

**BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin**

Complaint No. C-541/Lok/2010/

In the matter of:-

Sh. Mahabir SinghComplainant.

Vs.

Sh. Balbir Tyagi, Councillor MCD & AnotherRespondent.

1. Sh. Chetan Lokur, Advocate , Amicus Curiae.
2. Sh. Ranvir Vats, Advocate for Respondent and Respondent in person.

ORDER

1. Complainant a 70 years old senior citizen, resident of Vikas Puri filed a complaint against Respondent, alleging felling and uprooting of trees in the municipal park. The municipal park had different varieties of trees, such as Pipal, Burgad, Sheesham, Neem etc. Many of the trees were over 20 years old. Complainant, a nature lover, claims to have himself planted many of the trees, which had grown to a height of 15-20 feet.

Complainant alleged that the Respondent Sh. Balbir Tyagi, a Municipal Councillor of the area, got cut a number of trees on the morning of 18.11.2010. He claims that 4-5 persons carrying tools and implements cut down the trees. On enquiry, they said they did so as per direction of Respondent No. 1. Complainant contacted the police on 100 number. However on learning that trees were being cut at the behest of the Respondent-Councillor, they did not intervene.

2. Complainant on his return in the evening from a visit to Doctor found that about 10 trees had been cut. He filed a formal complaint with the Police Station Vikas Puri. Police team was informed by the persons cutting trees that they had the permission for trimming and pruning of trees. The police again was helpless in taking any action.

3. Complainant represented that it was a lone battle of an old man. He faced resistance from supporters of Respondent No. 1 and

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two of them had even roughed him up. Even on the next day police refused to register an FIR on 19.11.2010.

4. Complainant along with 10-20 supporters went to the park outside the house of the Respondent. Far from expressing regret or feeling apologetic for his actions, Respondent threatened the Complainant and told him that Respondent would do what he wanted. He did not hear the protest or objection of the Complainant, rather warned and threatened him from interfering in the affairs of Respondent. Complainant thus perforce came to this forum, with the complaint.

5. It was alleged that Respondent being a Councillor was a public functionary in terms of section 2(m) of the Delhi Lokayukta and Upalokayukta Act, 1995. Cutting and felling trees without requisite permission was not only an offence inter-alia under the Delhi Preservation of Trees Act, 1994, but was also a failure on the part of Respondent to act in accordance with the norms of integrity and conduct which ought to be followed by a Public Functionary or the Councillor in the instant case.

6. Notice of inquiry under section 7 read with 2(b) of the Act was issued to the Respondent No. 1. Respondent No. 2, the SHO who had been impleaded as a party was deleted from the array of Respondents with the observation that if his testimony was found to be relevant for the inquiry, then he could be examined under section 11 of the Act.

7. Complainant represented to the forum that he is an old man suffering from Asthma and has a cardiac block and is in a precarious state of health. He needed help for prosecution of the Complainant. Mr. Chetan Lokur, Advocate was therefore appointed as Amicus Curiae to assist the forum.

8. Pleadings were completed with reply being filed by the Respondent and rejoinder by the Complainant. Complainant and Respondent filed affidavits by way of evidence, together with documents. Complainant attached photographs showing the pruned and pollarded trees. Respondent produced on record the permission granted by the Horticulture Department, MCD for pollarding and pruning of trees. In the reply filed, Respondent

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denied having ever uprooted any trees. However, he submitted that there were representations and complaints of the residents regarding trees that had become dangerous or were intruding into the premises of the inhabitants and residents. Respondent also produced photocopies of number of complaints that he received from time to time from citizens complaining against the bad condition of the park, wild and uncontrolled growth of the trees and trees coming into their houses and endangering their structures. Respondent claims to be himself involved in the process of plantation of trees.

9. The complaint was alleged to be at the behest of opposite political parties to tarnish his image. The Respondent claims that trees that were alleged to be cut were actually pruned or pollarded. It was done after due permission from the Horticulture Department. Respondent had not cut a single tree himself. Respondent denied the incident of 18th as alleged. On 18th November, 2010 persons from the Horticulture Department had informed the SHO that trees were being trimmed and pruned as per the directions of Horticulture Department. Respondent also denied shouting at the Complainant as alleged. The Respondent claims to be committed to the cause of greenery. Respondent also denied holding out any threat as alleged or otherwise to the Complainant

10. Preliminary statement of the complainant was also recorded. Respondent has also produced on record the order of the Dy. Director (Horticulture) dated 25th August, 2010, in terms of which 90'Safeda' trees in Vikas Puri, West Zone with their location given, were to be pollarded and pruned. It is the Respondent's case that whatever trees were cut or felled were done by the authorities in pursuance to the said order.

11. Considering the pleadings on record and the documents filed by the Respondent and in particular the order of the Horticulture Department for pollarding and pruning of the trees that had over grown or were dangerous, It appears to the undersigned that the complainant felt aggrieved on account of some of the trees which he claims to have planted himself being pollarded or pruned. He

perceived Respondent to be the person responsible for it. The Respondent on the other hand claimed that he had received several complaints from the residents who apprehended danger to their properties and were weary of mishaps on account of uncontrolled growth of trees. The resultant departmental action, which was perceived by the Complainant as emanating from the Respondent, led to the filing of the complaint.

12. This is in my view was a fit case where the misunderstanding between a senior citizen and a public functionary ought to be removed and to bring them both to a path of reconciliation and away from acrimony.

It was explained to the Complainant that the Respondent was not against plantation of trees and that he had no intention to cause any embarrassment to or to hurt the Complainant or undo his efforts in tree plantation. Statement of the Respondent on oath was recorded. The material portion of which is as under:-

"...I have explained to the Complainant that the trees which he alleges to have been cut by me were pollarded and pruned by MCD staff pursuant to a direction by the Director Horticulture, MCD. I say that pollarding and pruning is resorted for trees which are not less than 15 ft from ground and whose branches are cut to encourage growth. Pruning is resorted to control the growth of the branches. I say that in this process if the residents or any worker had uprooted any tree in the park or which were planted by the Complainant then it is indeed a matter of regret.

I have the highest regard for the Complainant who is one of the elders of my Constituency and have so expressed it in the Court.

With a view to satisfy the Complainant of my bona fides in the matter, I followed up with the MCD and have got about 30 trees planted in the park. I further state that there is no question of my being involved in uprooting or cutting of any tree illegally or permitting any of my followers to do so. I would also take steps for plantation of shrubs and plants for beautification of the park on my own.

I regret the inconvenience, if any, caused to the Complainant."

The Complainant heard and accepted the statement of the Respondent and the explanation that the trees were pollarded and pruned after permission of the Horticulture Department of MCD. He stated that he did not wish to pursue the Complaint.

In view of the statement of the Respondent as recorded and the acceptance of the same by the Complainant, this forum is happy to record the satisfactory resolution of the Complaint. The Respondent and Complainant would be bound by their statements made before this forum. Complaint is accordingly disposed of as such.


Justice Manmohan Sarin
Lokayukta

Dated : 10th May, 2011
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