

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-282/LOK/2010

Lokayukta on its own motion in Re: Ms. Preeti Behn, Original Informant

Present:

1. Mr. Viraj R. Datar, Advocate, Amicus Curiae with Mr. Chetan Lokur, Advocate.
2. Various officers of MCD
3. Advocates and Representatives of 33 Public Functionaries as per individual orders.

1. By separate orders passed in 33 individual cases of which 8 related to MLAs and 25 to the Municipal Councillors, the various breaches of building bye laws existing in their premises have been pointed out.

2. On a point of back ground, it may be noted that these notices had been issued to MLAs and Councillors for inquiry under section 7 read with section 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 to inquire into the allegation of unauthorized construction, encroachment etc. in their properties.

3. The present proceedings emanated from a complaint made by one of the Councillors, Ms. Preeti Behn, in respect of whom an inquiry was being conducted for an on going construction in Jhilmil, Shahdara, an unauthorized colony. The Councillor raised a grievance before this Forum of having been singled-out, while complaining of inaction against numerous powerful and well-connected MLAs and Councillors, who had either themselves carried-out or were enjoying the benefits of unauthorized constructions and encroachments. She sent a communication and followed it by a statement on oath giving particulars of the public functionaries and details of their properties.

The Municipal Corporation was put on notice and asked to report after inspection, the factual position in respect of the said properties. The information came in bits

and pieces, with nearly four reports being filed by the Municipal Corporation. After compilation and analysis of the information received, individual notices were issued to eight MLAs and twenty five Councillors.

4. The menace of unauthorized construction and encroachment on public land is widely prevalent in Delhi. Large number of unauthorized colonies have mushroomed with abounding structures, without permission or sanction. Even in authorized colonies, there are substantial breaches of Municipal Bye-laws. There is excess coverage and at times even additional floors, which are not permissible, are constructed. The unauthorized structures without proper supervision and architectural control have led to unsafe buildings endangering lives of our citizens, as has been recently seen. The breach and defiance of law by unscrupulous builders is almost invariably in collusion with the Municipal Staff & Engineers. Police also turns a blind eye to the on going construction, instead of immediately reporting and taking preventive action. The nexus of builders with Municipal Staff and authorities including at times Public Functionaries has led to inaction against unauthorized construction. Various initiatives taken by the Courts and Executive in the past in the form of sealing drives and removal of unauthorized constructions have not yielded any lasting result, primarily due to lack of commitment and will to implement and sustain action. Such actions or drives can be successful only, when it has the support of leaders and public functionaries.

5. The present case provides a unique opportunity to public functionaries i.e. to the elected representatives of the NCT of Delhi to take the lead and voluntarily shun the benefits and advantages of unauthorized constructions. In a significant number of cases, the alleged breach is non sanction of building plans or unauthorized constructions and extra coverage being compoundable on payment of

compounding fee. The last category would be where the breaches are not compoundable. Here the public functionary would need to voluntarily undertake to demolish the non-compoundable portions.

6. The Municipal bye-laws in recent times have been liberalized to a large extent permitting additional coverage and certain concessions in dimensions of balconies and chhajjas, including those in set-backs. It is thus a good opportunity for the public functionaries to voluntarily abide by to bring their premises within the Municipal Bye-laws. Even otherwise public functionaries i.e. Councillors and the MLAs are not expected to indulge in conduct i.e. raising of unauthorized construction themselves or being a beneficiary of the same. Public functionaries are expected to abide by the Law both in letter and spirit. Conduct which is at variance is actionable at law. As mentioned, public functionaries can lead by example, which would give an impetus to the drive against unauthorized constructions & encroachments, cautioning their also to abide by law. The appeal is being issued in the hope and expectation that public functionaries would act voluntarily.

This is not to suggest that in case the public functionary feels that there is no breach of building bye-laws in their property, the case should not be defended. It goes without saying that the present proceedings are based on the inputs received from the Municipal Corporation and explanation/justification by the public functionaries wherever urged would be duly considered.

7. This Forum remains committed to carrying out its statutory mandate and it is for the public functionaries to make an informed choice voluntarily to abide by the Municipal Bye-laws or suffer the odium of being in breach thereof in public life.

8. The Media has a stellar contribution to make in the drive against unauthorized construction and encroachments on public land and building up public opinion in support thereof.

These observations have been made in the main complaint file of Ms. Preeti Behn. However the same shall apply to individual cases also.

9. In respect of Plot and park at NDSE-1, the affidavit filed by Dy. Commissioner, Central Zone has been perused, which conceals more than what it reveals. It is mentioned that further action is contemplated and shall be taken in due course. With the action already taken, it is not understood what further action is contemplated. Further its timings being in due course is equally vague. As the matter is listed on 20th December, 2010 at 2.30 PM, it is hoped that MCD would come up with specific and concrete report of what action has been taken and what remains to be done. Let a comprehensive reply by the Horticulture Department in respect of lawn adjoining H-73 to 75 be also filed.

Matter is already fixed on **20th December, 2010 at 2.30 PM** and further on **6.1.2010 at 12.00 noon** for further proceedings.


(Justice Manmohan Sarin)
Lokayukta

Dated : 10.12.2010
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