

(2017) 07 KAR CK 0008
In the Karnataka High Court
Case No : 106646 of 2017

VASANT @ VASAPPA

APPELLANT

Vs

THE STATE OF KARNATAKA & ANR.

RESPONDENT

Date of Decision : 03-07-2017

Acts Referred:

[Karnataka Municipalities Act, 1964](#), [Section 189](#), [Section 343](#), [Section 187 \(9\) \(ii\)\(c\)](#) - Power of Government to prohibit the erection of buildings in certain areas without p

Citation : (2017) 07 KAR CK 0008

Hon'ble Judges : K.N. Phaneendra

Bench : SINGLE BENCH

Advocate : K.L.PATIL, M.KUMAR, ANAND R. KOLLI

Judgement

1. The learned Addl. Government Advocate takes notice for respondent No.1. The learned counsel Sri Anand R.Kolli appears for respondent No.2 takes notice.

2. Heard and perused the records.

3. The impugned order is passed by the Chief Officer, Municipal Council, Badami in Bagalkot District Specifically under Section 187 & 189 of Karnataka Municipalities Act, 1964. Section 187(9)(ii)(c) says; If the owner fails to show cause to the satisfaction of the Municipal Commissioner or Chief Officer, he may confirm the order, with any modification he may think fit to make and such order shall then be binding on the owner;

4. The learned counsel contends that the said provision itself is not attracted because according to the municipality itself the petitioner is an unauthorized occupant. Whether the order is legal or illegal is not a question raised before the Court by the learned counsel for the respondent. He bring to the notice of this Court, the provision under Section 343 of the said Act, which refers to the statutory remedy by way of appeal which reads as follows; Section 343. Orders [subject to appeal].

"[(1)] No. appeal shall lie to the municipal council in respect of any order passed or anything done by a Municipal Commissioner (x x x x x) in the exercise of the powers conferred upon him by or under the provisions of this Act except in the case of an order passed or anything done by him under any of the following provisions, namely:-

- (i) sub-section (1) and (2) of Section 181,
- (ii) clause ? of subsection (9) of Section 187,
- (iii) sub-section (1) of Section 194,
- (iv) subsection (2) of Section 197,
- (v) subsection (2) of section 228,
- (vi) section 230,
- (vii) section 256,
- (viii) section 259,
- (ix) clause (b) of sub-section (1) of section 264,
- (x) section 269, (xi) clause (c) of subsection (1) of Section 342, in respect of an order of dismissal.

[(2) In respect of any order passed or anything done by the Municipal Commissioner which is not appealable to the municipal council under sub-section (1), an appeal shall lie to such officer as the State Government may by rules prescribed in this behalf.] In view of the above said provision, any order passed under Section 187 (9)(ii)(c) is appealable to the respective Municipal Council. Under the above said circumstances, when the alternative efficacious statutory remedy is available writ petition is not maintainable. However, as could be seen from the records only 3 days" time has been granted by the Chief Officer to the petitioner to vacate and hand over the premises to the possession of the Town Municipal Council Badami.

5. Considering the exigency, the respondents are directed not to dispossess the petitioner till they file appeal before the Municipal Council and they file any application for interim orders. In view of the above said submission, the writ petition is disposed off giving liberty to the petitioner to approach competent appellate authority for his remedy.

6. Office is hereby directed to return all the documents filed along with the writ petition to the counsel for the petitioner.

7. Petitioner is hereby directed to file necessary appeal before the competent appellate authority within one week from the date of receipt of a copy of this order.