

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-16/LOK/2006

Sh. Krishan Gopal Gupta
Vs.
Sh. Ramvir Singh Bidhuri, Ex.MLA

Present:

Sh. Ramvir Singh Bidhuri, Ex.MLA in person
Sh. Akshay Makhija, Amicus Curiae

Respondent

ORDER

1. A complaint dated 30.09.05 of Sh. Krishan Gopal Gupta against Sh. Ramvir Singh Bidhuri, Ex.MLA, was received from Anti Corruption Branch (Directorate of Vigilance), GNCT of Delhi, vide their letter dated 19.10.05. The same was registered as complaint No. C-16/LOK/2006. The Complainant was asked to file the complaint in the prescribed manner but he failed to do so. The complaint was accordingly filed as per order dated 12.01.06 and the Complainant was intimated vide letter dated 18.01.06.

2. Later, the Complainant filed the present complaint dated 19.04.06. However, the court fee paid was only Rs. 400/-. The Complainant was asked to pay the balance of the prescribed court fee, which was paid on 11.05.09.

3. In the complaint, it is alleged that Sh. Ramvir Singh Bidhuri, MLA abused his position to grab Government property at Tuglakabad Fort, by raising unauthorized construction adjoining the wall of the said World Heritage Monument, with his associates namely Sh. Khem Chand, Sh. Virender Bidhuri and others. He also influenced the concerned officers of the Departments and threatened them so that his illegal activities are not restrained by the officers of DDA, MCD, ASI or the concerned SDM. He has thus caused wrong-full loss to the tune of crores of rupees to the Government and wrongful gain to himself. As per letter dated 16.06.01 of SDM (Kalkaji), addressed to the Superintending Archeologist, Archeological Survey of India, annexed with the complaint, the unauthorized construction done by Sh. Ramvir Singh Bidhuri and Sh. Khem Chand, R/o House No. A-1, fell in khasra No. 647, which belongs to Archeological Survey of India.

4. Notice of the complaint was given to the respondent, who appeared and filed his reply on 12.06.06. He denied having raised any unauthorized construction or owning any house in Tuglakabad. He stated that the complaint has been filed at the instance of Sh. Shish Pal, former MLA from Tuglakabad and was politically motivated. He further stated that Sh. Ramphal, his father, was having a residential house bearing municipal No. 2, Village Tuglakabad, New Delhi, which was originally constructed by Late Sh. Dunger, his grand father, more than 50 years ago and has been modified from time to time. His father had been living in this house for over 45 years. He also stated that MCD has assessed this house for house tax purposes w.e.f. 01.05.1966 and his father has been regularly paying property tax in respect of this house for the last 40 years. He further submitted that as per reply of the Delhi Govt. dated 30.03.01, all the land of Tuglakabad Village both within and outside the Lal dora was owned by Archeological Survey of India. The demolition proceedings against properties in Tuglakabad Village have been stayed by the Hon'ble High Court on 09.04.01. He relied upon letter dated 22.04.04 of Sh. Jagmohan, former Union Minister, according to which the Union Government has decided that no structure existing prior to 1993, as per Aerial Survey Report of DDA at Tuglakabad Fort, would be demolished, and letter dated 20.01.98 of Special Secretary to Hon'ble Lt. Governor, Delhi, saying that Special Task Force, which conducted the preliminary inquiry into encroachment of land in question, found that Respondent had no role in the encroachment or unauthorized construction in or around the Tuglakabad Fort.

5. The Complainant filed a rejoinder dated 22.08.06 wherein he, inter-alia, stated that Special Task Force report filed by the respondent states that there are two ancestral houses of Sh. Ramvir Singh Bidhuri and his brother Sh. Virender Bidhuri on the land belonging to Archeological Survey of India and thus it was incorrect to state that Special Task Force has cleared the name of the respondent and his brother in encroachment of the public land. Any construction on the land of Archeological Survey of India, whether ancestral or otherwise was illegal. It was further stated that while contesting elections, the residential address given by the respondent to the Election Commission was that of Village Tuglakabad. The payment of house tax or other taxes does not make encroachment legal. Further, letter dated 22.05.04 is addressed to Sh. Ramesh Bidhuri and not to the

respondent. It also did not say that the commitment made by Sh. Jagmohan was policy of the Government.

6. The respondent filed reply to the rejoinder, inter-alia, stating that he was living in his ancestral house in Village Tuglakabad with his parents but he did not own any property or house in the village.

7. It is pertinent to mention that the respondent had moved an application on 23.07.07 for dismissal of the case. Vide order dated 20.12.07 of my Learned predecessor, the said application was dismissed.

8. It is also pertinent to mention that the Complainant had stopped appearing in the proceedings w.e.f. 19.11.08 and did not appear despite notices issued vide order dated 19.11.08, 06.01.09 and 24.02.09. As a matter of abundant caution, notices were issued at three available addresses of the Complainant by registered AD post among other modes. The Complainant was duly served but did not appear. It seems that the Complainant was no longer interested in pursuing his complaint. In these circumstances, to assist this forum, Sh. Akshay Makhija, Advocate was appointed as Amicus Curiae vide order dated 06.01.09.

9. In order to establish the allegations levelled, the following witnesses were examined on behalf of the Complainant:-

- i) Sh. Krishan Gopal Gupta, Complainant
- ii) Sh. C.M.Dhingra, SDM (Kalkaji), (PW-1)
- iii) Sh. Satbir Singh, UDC, Archeological Survey of India, (PW-2)
- iv) Capt. Raghubir Singh, Security Officer, ASI (PW-3)
- v) Sh. A.K.Sinha, Superintending Engineer, (PW-4)
- vi) Smt. Richa, SDM (Kalkaji), (PW-5)
- vii) SI Satvinder Singh, Economic Offence Wing, Crime Branch, Delhi Police, (PW-6)
- viii) Sh. Javed Gilani, SP (Special Branch), (PW-7)
- ix) Sh.J.S.Yadav, Executive Engineer (Building), Central Zone, MCD (PW-8).

The witnesses examined by the respondent are:-

- i) Sh. Ram Phal, father of the respondent (RW-1)

- ii) Sh. Ramvir Singh Bidhuri (RW-2) i.e. the Respondent himself

10. The respondent himself made submissions from time to time. He advanced final arguments on 28.07.09. The main contention of the respondent is that even though the house may have been built on Government land, it was constructed by his grand father more than 50 years ago and is now owned by his father Sh. Ramphal, who has been paying property tax in respect of the same. The house was neither owned by him nor he raised any construction thereon. He has no concern with the same. He was merely residing in another house of his fore-fathers. There are more than 10,000 houses falling in village Tuglakabad, the fate of which is yet to be decided by the Hon'ble Supreme Court.

11. The Learned Amicus Curiae has filed written submissions on 28.08.09. He submitted that though various witnesses have been examined on behalf of the Complainant, no conclusive or determinative evidence has come on record to prove respondent's involvement in any land grabbing mafia or that he had himself encroached upon any Government land in Tuglakabad Fort area. There is no material on record to corroborate the allegations made by the complainant with regard to encroachment of land or the illegal construction being made by the respondent. Finally, the Learned Amicus Curiae submitted that the present complaint was liable to fail on account of lack of evidence to substantiate the complaint.

12. In his affidavit, by way of evidence, the respondent states that he does not own any property in Tuglakabad Fort or in Tuglakabad Village. He avers that as per the complaint, alleged constructions and encroachments were made in June and July, 2001. He was not MLA or Public Functionary during the period December, 1998 to December, 2003. Hence the enquiry under the provisions of Delhi Lokayukta and Uplokayukta Act, 1995 was not competent and was barred by limitation.

The plea of the complaint being barred by limitation need not detain us. The substance of the complainant's allegation has been two fold, firstly occupation and encroachment on Government land and raising construction thereon and secondly misusing the public office for preventing and diverting action against demolition. Even if the allegation

with regard to the construction having been carried out at the time when the respondent was not a public functionary was accepted as such, the cause of action for the complaint for allegedly misusing the public office in diverting demolition action occurred when the respondent was an MLA in the year 2003. The complaint has been filed in 2006. Hence the plea of complaint being barred by limitation is not sustainable. The complaint has been accordingly dealt on merit.

13. It is an admitted position that the land situated in Tuglakabad Fort, including khasra No. 647, whereon the house in question is built, was handed over by the Land & Building Department of Govt. of Delhi to Archeological Survey of India in 1995. Sh. Ram Phal, father of the respondent is having a residential house bearing municipal No.2, Village Tuglakabad, New Delhi. The said house has been assessed to property tax w.e.f. 01.05.1966. Sh. Ram Phal had been paying the property tax. He is also having electricity connection in his name. As per his reply to the rejoinder, the respondent is living in the said ancestral house. There is no dispute about the fact that the said house, along with other properties has been constructed on the Govt. land after occupation of the same.

14. However, the main issue left for determination in the present controversy, is as to whether the respondent had any role in occupation/encroachment of the Government land or in raising construction thereon? The Complainant in his deposition stated that once Government took action for removal of the encroachment, but the same was diverted and stopped on account of political pressure from the respondent. During his cross examination, he stated that he has seen the respondent raising construction on the impugned land. However, the date, time and place etc. when he has allegedly seen the respondent raising construction or the details of construction has not been specified by him. He has also not shown any material from which it can be inferred that it was on account of political pressure from the respondent that action for removal of encroachment was stopped.

15. PW-3 Capt. Raghubir Singh has given a report dated 28.07.06, Ex.PW-3/1 wherein he stated that Respondent Sh. Rambir Singh Bidhuri, MLA is a habitual encroacher. He lodged a complaint with the police with regard to encroachment but the police hesitated to take action against the

respondent. However, he also stated that he did not approach the higher authorities against the hesitation of police to record FIR against the respondent. He further stated that the encroachers, who made encroachment in the year 1995 and later on, were saying that they were paying rent to the respondent and his brother since they had been put in possession on the land encroached upon by them. He also stated that he had also seen the property of the respondent on his first visit to the ancient monument in the year 2000. The area of the property of the respondent was lesser at the time of his first visit then it was now. When he first visited the village, he found that the construction raised by the respondent was a fresh one. It can be seen that his statement is quite general in nature and is hearsay. He has not given name of any person/tenant who stated that he was paying rent to the respondent or his brother. In the absence of particulars, no direct evidence of the alleged persons/tenants paying rent could come in. He has also not specified as to what kind of construction had been raised by the respondent. PW-4 Sh. S.K.Sinha, during his cross examination stated that since the report of Capt. Raghubir Singh did not have any supporting document or statements of the concerned persons, he could not act on the same or inform the Crime Branch or Special Task Force accordingly. He also stated that a show cause notice dated 28.09.01 was issued to the respondent on the basis of the report of the field officer. The respondent gave a reply to the Show Cause Notice claiming construction was nearly 4-5 decades old and house tax and electricity bills being paid since long. He also stated that after receiving reply from Sh. R.S.Bidhuri, notice was issued to his grand father Sh. Dunger. He has also admitted that the respondent never brought about any pressure or undue influence to stall any action of demolition in respect of the property in question.

16. From the aforesaid, it is clear that since the report of PW-3 Capt. Raghubir Singh lacked specific details regarding the role of respondent, it was not acted upon. Further based on the reply given by the respondent to the notice, Show Cause Notice was issued to his grand father Sh. Dunger. The ASI therefore seems to have accepted the version of the respondent that the house in question was ancestral house, which was constructed and renovated by his grand father and father and that he was merely residing with them. No direct and cogent evidence had come on record to show that

it was the respondent who had occupied or made encroachment on Government land or raised any unauthorized construction.

17. Sh. A.K.Sinha, Superintending Engineer, Archeological Survey of India, in his deposition and cross examination stated that he cannot say with certainty as to whether the alleged encroachment was from Sh. Ramvir Singh Vidhuri, Sh. Ram Phal or Chaudhary Dunger Mal. He also admitted not visiting khasra No. 647 himself and Respondent not exerting any pressure or undue influence to stop action of demolition in respect of property in question. He also admitted that he did not bring to the attention of Mr. Thakur, the shortcomings in latter's report which was bereft of material particulars with regard to persons /tenants who were claiming to be allegedly paying the rent to the respondent and others for structures raised on encroached land. No corrective action or direction were given to rectify the shortcomings with regard to non recording of statement of persons from whom inquiries are stated to have been made. Even while producing the photographs which were taken in the year 2000, Sh. Sinha was unable to point out any property or establishment which had been constructed by the respondent and was rented out or sold out. Sh. Sinha also pointed out that the property in question was based on the maps and aerial photographs taken in the year 1993.

18. At this juncture, it would be pertinent to notice that clarification has been given by Sh. Ramvir Singh Vidhuri, Respondent, on oath, in respect of the houses and properties in question. Referring to the notice dated 30.10.02 issued to him by the Archeological Survey of India, mentioning the unauthorized construction at House No. A-1, Chowk Mohalla, Sh. Vidhuri deposed that there was no house bearing A-1 Chowk Mohalla. He said that house No. 2 Zalim Mohalla, Village Tuglakabad was the house built up by his grand father Late Sh. Dunger where his father and elder brother resided. There is another house bearing No. 34 Zalim Mohalla, Village Tuglakabad which had been built by his great grandfather late Sh. Puran and he resided there. Reference to house No. A-1, Chowk Mohalla by Archeological Survey of India, in the notice was in fact to residential house bearing No. 2 Zalim Mohalla, Village Tuglakabad, where his father and his elder brother resided.

19. Affidavit by way of evidence of Sh. Ram Phal, father of respondent has been filed. He has also personally appeared before this Forum and deposed on oath. As per the said affidavit, Ex. DW-1/1, the property in question was in possession of Sh. Ram Phal, where he was residing with his son Sh. Khem Chand, elder brother of the respondent. Sh. Ram Phal also stated that the decision of the Supreme Court on the question of construction/demolition would be acceptable to them and he would abide by it. He stated that Sh. Ramvir Singh Bidhuri was not dependent on him and was living independently. The property in question has been built by his father late Sh. Dunger who passed away 35 years ago. He had added one floor to the property out of the compensation received for acquisition of land. He produced property tax certificates issued by the Corporation showing the existence of the property prior to 1966. The existence of construction in the abadi area prior to even 1973 is borne out from Government's communications. He deposed that respondent did not contribute to the construction of the new floor.

20. On perusal of the documents and evidence as come on record, it transpires that the land in khasra No. 647 was transferred in 1995 to the Archeological Survey of India and even that time there were encroachments and constructions in question. Be that as it may, the documents on record show an assurance from the Union Minister that structures and houses in existence prior to 1993 would not be demolished. In any case the writ petition which was filed in the High Court has also been transferred to the Supreme Court and the Supreme Court is seized of the matter, regarding existence and removal of encroachment on the land transferred to ASI, in SLP NO. 4821.

21. 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 responsible for the encroachment and/or unauthorized construction. No person can be vicariously held liable for the acts of his fore fathers.

22. In view of the above discussions 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 monetarily or otherwise by the respondent in raising construction. Assuming for the sake of argument, even if the father and brother of respondent are alleged to have made constructions / renovations after 1995, then they would also be subject to demolition / removal as per the decision taken in the matter 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 father regarding 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