

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-330/Lok/2010

In Re: Communication from one Sh. Rajinder Sethi regarding unauthorized constructions in violation of sanctioned plans in connivance with top BJP leader and bureaucrats of MCD.

AND

In Re: In the matter of enquiry under section 7 read with 2 (b) of the Act against Sh. Subhash Arya, Municipal Councillor and leader of the House

ORDER

1. By this order the question of initiating inquiry against Sh. Subhash Arya, Municipal Councillor is being decided.

2. A pseudonymous letter dated 10.03.10, purportedly written by one Sh. Rajender Sethi of 12/24, WEA, Karol Bagh, Delhi was received in this office. It was alleged that there were unauthorized construction in 11 properties at Ramjas Road and WEA Karol Bagh. It was claimed that hotels in violation of sanctioned residential plan were being constructed. It was also alleged that when a Junior Engineer commenced action against the illegal construction he was thrashed by the leader of the MCD House and transferred. Communications sent to Sh. Rajender Sethi both by post and special messenger revealed that the above given address of Sh. Rajender Sethi did not exist.

Considering that the common man may not have the courage to come out openly by disclosing his identity while complaining against an important and highly placed public functionary and since specific details and particulars of unauthorized constructions in the properties were given in letter dated 10.03.10, a status report was called from MCD. MCD reported large scale unauthorized construction in the properties/area thus confirming substantially the allegations contained in the pseudonymous letter. Action against the unauthorized properties was initiated by the MCD resulting in the owners/occupiers applying for regularization of properties entailing deposit of huge amount of regularization/compounding charges and the progress made by MCD is being reported to this Forum.

3. During the course of proceedings, it transpired that on 26.11.09, one Assistant Engineer posted in Karol Bagh Zone was asked by Junior Engineer to accompany him for

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two demolitions in respect of property No. 15-A/24 WEA Karol Bagh and property No. 4/18, WEA Karol Bagh.

When they reached building No. 15-A/24 for demolition of rooms constructed on the fourth floor, with the demolition force, they met Sh. Sunny Ghai and Sh. Yashpal Ratiwal. Sh. Sunny Ghai is stated to be the son in law of Sh. Subhash Arya. The AE received a telephone call on his mobile from Sh. Subhash Arya, who mentioned that Sh. Sunny Ghai was known to him and that instead of proceeding for demolition by the Corporation, he should give them an opportunity to do the demolition work themselves. The AE told Sh. Subhash Arya that the force was already with him and he can only defer the demolition so that they could start the demolition work themselves and if he does so, the force could return. The Assistant Engineer waited for 1-1/2 to 2 hours but Sh. Sunny Ghai and Sh. Yashpal Ratiwal did not start demolition. Thereupon the MCD officials carried out demolition on the 4th floor. The Assistant Engineer has expressed his belief that the above demolition annoyed Sh. Subhash Arya.

4. As per various reports filed by the MCD, Smt. Suman Sharma, Smt. Meenakshi Channa, Smt. Veena Kalra and Smt. Ekta Kalra are the co-owners of the property No. 15-A/24 WEA Karol Bagh, New Delhi. A letter dated 17.02.11 was written to them by the MCD to clarify the connection / interest of Sh. Yashpal and Sh. Sanjay Ghai with them or as to whether they have executed any collaboration agreement with Sh. Yashpal and Sh. Sanjay Ghai. In response MCD has received reply dated 17.02.11 from Sh. Ashok Kumar, Authorized Signatory intimating that there is no connection whatsoever of Sh. Yashpal and Sh. Sanjay Ghai with property No. 15-A/24 WEA, Karol Bagh and that they have not executed any collaboration agreement with Sh. Yashpal or Sh. Sanjay Ghai nor they were builders of the said property. However, the JE (Building) who had issued a notice in the name of Sh. Yashpal, has reported that Sh. Yashpal was builder of the property.

5. Note submitted by the Amicus Curiae in this connection has been perused. Statement of the concerned AE was recorded on oath. He alleged that on **03.12.09**, he was called by Sh. S.K. Chauhan, Executive Engineer (Building) who told him that he received instructions from Engineer in Chief office for relieving him from the said zone. Sh. Chauhan discussed the matter with Dy. Commissioner who said that they would not relieve him till the transfer or relieving order was received. Thereupon on 7th December, 2009, the case for his reversion and transfer was initiated by RPA-II, and after 4-5 levels

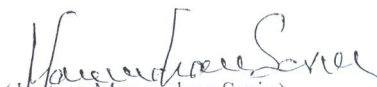
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of administrative approvals, it was cleared by the Commissioner on a single day. He was sought to be transferred on the basis of charges of 2005 issued in October, 2009. He challenged the reversion order in CAT and obtained stay order. He has now been posted as Assistant Engineer in the same zone.

6. From the above circumstances, it prima facie appears that action for reversion of AE and his transfer, taken in undue haste, was a result of the AE proceeding to take demolition action in respect of the above property. There is clear and cogent allegation of Sh. Subhash Arya having intervened and asked the AE not to proceed for demolition and to give Sh. Sunny Ghai an opportunity to do the demolition work himself. Direct evidence of the interest Sh. Subhash Arya had in respect of property in question or its occupier/builder may not be available and forth coming at this stage. In cases of unauthorized construction carried out under the patronage of politicians, it is difficult to find direct evidence of the interest of such politicians or their immediate relations in the property. The factum of telephone call made by Sh. Subhash Arya to the concerned AE, the AE proceeding for demolition of the property after Sh. Sunny Ghai failed to do the same, Sh. Chauhan, Executive Engineer informing him about receiving instruction for relieving him from the said zone and the processing of the case for his reversion and transfer on 7th December itself, in one day, form a chain of circumstances showing prima facie that Sh. Subhash Arya has interfered in the official functioning of a public servant and that the AE was victimized for having acted against the wishes of Sh. Subhash Arya. There is thus prima facie case for enquiry into the conduct of Sh. Subhash Arya and the allegation of abuse and misuse of his position in order to obtain gain or favour to himself or other and cause undue harm to the AE and failing to act in accordance with norms of integrity and conduct which ought to be followed by public functionary of his class. Sh. Subhash Arya being a councilor and leader of the MCD is a 'public functionary' within the meaning of section 2 (m) of Delhi Lokayukta and Upalokayukta Act, 1995. Let a notice be issued to Sh. Subhash Arya to show cause as to why an inquiry in terms of section 7 read with section 2 (b) of Delhi Lokayukta and Upalokayukta Act, 1995 be not initiated against him returnable on 3-8-2011 2.00 Pm.

18-07-2011

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(Justice Manmohan Sarin)
Lokayukta