

Complaint No. C-548/LOK/2010

Lokayukta on its own motion in Re:

Ms. Preeti Behn, Original Informant
And

Smt. Chaman Ambavat, Municipal Councillor- Respondent

Present:

Sh. Narender Sharma, Counsel for Respondent

Sh. Sanjay Yadav, Executive Engineer (HQ), MCD

Reply has been filed by the Respondent. The learned counsel for Respondent raises preliminary objection on the maintainability of the proceedings, questioning the jurisdiction of the Lokayukta.

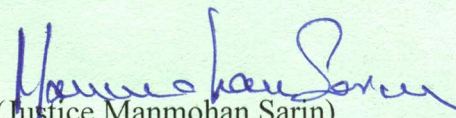
The Respondent's submission is that the property in question was constructed in the year 1992-93. It was purchased by her mother in law and the construction was raised by her father in law in the year 1992-93, while the Delhi Lokayukta and Upalokayukta Act was enacted only in the year 1995-96. Respondent got elected as Public Functionary in the year 2007. There was no role played by the Respondent as Public Functionary in acquisition of property or raising the construction. Hence, there was no cause of action against the respondent who had neither raised construction nor was responsible for it. The respondent was simply living with her husband and in laws in the premises. These pleas raise questions of facts which would need to be adjudicated.

It may be noted that these proceedings have been initiated on the basis of a communication received from Ms. Behn Preeti, Councillor regarding the existence of unauthorized construction in the properties belonging to or in occupation of Public Functionaries. Proceedings were not initiated on the basis of a formal complaint. On receipt of the information, notices were issued to MCD to inspect the properties in question and report regarding the unauthorized construction or violation of Building Bye laws. Inputs were received from MCD. Based on the said inputs which revealed facts constituting 'allegation' within the meaning of section 2 (b) (1) of the Delhi Lokayukta and Upalokayukta Act, 1995, notices to show cause as to why inquiry be not held were issued to public functionaries including the respondent applicant.

It is not disputed that the Respondent Public Functionary is in occupation and enjoyment of property with her husband and in laws. At this stage we need not to into the merits regarding the details of unauthorized construction or the breaches of Bye laws pointed out by the MCD of their being approximately 85 sq.mtrs. of non compoundable construction, besides the projection of Chajjas on municipal land. The submission of the Respondent is that she had neither raised the construction nor was responsible for it. Besides she became a public functionary only in 2007. The plea of the limitation is also raised based on the date of construction of property.

The above pleas ignore the factum of continuous beneficial use and enjoyment of the premises by the Public Functionary which continues even today and provides prima-facie a cause of action in terms of Section 2 (b) (i) of the Act. The beneficial enjoyment and use of unauthorized and illegal construction by itself violates the norms of conduct and integrity expected of a Municipal Councillor as a Public Functionary. The said enjoyment is even continuing today providing a continuous cause of action.

In view of the foregoing, the application/plea of the Respondent for dismissal of these proceedings at this preliminary stage is devoid of merit. The application is accordingly dismissed. MCD to file rejoinder, if any within 2 weeks. Re-notify for 31.03.11 at 12 Noon.


(Justice Manmohan Sarin)
Lokayukta
11.03.11

SS