

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-22/LOK/2006

Sh. Krishan Gopal Gupta
Vs.
Sh. Ramesh Bidhuri, MLA

ORDER

1. The complaint dated 28.06.06, filed by Sh. Krishan Gopal Gupta against Sh. Ramesh Bidhuri, MLA alleges that the respondent abused his position to grab the property of the Archeological Survey of India, Govt. of India i.e. Tuglakabad Fort by raising unauthorized construction in khasra No. 647, adjoining the wall of the said World Heritage Monument. He has also misused his official capacity in influencing the officers of the Delhi Development Authority, Sub Divisional Magistrate, Municipal Corporation of Delhi and Archeological Survey of India. He has committed corrupt practices by causing wrongful loss to the Government and wrongful gain to himself by flouting all laws of the land. He has played with the faith reposed on him by the people of the area as MLA. He was in possession of Government land and property, encroached by him illegally, to the tune of crores of rupees and disproportionate to his known sources of income. He has also filed certain photographs, which are clips from the news channel "Delhi Ajtak" showing a house with signboard of the respondent, at the site in question and a CD, inter-alia, showing the interview of the respondent wherein he stated that they were doing business and have built a palatial house.

2. Notice of the complaint was issued to the respondent. He appeared and filed reply on 10.08.06, wherein allegations levelled in the complaint are generally denied. He further submitted that annexure-P-1, which is answer to Un-starred Question No. 514 dated 30.03.2001, is general in nature and is in respect of the whole village of Tuglakabad wherein it is admitted by the Govt. of Delhi that Village Tuglakabad was in existence prior to 1859. His house is situated more than 300 meters from the boundary wall of the Tuglakabad Fort. Khasra No. 647 was transferred to Archeological Survey of India on 16.11.1995. He further averred that a case is pending in the Supreme Court of India in respect of the whole of village of Tuglakabad including khasra No. 647 and that he will abide by the decision of the Hon'ble Supreme Court. The photographs only show his house which was constructed by his grand father Sh. Sanpat in the year 1944 which was later on renovated by his father Late Sh. Ram Rikh in the year 1986 when their family was

living in the said property. He has attached photocopies of receipt of application dated 26.08.87 for electric connection, copy of electricity bill in the name of his elder brother Babu Ram, telephone bill, installed in the premises in the name of his elder brother Ch. Harswaroop on 30.03.1987, MCD water connection receipt which was applied by one of his elder brother on 14.10.1986 and a photograph of stone affixed at Arya Samaj Mandir, village Tuglakabad, the land for which was donated by his grand father Sh. Sanpat in the year 1944. He has averred that the construction of house was done by his grandfather in 1994 and renovation by his father in 1986. He was not even born in the year 1944, while a student in 1986, when the house was renovated. Thus, the question of raising construction on the Government land by him does not arise. He denied misusing his official position or threatening/influencing the officers, indulging in corrupt practices and causing wrongful loss to the Government or wrongful gain to himself or playing with the faith reposed on him by the people of the area.

3. The complainant filed a rejoinder dated 05.12.2006, wherein he generally denied the averments made in the reply and reiterated those made in the complaint. He averred that khasra No. 647, on which property of the respondent is situated, is Government land owned by Archeological Survey of India. The palatial building of the respondent is entirely a new structure which is not more than 7-8 years old and has been constructed by the respondent after encroaching upon the public land. The electricity bill and the receipt of the installation of telephone, does not justify the encroachment or illegal construction. Since the land in question is Government land, there was no legal transfer or donation to Arya Samaj Mandir.

4. It is pertinent to mention that in a connected complaint case against Sh. Ramvir Singh Bidhuri, Sh. Akshay Makhija was appointed as Amicus Curiae. He has also assisted this forum in the present case very diligently.

5. In order to establish the allegations, the following witnesses, were examined on behalf of the complainant :-

- 1 Sh. C.M.Dhingra, SDM (Kalkaji) (PW-1)
- 2 Sh. Anil Samota, Inspector, ALBER Section, Economic Offences Wing, Crime Branch, Delhi Police (PW-2)
- 3 Sh. V.K.Tyagi, Asstt. Engineer, Building Department, Central Zone, MCD (PW-3)

- 4 Sh. Surinder Singh Rana, LDC, ASI (PW-4)
- 5 Ms. Richa, SDM (Kalkaji) (PW-5)
- 6 Sh. A.K.Sinha, Superintending Archeologist, ASI (PW-6)
- 7 Sh. Bhuppinder Singh, SP, CBI, Anti Corruption Branch (PW-7)
- 8 Sh. Javed Gilani, SP, Crime Branch, CBI (PW-7)
- 9 Smt. Alka Dewan, Addl. Secretary to Chief Minister, Delhi (PW-8)
- 10 Sh. A.S.Cheema, DCP (STF) (PW-9)

The respondent has examined the following witnesses :-

1. Sh. Ramesh Bidhuri, Respondent himself
2. Ch. Harswaroop, S/o Late Sh. Ram Rikh
3. Mohd. Salim, S/o Sh. Ramzan Ali

6. It is pertinent to mention that the complainant stopped appearing w.e.f. 19.11.2008. Notice for default was issued to the respondent and his counsel. However, despite service of notices, he has not appeared. Both the respondent and his counsel have made submissions from time to time. The main contention of the respondent is that even though the house where he is living is built on the land belonging to Archeological Survey of India, the case is pending in the Supreme Court of India. He would abide by the decision of the Supreme Court. The house in question was constructed by his grand father Late Sh. Sanpat before partition of India and it was later on renovated by his father Late Sh. Ram Rikh in the year 1986. The said house was built prior to his becoming MLA and thus he cannot be held responsible for the same. The Respondent became a MLA for the first time in 2003.

7. The learned Amicus Curiae has submitted that no conclusive evidence has come on record to prove respondent's involvement in any land grabbing or encroachment upon Government land in Tuglakabad Fort area and that in view of the statement of the respondent that he would abide by the decision of the Hon'ble Supreme Court, the matter can be closed.

8. There is no dispute about the fact that house No. 179, Village Tuglakabad, where the respondent is residing, falls in khasra No. 647 which is situated in Tuglakabad Fort. The said land was handed over by the Land & Building Department of Govt. of Delhi to Archeological Survey of India in the year 1995. The main issue which requires determination in the present controversy is as to whether the respondent after becoming MLA had any role in encroachment of the Government land or in raising construction

thereon. In the instant case, the complainant has not himself appeared as a witness. All the witnesses examined on behalf of the complainant are official witnesses.

9. PW-1, Sh. C.M.Dhingra has merely stated that no complaint was received in his tenure with regard to unauthorized construction being raised in khasra No. 647. As per information given to him, complaint to this effect was made earlier which was also not traceable. PW-2, Sh. Anil Samota, Inspector, ALBER Section, Economic Offences Wing, Crime Branch, Delhi Police, has stated about receiving of complaint from Sh. Krishan Gopal Gupta with regard to encroachment on khasra No. 647 and Archeological Survey of India informing them that a writ petition was pending before the Supreme Court of India. He further stated that two cases were registered on individual complaints of Sh. Vishwanath Mitra and two persons were arrested and regular case was registered against them. PW-3, Sh. V.K.Tyagi is Assistant Engineer, Building Department, Central Zone, MCD, who has denied any knowledge with regard to encroachment on khasra No. 647. PW-5, Ms. Richa is SDM (Kalkaji) who deposed about khasra No. 647 situated in village Tuglakabad being Government property and in possession of Archeological Survey of India since 1995. PW-6, Sh. A.K.Sinha is Superintendent Archeologist, Archeological Survey of India, who has also testified about khasra No.647 in village Tuglakabad having a Government land. He further stated that he was unable to state as to who had encroached on land in khasra No. 647. PW-7, Sh. Bhupinder Singh is Superintendent of Police, CBI, Anti Corruption Branch, who stated about receiving a complaint of Sh. Krishan Gopal Gupta in November, 2005 with regard to encroachment on property situated around the wall of Tuglakabad Fort by Sh. Ramesh Bidhuri and the same being transferred to Chief Vigilance Officer, DDA. PW-8, Smt. Alka Diwan is Additional Secretary to Chief Minister, Delhi, who has testified that she was Joint Secretary, Urban Development Department in the year 2001. A complaint was received with regard to encroachment on Government land. The complaint was sent to Divisional Commissioner, Govt. of NCT of Delhi on 18.05.2001. She further stated that another complaint was received from complainant on 27.10.05 regarding encroachment upon Government land. Sh. Shishpal lodged a complaint with the Chief Minister's Office in the year 2005 that Sh. Ramesh Bidhuri has encroached upon Government land. The said complaint was also referred to the Divisional Commissioner on 25.05.05. She has further stated about the information given by Dy. Conservator of Forest (South) and Dy. Director (Land Management), DDA to Chief Minister Office. However, the said information is not with regard to khasra No. 647. Sh. Javed Gilani also numbered as PW-7, has deposed about a closure report having been filed in RC-DA1-2001-A-0037 dated 15.05.01 regarding encroachment of Government property with connivance of police, officials of ASI and other revenue officers, stating therein that since encroachment has taken place over

decades, it was not possible to find out as to who were responsible for allowing the encroachment and the persons who had encroached upon the Government land. He further stated that as per the survey of Archeological Survey of India there were about 1950 dwelling units located upon the encroached Government land. The CBI has also sent a note requesting the Chief Secretary, Govt. of Delhi to initiate action against those who were responsible for encroachment. He further stated that during the course of investigation, CBI did not look into the fact as to whether Sh. Ramesh Bidhuri has encroached upon any part of the khasra No. 647 or any part of the land of Tuglakabad Fort. He further stated that he was unable to say as to whether Sh. Ramesh Bidhuri was in the list of 1950 encroachers.

10. RW-1, Sh. Ramesh Bidhuri has testified that house No. 179, Village Tuglakabad is ancestral property, built by his grand father Sh. Sanpat in 1944 and renovated by his father Sh. Ram Rikh in the year 1986. He has also filed a copy of receipt of application dated 26.08.1987 Marked 'A', bill of electricity connection dated 20.07.1989 Marked 'B', telephone connection intimation dated 30.03.1987 Marked 'C' and water connection slip Marked 'D'. RW-2, Sh. Harswaroop is the brother of the respondent who has testified that he was born in the ancestral house No. 179 in Tuglakabad and he was 65 years old. The house in question has been constructed by his grand father and father. The house in question was constructed by his grand father and was renovated and additions made by his father in the year 1986. Neither he nor his brothers including the respondent made any change or renovation in the house. The labour contract for construction of the said house was given to Mohd. Salim by his father Late Sh. Ram Rikh in the year 1986. RW-3, Mohd. Salim is the contractor who has testified about his having been hired as labour contractor for construction of house No. 179, Village Tuglakabad in the year 1986 by Late Sh. Ram Rikh and his having done construction and renovation of the said house. He further stated that building material for the construction, sanitation, electrification and wooden work was supplied by Late Sh. Ram Rikh.

11. Statement of the respondent with regard to Computer Disk filed by the complainant along with the complaint was also recorded on 16.11.09, wherein he stated that reference to "Hamne Mahal Bana Liya" meant his family and not the respondent himself personally. Since the family was engaged in business of stone crushing and transportation, it had the means to make a house. The explanation regarding use of the term "Mahal" in the interview as recorded in (compact disc) is that since the Jha Committee had used the same expression in its report, he also repeated it. This is plausible explanation. In the given facts and circumstances it cannot be regarded as an admission of having himself constructed a palatial house.

12. From the aforesaid it can be seen that none of the witnesses examined on behalf of the complainant, have stated that it was the respondent who has encroached upon the Government land or raised unauthorized construction thereon. None of them have stated about respondent misusing his official capacity in influencing the Government officers to prevent them from removing any encroachment or stopping unauthorized construction. In fact, no evidence whatsoever has come on record regarding the respondent making any encroachment or raising unauthorized construction. On the other hand, RW-1, Sh. Ramesh Bidhuri and RW-2, Ch. Harswaroop have testified that the house in question was built by their grand father Late Sh. Sanpat in the year 1944 and renovated by their father Late Sh. Ram Rikh in the year 1986. Admittedly at that time the respondent was not an MLA. The factum of house of the respondent being situated in Tuglakabad Fort shown in the CD filed by the complainant is not disputed. However, according to the respondent when he stated that “Hum Business Karte Hain, Hamne Mahal Bana Liya”, he meant that his family was having the business of stone crushing and transportation and they have built a house and by “Hamne” he meant his family members and not the respondent himself personally. RW-3, Mohd. Salim has also corroborated the version of RW-1 Sh. Ramesh Bidhuri and RW-2, Ch. Harswaroopo regarding renovation and construction of the house in the year 1986 by Sh. Ram Rikh. The testimonies of all the RWs have gone un-rebutted.

13. Merely because the respondent happens to be a public functionary and was living in a house built up / constructed on the occupied/encroached land by his ancestors, he cannot be held responsible for the said encroachment or construction unless it is shown that the respondent was himself responsible for the encroachment and/or unauthorized construction. No person can be vicariously held liable for the acts of his fore fathers. Though in the complaint, it is alleged that the respondent was in possession of property worth crores of rupees and disproportionate to his known sources of income. However, no evidence to this effect has been led by the Complainant.

14. In view of the above discussion and considering that there is no plausible or concrete evidence led before this Forum regarding the respondent public functionary having misconducted himself by occupation/encroachment or raising unauthorized construction on public land, the allegations made in the complaint remain unsubstantiated. No credible evidence regarding land grabbing, colonization and renting out of the encroached portions has come on record. Similarly, there is no evidence with regard to contribution monetary or otherwise by the respondent in raising construction.

Assuming for the sake of argument, even if the family members of respondent are alleged to have made constructions / renovations, then they would also be subject to demolition / removal as per the decision taken in the appeal pending in the Supreme Court.

In view of foregoing discussion, the complaint is dismissed. The inquiry was in respect of the role and conduct of the public functionary viz. the allegation of encroachment and unauthorized construction on public land. Nothing stated in this order shall be construed in any manner as endorsement/approval, tacit or otherwise, of the unauthorized construction and encroachment on public land. The undertaking given by the respondent and his brothers regarding their abiding by the decision of the Supreme Court in the matter of removal of encroachment / demolition be supplied to Archeological Survey of India. Copies of the order be supplied to parties.

-Sd/-
(Justice Manmohan Sarin)
Lokayukta

Dated : 01/12/2009

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