corporation officers on 22.10.2013. The aforesaid dates would indicate the close proximity with the complaint and the suit filed by Respondent No.7 and gives credence to the contention of the petitioner that all the actions taken by the Corporation officers are at the behest of Respondent No.7 who intended to usurp the property of the petitioner and that these actions have been taken without even as



much as serving notice on the petitioner depriving her of a right to contest the same.

38.16. One other relevant aspect is that the petitioner claims that she got a call on 25.11.2013 from the junior engineer of the BBMP to produce the documents sought for in 308 notice which was never served on her and in furtherance thereof the petitioner's husband had furnished the said documents on 25.11.2013 as per Annexure-AB to the petition which was not acknowledged on 25.11.2013 to have been received by the officers of the Corporation, hence petitioner once again visited respondent official at their office on 29.11.2013 and got acknowledgement for having furnished the copy of the sale deed, copy of the sale deed of the vendor of the petitioner, katha, copy of FIR, electricity bill of the year 2007, tax paid receipt, etc. Even at that time, the petitioner was not informed of the provisional order or the confirmatory order,



which are stated to have been passed on 29.11.2013. Thus the manner in which the respondent officials have acted clearly indicates gross disrespect for the applicable law, clear flouting of the applicable law and the respondent officials not having followed the basic principles of natural justice in a matter as serious as demolition of a dwelling house of the petitioner.

38.17. Thus, I answer point No.1 by holding that the notices issued by the Corporation under Section 308, Subsection (1) and (2) of Section 321 as also the confirmatory order under Subsection (3) of Section 321 have not been properly issued and served on the petitioner.

39. **ANSWER TO POINT NO.2: Whether the Corporation can on the ground that the plan has been sanctioned by an authority who is not competent to do so contend that the layout approved is illegal and or the building plan sanction is illegal?**



39.1. In paragraph 15 of the order of the Commissioner, the Commissioner has come to a conclusion that the petitioner had failed to produce layout plan and Katha extract in respect of site No. 11. The aforementioned letter dated 29.11.2013 received by the officers of the Corporation on 30.11.2013 has not been adverted to by the Commissioner which has been Produced at Annexure-AB to the petition.

39.2. Though the layout plan sanction is not part of the documents produced, copy of the sale deed in favour of the vendor of the petitioner dated 30.01.1991, copy of the sale deed in the year 2005, copy of the tax receipt and electricity bills had been produced. These aspects have not been adverted to by the Commissioner.

39.3. A perusal of the sale dated 30.01.1991 in favour of the vendor of the petitioner would indicate in the schedule that the property bearing HASB katha No.471/2 and 476/1



situated at Doddabekkundi village, K.R.Puram Hobli, Bangalore South Taluk, had been transferred to the vendor of the petitioner, which sale deed has been produced along with the writ petition at Annexure-Q.

39.4. The HA Sanitary Board has issued endorsement dated 15.07.1991 that katha No.471/2C and 476/1B have been allotted to the property in question which has been produced at annexure-R to the writ petition. The HA Sanitary Board has also issued a tax assessment register extract dated 10.09.1991 as regards the aforesaid property in the name of the petitioner's vendor as per Annexure-S to the petition and in terms of sale dated 17.01.2005, the vendor of the petitioner has transferred the aforesaid property in favour of the petitioner. These documents having been made available to the office of the Corporation, the Commissioner ought to have looked into these



documents rather than to come to a conclusion that no such documents had been produced or the Commissioner has been misled by his officers and the letter submitted by the petitioner dated 29.11.2013 at Annexure-AB has not been brought to his notice.

39.5. In that view of the matter, the finding of the Commissioner that the construction has been put up illegally cannot be sustained and the petitioner has no right over the property cannot be sustained.

39.6. There are two aspects relating to the above. Firstly, as regards the right of the petitioner to the property and Secondly, as regards the construction put up therein.

39.7. Insofar as the right of the petitioner to the property is concerned which relates to ownership thereto the Corporation cannot adjudicate ownership rights in relation thereto. The dispute between the Respondent No.7 and



petitioner as regards ownership was one requiring the civil court seized of the matter to adjudicate and not for the Corporation or its officials to intermeddle and decide on the title of the property.

39.8. In the notice dated 11.02.2014, it being stated that a complaint regarding the ownership of the property had been received and until a decision has been given by the Joint Commissioner in that regard, no construction activities shall take place, failing which a suitable action will be initiated against her, would indicate as if the Joint Commissioner is deciding the title dispute between the parties. The officers of the Corporation are required to implement the statute relevant thereto, at present the Bruhat Bengaluru Mahanagara Palike Act, 2020. None of the officers of the Corporation can decide a title dispute, it can only be decided by the Civil Court of competent jurisdiction. If a



complaint had been filed by Respondent No.7 in that regards the officers of the corporation ought to have requested him to approach the civil court, the officers of the Respondents can only ascertain if the construction is in accordance with the sanctioned plan and/or building bye laws and cannot decide questions of title. The haste with which the officials of the Corporation have acted on the basis of the complaint given by respondent No.7 would only indicate the collusion between the said officials and respondent No.7. The officials of the Corporation would be well advised not to take sides in any dispute between the private parties. The officers are required to discharge their official functions in terms of the applicable law and while doing so, the powers vested with them cannot be exercised at the behest of or in favour of any one of the private parties, they are required to act in accordance with law.



39.9. In the present case, as soon as the complaint came to be filed by respondent No.7, the officers of the Corporation, without verification of any fact, issued a notice under Subsection (1) of Section 321, by affixing it on the property, without serving the same on the petitioner. The notice was once again posted on 28.11.2013 by backdating it to 18.11.2013. The confirmatory order under Subsection (3) of Section 321 also clearly appears to be backdated inasmuch as the initial date was 26.11.2013 and subsequently has been overwritten with the date 29.11.2018.

39.10. Be that as it may, without service of notice under Subsection (1) of Section 321 detailing out the alleged violations and without affording an opportunity to the petitioner to reply to the same, the confirmatory order has been passed, which is as observed above, clearly at the



behest of and in collusion with respondent No.7.

39.11. In so far as illegal construction is concerned, even if it were to be assumed that there is no plan sanction which had been obtained by the petitioner, it was for the Corporation to put across to the petitioner by way of a provisional order under Subsection (1) of Section 321 as to exactly what are the violations committed by the petitioner with reference to the applicable Building bye laws since according to the Corporation there is no plan action which has been obtained.

39.12. The petitioner has produced the plan sanction issued in favour of Munimarappa and Kenchappa as regards the layout formed in Sy.No.88, Doddanekkundi village, K.R.Puram approved by the HA Sanitary Board. Whether the said plan sanction is valid or not would also



required to be adverted to by the Commissioner which is also conveniently ignored.

39.13. Insofar as the construction put up by the petitioner, the petitioner has produced a plan said to be sanctioned by the HA Sanitary Board under license No. 108/95-96 in favour of the vendor of the petitioner at Annexure-V. This aspect has also not been adverted to by the Commissioner in his order.

39.14. Without looking into the above aspects, without coming to a conclusion as to whether the layout plan sanction was valid or not, whether the building plan sanction was valid or not and without coming to a conclusion as to whether the construction is in violation of the Building Byelaws or not, in my considered opinion it is impermissible for the officers of the Corporation, including the Commissioner to come to a conclusion that there is an illegal construction which has been put up.



39.15. Once there is a HA Sanitary Board layout plan sanction and building plan sanction, same ought to have been taken into consideration by the Commissioner, and reasoned order passed as to why the said plans were not valid and thereafter examine whether the construction put up is in accordance with Building Bylaws of the BBMP under whose jurisdiction it comes under and categorically put on notice the petitioner the violation in respect of the Building Bylaws calling upon the petitioner to answer the same. None of these being done, in my considered opinion, the rights of the petitioner have been violated by the officers of the Corporation.

39.16. Hence I answer point no.2 by holding that the Corporation can on the ground that the plan has been sanctioned by an authority who is not competent to do so contend that the layout approved is illegal and or the building plan



sanction is illegal however these aspects and the reasons relating thereto are to be borne out by records and cannot be considered on the basis of the oral submissions now made.

40. **ANSWER TO POINT NO.3: Whether the officers of the Corporation could have carried out demolition work without issuing a notice under Section 462 of the KMC Act?**

40.1. Section 462 of the KMC Act is reproduced hereunder for easy reference:

462. Time for complying with order and power to enforce in default.-

(1) Whenever by any notice, requisition or order made under this Act or under any rule, bye-law or regulation made under it, any person is required to execute any work, or to take any measures or do anything, a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measures taken, or the thing done.

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



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

- 40.2. Upon a valid confirmatory order being passed under Subsection (3) of Section 321, a notice under Section 462 of the KMC Act is contemplated for the officers of the Corporation to take necessary action of demolition or otherwise in terms of the confirmatory order.
- 40.3. Section 462 prescribes a reasonable time to be named in such notice within which the work shall be executed, measures taken or things done. Merely because a confirmatory order under Subsection (3) of Section 321 has been issued would not mean and entail that on the next day or any other date thereafter demolition is carried out without issuing notice under Section 462. It is but required for such a notice to be issued.



40.4. In the present case, no such notice having been issued, no demolition work could have been carried out by the officers of the Corporation without so doing. This aspect was also considered by the Division Bench of this court in the dispute between the petitioner and the BBMP in W.A. No.967-968/2016 dated 1.08.2017 in its orders on IA-2/2016 and this Court had imposed cost of Rs.25,000/- and issued general directions extracted herein above.

40.5. It is thus clear that the Division Bench of this Court has already come to a conclusion that there is violation of Section 462. Having considered the matter in detail there being no notice issued to the petitioner under Section 462 before the demolition works were carried out, it does not lie for the Corporation to contend that it was only implementing the orders passed by this court dated 25.04.2016.



40.6. Whenever any orders are passed by this court, same would also have to be implemented in a manner known to law and the Authority cannot short circuit the process without following the applicable law. This court had directed action to be taken under Section 462 of the KMC Act, which meant by complying with all requirements Section 462, it is further shocking in the present case that for carrying out demolition the funds earmarked for storm water drain works have been diverted and used, without getting necessary budgetary approval, what was the urgency in diversion of such funds to demolish a dwelling house in the year 2017 when the initial notices were issued in the year 2013 is not forthcoming from the records.

40.7. There being a gross violation by the officers of the BBMP in not issuing notice under Section 462. I am of the considered opinion that the



officers of the Corporation have not acted in consonance with the applicable law.

40.8. The demolition once again has been carried out apparently at the behest of respondent No.7 when the petitioner had informed the officers of the Corporation that she had filed proceedings before this Court, it was required for the said officers to at least verify the same with their standing counsel. No notice having been issued under Section 462, the demolition could not have been carried out without affording a reasonable time to the petitioner to have availed her options under law or at least remove her belongings. The demolition having occurred without any notice, the personal belongings of the petitioner having been damaged, the errant officers of the respondent Corporation would also be liable to make good the said loss.



40.9. Considering the status of the petitioner, I am of the considered opinion that the damage caused to the personal belongings would be at least amounting to Rs.10 lakhs, which is directed to be paid by the Corporation, recoverable from the errant officials, upon due enquiry by the Commissioner.

41. ANSWER TO POINT NO.4: Whether the officers of the Corporation have acted in a malafide manner without following due procedure of law causing harm and injury to the petitioner?

41.1. Having considered the aspects relating to issuance of notice under Section 308, 321 as also under Section 462, none of them having been served on the petitioner before next order was passed, that is to say before 308 notice was served, notice under Subsection(1) and (2) of Section 321 was issued. Before the petitioner became aware of the notice under Subsection (1) of Section 321 and Subsection (2) of Section 321 a confirmatory order under



Subsection (3) of Section 321 was passed without serving notice under Section 462 demolition work was carried out. All these actions can only be said to be high-handed and illegal on part of the officers of the Corporation.

41.2. The mere contention that the petitioner was knowledgeable about all these in the proceedings in W.P. No.18596/2015 does not enure to the benefit of the Corporation since those were much subsequent. It was but required that notice under Section 308 was served on the petitioner and adequate time made available to the petitioner to furnish the documents. It was but required that composite provisional order and show cause notice under subsection (2) of Section 321 was to be served on the petitioner detailing out the violations if any, in terms of the Building Bye-laws so as to enable the petitioner to reply to the same. Before such service could occur, the



confirmatory order under subsection (3) of Section 321 was passed and as such, it does not now lie for the Corporation to contend that since confirmatory order has not been challenged before the KAT it has now attained finality.

41.3. This court vide its order dated 28.04.2016 in W.A. No. 967-968/2016, observing that the petitioner had not been provided an opportunity before an order under Subsection (3) of Section 321 of KMC Act was passed had directed the petitioner to make a representation to the Commissioner on or before 2.05.2016 and if such a representation is made the Commissioner, BBMP was requested to consider the same and pass order within two months from the date of receipt of such representation uninfluenced by the order passed under Subsection (3) of Section 321 of the Act. This



Court further directed the BBMP to maintain status-quo as on that date i.e 28.04.2016.

41.4. Thus, in effect, the order of the Division Bench supersedes the order passed by the learned Single Judge dated 7.04.2016 in W.P. No.18596/2015 c/w W.P. No.3147/2016 wherein the single Judge directed the petitioner to approach the KAT. The Division Bench had directed the Commissioner, BBMP to consider the representation of the petitioner and pass fresh orders under subsection (3) of Section 321 uninfluenced by the earlier orders under Subsection (3) of Section 321, which, in my considered opinion would only mean that the earlier order would not be in force and fresh orders were to be passed after hearing.

41.5. In furtherance of the same a representation was submitted by the petitioner on 2.05.2016 which has not been considered by the Commissioner and no fresh order under



Subsection (3) of Section 321 has been passed. This aspect has not been taken into consideration by the Commissioner in the impugned order. The Commissioner has wrongly come to a conclusion that the notices were never challenged before the competent authority till the demolition of the building partly and that the notices have reached finality on demolition of the building.

41.6. The Division Bench of this court as aforesaid vide order dated 28.04.2016 in W.A. No.967-968/2016 directing the Commissioner to consider the matter afresh, there is no confirmatory order under Subsection (3) of Section 321 which can be said to be in force. Thus, I am constrained to observe that the officers of the Corporation have acted in a malafide manner without following the due procedure of law causing harm and injury to the petitioner by demolishing the portion of her



residence as regards which the Principal Secretary, Urban Development Department [UDA] is directed to constitute a committee to hold an enquiry into the very serious allegations made by the petitioner. The committee to be constituted within a period of three weeks from today and the enquiry to be completed within a period of 90 days thereafter. The Commissioner is directed to preserve all the records relating to the present matter and furnish the same on being called upon to the concerned committee.

42. ANSWER TO POINT No.5: Whether the petitioner is entitled for any compensation, if so what amount?

42.1. In view of the manner in which the officers of the Corporation have acted, this court had directed the respondent- Commissioner to consider the representation of the petitioner dated 2.05.2016 vide its order dated 28.04.2016 and 1.08.2017 in W.A. No.967-



968/2016 which include compensating the petitioner for the damages caused to her on account of the illegal action carried out by the officers of the Corporation.

42.2. Having dealt with all the above aspects in the matter and in furtherance of the answers given by me to the earlier questions posed, I am of the considered opinion that the demolition which has been carried out by the officers not being in conformity with the law, without due opportunity being provided to the petitioner to reply to the notices, no notice having been served under Section 462 prior to the demolition, the loss caused to the petitioner would be required to be compensated.

42.3. The Executive Engineer, PWD of the concerned jurisdiction is directed to inspect the construction put up by the petitioner, assess the damages caused on account of demolition and submit the same to the Commissioner-



Corporation who shall make payment of the same. The said assessment to be carried out within 45 days from the date of receipt of the copy of this order and payment to be made within a period of 30 days thereafter. This being the compensation towards the actual losses which have been caused on account of demolition, I am of the further considered opinion that a sum of ₹5 lakhs would have to be directed to be paid to the petitioner as compensation on account of mental trauma due to demolition of a residence where she was residing.

43. **GENERAL DIRECTIONS:**

43.1. The manner in which the officers of the Corporation have acted require this court to issue general directions in matters relating to notices under Section 308, 321, 462 of the



erstwhile KMC Act, now under Section 248 and 356 of the BBMP Act or any other similar provisions. This court in ***Aslam Pasha v. Chief Commissioner Appellate Authority BBMP²*** vide its order dated 27-09-2023 held that all Authorities and officers exercising penal powers under the BBMP Act would be required to be given access to all documents pertaining to the property available with the Corporation, as also available with other government departments, including the Sub-registrar, etc.

43.2. In view of the above, whenever any notice is issued to the noticee in relation to a property, the name and address of such owner of the property shall be cross verified from the Sub-registrar's office, the data base of the BBMP including that relating to issuance of katha, payment of taxes, etc. and the notice issued to

² WP no. 21775/2023 : 2023:KHC:35364



such person at such address as is available on the file of the Corporation, preferably by personal service with due acknowledgment, if not by RPAD and only in the event of the said RPAD not capable of being served on account of the person having moved from the said location without forwarding address, then the notice to be affixed on the conspicuous place of the property, photographs to be taken thereof and a mahazar to be drawn, with at least two independent witnesses.

43.3. While sanctioning any plan, issuance of Katha or the like document from the Corporation, the Corporation to secure the mobile number and email of such person who has applied for sanction of plan, issuance of Katha, payment of tax, etc. Any notice referred to above to be sent to such email ID and mobile number.

43.4. As regards notices under Section 321 of the KMC Act or Section 248 of BBMP Act. Before



such issuance of notice, a spot inspection to be carried out, whether there is a plan sanction or not to be ascertained, the violations if any in terms of the plan sanction as also the Building Bylaws to be ascertained in terms of setback, area coverage, height of the building, Floor Area Ratio [FAR]/ floor space index, use that the building has been put to, etc., in a tabulated column clearly detailing out the violations if any, and calling upon the noticee to answer the specific violations.

43.5. The said notice to clearly record what are the violations with regard to each of the above components and any other component that the concerned officer is of the opinion has been violated.

43.6. Reasonable time shall be granted to the noticee to answer the said notice of not less than 10 days calculated from the date of service of notice which shall be specified in the notice.



- 43.7. The manner of reply to be provided either by way of email or by submission of documents in a hardcopy also to be detailed.
- 43.8. On receipt of the reply, the joint inspection to be conducted of the property in question to ascertain if the violation of the sanction plan or Building Bye-laws advertent in the provisional order has been removed or not.
- 43.9. In the event of the violations persisting, then issue a confirmatory order under Subsection (3) of Section 248 or subsection (3) of Section 321 of KMC Act, only upon due confirmation that the provisional order and show cause notice has been duly served on the noticee.
- 43.10. The confirmatory order also to be clear and specific as to which violation has been removed and which has not been removed and how the same is in violation of sanction plan and Building Bylaws.



43.11. In the confirmatory order, suitable time to be fixed of say three months to bring the violation in conformity with the sanction plan or Building Bylaws, failing which necessary action to be initiated in terms of Section 356 of the BBMP Act or Section 462 of the KMC Act.

43.12. Before taking any such action a separate notice under Section 356 or Section 462 specifying reasonable time of atleast 15 days for bringing the property in conformity with the sanction plan or Building Bye-laws failing which demolition process would be undertaken.

43.13. It is only after the time period prescribed in the notice under Section 356 or section 462 that any demolition work should be taken up.

43.14. The Chief Commissioner is directed to issue a circular containing the above general directions and such other directions that he is of the opinion would be required to be followed by the concerned officers dealing with the similar



matters. Circular to be placed on the file of this court within a period of four weeks from the date of receipt of copy of this order.

44. ANSWER TO POINT NO.6: What order?

- 44.1. The writ petition is allowed.
- 44.2. Demolition of the dwelling house of the petitioner is declared to be illegal.
- 44.3. The jurisdictional Executive Engineer, PWD is directed to cause inspection of the property of the petitioner to ascertain the financial damage caused an account of the demolition and submit a report within a period of 45 days from the date of receipt of copy of this order to the chief Commissioner who shall make payment thereof within a period of 30 days thereafter.
- 44.4. Respondent No.1 is directed to make payment of a sum of ₹5 lakhs compensation towards



mental trauma undergone by taken by the petitioner.

44.5. Respondent No.1 is directed to make payment of a sum of Rs.10 lakh compensation towards damage caused to the movable items of the petitioner, recoverable from the errant officials, after due enquiry by the commissioner.

44.6. A certiorari is issued quashing the order dated 24.01.2018 of the Chief Commissioner at Annexure-A to the present petition the Chief Commissioner is directed to make payment of ₹10,000 per month calculating from the date of demolition that is **25.04.2016** till the premises of the petitioner is restored for human habitation.

44.7. The Principal Secretary, Urban Development Department to institute an enquiry into the manner in which respondents No. 3 to 6 have acted in pursuance of the complaint of respondent No.7, as regards the violations on



their part in not following the applicable law and take such action as is necessary against them as under the applicable law.

44.8. Though the above matter is disposed off, **relist on 22.03.2024** for reporting compliance with general directions by the Chief Commissioner.

**Sd/-
JUDGE**

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List No.: 19 SI No.: 2