

BEFORE THE LOKAYUKTA

Justice Manmohan Sarin

Complaint No. C-396/Lok/2010

Lokayukta on its own motion - Encroachment upon Hospital land of Rajan Babu Tuberculosis Hospital, Model Town, Delhi

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In the matter of Sh. Nathu Nagar, Ex. Municipal Councillor, Noticee Respondent

ORDER

1. By this order, two applications filed by the Noticee/Applicant dated 4th January, 2011 and 25th March, 2011, are being decided. By the first application, the Noticee/applicant challenged the inquiry proceedings on the ground of lack of jurisdiction and as being barred by limitation. The second application seeks dispensation of the directions by the Forum to the applicant to produce documents of title i.e. GPA, Agreement to Sell, Will etc. for decision of the preliminary objections raised by him.

2. Earlier Noticee/Applicant had filed a writ petition bearing No. 8525 of 2010, challenging the assumption of jurisdiction by this forum and initiation of the inquiry proceedings by issuance of notice. Ld. Single Judge disposed of the writ petition permitting the Respondent/Noticee to raise specific objections to jurisdiction and any other preliminary objection to the proceedings, before the Lokayukta itself first. The Ld. Single Judge also observed that if such an application was made, this forum would first adjudicate the preliminary objections of the applicant. It is in these circumstances that the above applications have been filed by the Noticee, raising preliminary objections on jurisdiction and limitation.

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3. Vide order dated 4th of January, 2011, this forum had directed the Respondent/Noticee to produce copies of the agreement, power of attorney etc. by which he purchased or holds the land claimed to be in his settled possession. Thereafter, in the proceedings that ensued applicant kept on seeking more time to place on record the agreement to sell, power of attorney, sale deed etc. first on 20th January, 2010 and thereafter on 21st February, 2011. However, on 25th of March, 2011, the second application seeking dispensation of the direction to produce agreement to sell, power of attorney, sale deed and other documents executed in his favour by one Ms. Mai Kaur was moved on the ground that the documents were misplaced and not traceable.

FACTS.

4. Before we consider the averments in the applications of the applicant/Respondent and the replies thereto by the MCD and the Amicus Curiae, it would be helpful to recapitulate the facts in which this Forum issued notice to Sh. Nathu Nagar, Ex. Municipal Councillor/Respondent, for enquiry under Section 7 read with Section 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995.

- (i) A communication dated 23rd June, 2010, purporting to be from one Sh. Swatrant Kumar, 12/24, Karol Bagh, Delhi- 110 005, regarding illegal and unauthorized encroachment upon the land of Rajan Babu Tuberculosis Hospital (RBTB), Model Town, Delhi was received. It was alleged that 2 ½ hectare of public land belonging to and under the jurisdiction of MCD, acquired for the Hospital was encroached in connivance with MCD officials and Delhi Police by Sh. Nathu Nagar, Ex. Municipal Councillor and other small time politicians. It was claimed in the communication that the encroachments were again

surfacing after the dissolution of "Monitoring Committee" of Delhi High Court. Details of new encroachments with establishments namely Mohan A/C, Rajeev Accessories, Play Way School, PCO Booth, Car Service Station etc, had come up. Plots were being carved and sold out with fake sale deeds. Several Writ Petitions filed by the encroachers were dismissed by the High Court, still no action had been taken to remove them. The representation enclosed copies of the following documents:

- (a) Letter number I.143/A.E (W)/RBTBH?VLZ/2007 dated 10-12-07 of Asstt. Engineer (Works), Civil Line Zone addressed to Ex. Municipal Councillor.
- (b) Note No F.36/622/MC/HCD/2007/D-3248 dated 19-10-07 of Coordinating Officer, Monitoring Committee marked to Dy. Commissioner MCD, Civil Line Zone.
- (c) Letter no. 5424/Complt. NW Distt. Dated 10-10-07 of Addl. Dy. Commissioner of Police, North West District, Delhi addressed to the Coordinating Officer, Monitoring Committee, M.C. Primary School Complex, Lajpat Nagar-III, New Delhi.
- (d) Reminder no. F.36/Complt./MC/HCD/2007/D-2950 dated 10-09-07 of Coordinating Officer, Monitoring Committee.

5. The aforesaid documents, inter alia, referred to the encroachment by Sh. Nathu Nagar, Ex. Municipal Councillor. This Forum on consideration of the representation along with the documents annexed and the notings of the "Monitoring Committee" of the High Court and the documents of the Municipal Corporation, noted that these prima facie, disclosed involvement of Sh. Nathu

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Nagar, Ex. Municipal Councillor in encroachment on Government/Public Land. Accordingly, an inquiry into violation of norms of integrity and conduct, which ought to be followed by the "Public functionary" as well as misuse of position to obtain gain or favour was called for. By order dated 13th July, 2010, this Forum directed issuance of notice to application/Respondent, returnable on 6th August, 2010. Notice was also directed to be served to the informant Sh. Sarwant Kumar, which notice was returned with the report that no such address existed, thereby indicating that the complaint was a pseudonymous complaint. However, the information given disclosed sufficient particulars for the purpose of proceeding with the inquiry.

6. Respondent Sh. Nathu Nagar, Ex. Municipal Councillor was duly served. MCD was directed to file a Status report along with the site plan drawn to scale, clearly delineating and showing the various structures and the boundaries thereof. The extent and nature of the construction and its user was also to be disclosed. Further the current status of the sealed premises of the Respondent, alleged to have been left open from the rear, to allow access was sought. Amicus Curiae was appointed. However, there was tardy progress in furnishing information and compliance of orders by the MCD. Information was delayed on one ground or the other, claiming that there were other land owning agencies involved. Ultimately Kanungo of the land department of MCD, submitted that the land in question had been acquired as per the award for RBTB Hospital. After repeated specific directions being given, the MCD filed a site plan titled "Detailed Topographic Survey for MCD Land for RBTB Hospital" along with another plan titled , "Detailed Topographic Survey for MCD land". The first site plan delineates the boundary which is encompassed by marking ABCDEFG & H, showing the portions on which encroachments exist. These encroachments have been shown by

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different colours based on the survey. Encroachment in yellow colour is stated to be belonging to Jagdish Bros. and Play Way school. It has workshops, hutments, a police booth, while encroachments in blue line encompasses car workshops, a temple and a hut, the encroachments in green colour are a mix of agricultural and motor workshops. The management of RBTB Hospital is not aware even of the extent of land allotted and acquired for the hospital. The total encroached portion of land is estimated at 6.57 acres of prime land. This impasse on encroachment of municipal land which had been acquired for the expansion and public purpose of the Hospital has continued unabated without the authorities making any effort for removal of encroachment and restoration.

7. During the course of proceedings, Sh. Nathu Nagar / Respondent along with his Counsel stated that they are in occupation and possession of portions which are shown in green, red and blue lines in the plan and claimed to have acquired the same from one Ms. Mai Kaur. The Public Functionary relies on an order of permanent injunction against dispossession without due process of law obtained by one Ms. Mai Kaur & others claiming settled possession of the land. Applicant/ Noticee having been substituted for Ms. Mai Kaur, in the decreed suit, asserts his claim on the property.

8. Notice of the present applications was given to MCD as also to the Amicus Curiae. Both have filed replies thereto. Mr. Avinash Lakhanpal, Counsel for the Respondent, was heard on 19th of August, 2011 in support of the applications. The crux of the submission of Mr. Avinash Lakhanpal is that the Respondent is one of the Co-Owners of the property situated at Khasra No. 587/29, 537-38, 587-80, 587-113 and 587-6 to 282 of village Malkpur Chhawani, Delhi. It is urged that he stepped into the shoes of the previous owner Ms. Mai Kaur. The name of the

Respondent was duly substituted for Ms. Mai Kaur in the Civil Suit for injunction filed by plaintiffs i.e husband of Ms. Mai Kaur & Others. The Suit for injunction was decreed on 23-01-1995. Union of India, DDA & MCD were restrained from dispossessing or interfering with the possession of the co-owners except by due process of law. It is urged that the Court held the Plaintiff's predecessor Ms. Mai Kaur and the co-owners to be in a settled possession. The case of the Union of India was that it had transferred vide notification dated 12.7.74, the land to DDA while MCD claimed that the land vested with it. Counsel submitted that the stands of Union of India and MCD were at variance with each other. The trial court also observed that Union of India had failed to produce any award or document of title in its favour. Counsel submitted that once Union of India does not prove its ownership, it could not have placed the land at the disposal of DDA and / or MCD.

9. The submission of Respondent is that the Union of India and DDA had failed to prove their ownership, while the Respondent/plaintiffs had shown their settled possession. Respondent also accepted that only the will of Ms. Mai kaur was filed in the suit for injunction. Counsel claimed that documents of title were misplaced and were not traceable. In any case, he submitted that for disposal of the present applications, documents of title or ownership was not required to be proved by the Respondent. Settled possession was enough.

10. The next submission was that the Respondent had come in possession of the land and became co-owner much before he became a Councillor for the first time for the term 1992-97 and thereafter, 1997-2002. Under Section 8(b) of the Delhi Lokayukta and Upalokayukta Act, 1995, there was a bar on taking cognizance of a complaint or proceedings, where cause of action had arisen more than 5 years back. The assumption of jurisdiction by the Lokayukta by issuance of notices on a

complaint dated 23-06-2010 was thus urged to be clearly barred by limitation. Five year period after the last term of 1997-2002 also expired in 2007.

11. Lastly, Counsel submitted that the letter dated 23.06.2010, on the basis of which the proceedings were initiated and jurisdiction assumed, could not be treated as a complaint. It was not accompanied by any affidavit, even the identity of the Complainant was doubtful. Complaint did not contain any allegation of misuse of power during Respondents term as Councillor.

12. Mr. Avinash Lakhanpal while summing up submitted that prima facie there was no basis to proceed against the Respondent for alleged misconduct as a Municipal Councillor or violation of norms of integrity once the suit for injunction had been decreed by the Court, holding the Respondent to be in settled possession. There was thus no basis to treat the Respondent as an encroacher and proceed with inquiry for alleged violation of norms of integrity. This forum was not required to determine or go into the question of ownership. Once the trial court has returned the finding of settled possession in favour of the Plaintiff in the injunction suit, wherein the Respondent had been substituted as Plaintiff. Lastly, he urged that this Forum was not to act as an instrumentality of MCD to evict the Respondent or seek possession for it.

13. Submissions of the Amicus Curiae and Sh. Ajay Arora, Advocate, on behalf of the MCD.

Mr. Ajay Arora, Advocate, on behalf of MCD submitted that the Respondent/Applicant Sh. Nathu Nagar had failed to produce a single document which would show his legitimate acquisition of the land or the ownership of the land or his having purchased the land vide Agreement to Purchase, Power of

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Attorney, Purchase Agreement etc. After repeatedly having taken time to produce the said documents, Respondent finally sought dispensation of the same stating that the same had been misplaced and were not traceable. No particulars of the same at the time of execution were ever given or pleaded. He submitted that MCD has been agitating in different Forums against the encroachers who have not been able to show their legitimate claim of purchase or ownership. In one of the Writ Petitions, the Single Judge had directed that the proceedings under the PP Act may be commenced in a time bound manner. MCD had challenged the said order before the Division Bench, which dismissed the appeal and MCD now proposed to file SLP before Supreme Court. Mr. Arora relied on the observations of the Supreme Court in Ahmadabad Municipal Corporation's case to urge that where encroachment of public land was of recent origin it could be got vacated without notice, but if it was of long origin, notice ought to be given. He said in the instant case, the Lokayukta has validly assumed jurisdiction and there was no ground to assail the same.

14. Amicus Curiae, Mr. Sanjeev Sharma, submitted that Civil Suit for injunction on which reliance was sought to be placed has several discrepancies and said suit was one for injunction simplicitor. Ms. Mai Kaur was Plaintiff no. 4, Mr. Nathu Nagar does not appear in the judgment or in the suit except in the memo of parties where his name was substituted. Even though, in the suit an issue no. 5 was specifically framed to the effect:-

“(a) Whether the Plaintiff has right, title or interest in the suit Property?”

there was no finding given on this aspect. The suit was decreed on the ground of plaintiff being in settled possession of land and the injunction granted was against dispossession without following the due process of law. The cause of action in the

suit for injunction is the imminent threat of dispossession perceived by the Plaintiffs from the Defendant against whom injunction is being sought. The said right of injunction does not automatically get transferred to successor. He submitted that assuming that there is a finding of settled possession in favour of Ms. Mai Kaur, one of the Plaintiffs, the same does not automatically get transferred in favour of the successor in interest. There is no proprietary interest involved which in terms of Transfer of Property Act, could be transferred. Leaving that apart, barring the factum of substitution in memo of party, the Respondent has not produced any document to show his purchase or acquisition of the land. In fact the only document that was filed in the suit for injunction is an alleged Will of Ms. Mai Kaur, which has not been produced in these proceedings.

15. Ld. Amicus Curiae next submitted that during the proceedings, Respondent had claimed the portion shown in Red, Green and Blue in Plan-A as the land purchased from Ms. Mai Kaur. Mr. Sanjeev Sharma submitted that the perusal of the Plan in the suit showed that it does not cover portions A-9 to A-8 and B-2, B-4 and B-5 shown in Blue colours. Hence, the aforesaid lands were not the subject matter of the suit for injunction. Respondent has not explained how he came to be in possession of the same or through whom he is claiming the said lands. Certain other minor discrepancies, though not fatal, are that the Plaintiff no. 6 is described as Nathu Ram Son of Sh. Shree Ram without mentioning the caste. Further the suit is stated to be filed in the year 1978 by Plaintiffs no. 1 to 3 and one Sh. Net Ram who is stated to be the husband of Ms. Mai Kaur. However, Net Ram is stated to have died on 9/10/1977 which would render filing the suit impossible. Mr. Sharma further submitted that the onus to prove the title of the land was on the Plaintiff, which they have failed to discharge. The judgment is also silent as to how the Plaintiffs no. 4 to 8 have been brought on record. In any case he submits

that finding of settled possession does not create a proprietary right or interest that can be transferred or decreed in law through Will.

16. Having noted the facts, as also the averments in pleadings of the parties and the submissions on behalf of the applicant/respondent's Counsel and Counsel for MCD and the Amicus Curiae, let us consider the objection of initiation of proceeding being barred by limitation and lack of jurisdiction.

17. The first objection to be considered is that the order directing issuance of notice to the Respondent for an inquiry under Section 7 read with Section 2 (b) of the Delhi Lokayukta and Upalokayukta, Act, 1995 (for short as 'Act') was clearly barred by limitation. The basis for this plea or objection by the Respondent is that he was the Councillor in the year 1992-1997 and 1997-2002. The Lokayukta can take cognizance within five years of the cause of action. In short the submission is that the five year period after the second term expired in 2007, while the notice had been issued in 2010. The alleged encroachment being of 1978 or so. It would be worthwhile to reproduce section 2 (b) (1) of the Act for facility of reference:

“(i) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries or the class to which he belongs.”

In the instant case, the allegations against the Respondents are of encroachment of public land and unauthorized construction in connivance with the officials of the MCD or Police. It is not disputed before this forum that the Respondent continues to be in occupation and beneficial enjoyment of the encroached lands and unauthorized constructions or continues to derive benefit from them, thus having their beneficial enjoyment till today. Even if these lands were occupied or encroachments/constructions were carried out earlier, their continuous use and beneficial enjoyments provides a continuing cause of action for cognizance to be

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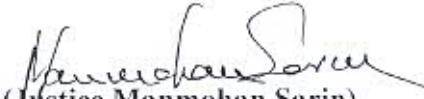
taken. Moreover, in respect of some of the lands which he has claimed to be in possession before this Forum have not been shown to have been acquired through Ms. Mai Kaur at all. There are no dates given as to when these lands/properties were encroached upon or taken possession of. Their continuance possession gives a fresh cause of action. In these circumstances the objection as to proceedings before the Forum being barred by limitation is without merit. In any case it would even require evidence to be led and cannot be disposed as a preliminary objection

18. Coming to the next preliminary objection namely that once the Trial Court in the suit for injunction had returned a finding of the predecessor in interest of the Respondent i.e Ms. Mai Kaur being in settled possession, there could be no encroachment by the Respondent and therefore any proceedings for inquiry for violation of the norms of integrity and conduct, initiated was wholly vitiated. Respondent MCD has placed on record the award under the Land Acquisition Act for acquisition of lands for the public purpose of setting up and expanding Rajan Babu Tuberculosis Hospital, Model Town, Delhi, under the aegis of MCD. The usual laxity and half hearted manner in which Government litigation is defended, possibly resulted in the suit for injunction being decreed on the basis that relief of restraint against dispossession without due process of law was an innocuous one. The trial court significantly did not return any finding despite an issue being framed on ownership in favour of the plaintiffs. The onus of proving that was also on the plaintiff.

19. Be that as it may, the benefit of an injunction restraining dispossession without due process of law does not automatically enure to the benefit of a person who is substituted as a Plaintiff. It is a right of the Plaintiff on the basis of imminent threat faced by the Plaintiff. It is not a right or interest in the property

which is transferable. In the instant case significantly despite specific issue being framed on the question of ownership, the trial court did not return a finding in favour of the Plaintiff in the suit i.e. predecessor in interest of the Respondent. The allegations against the Respondent are encroachment of a public land acquired under the Land Acquisition Act for the public purpose of RBTB Hospital, which is functioning without the benefit of 6.57 acres of prime land under encroachment. It is not only encroachment of public land, it is also raising an unauthorized constructions for which prima facie evidence exists. There are allegations of the Government agencies not acting on the ground of influence of the Public Functionary or in connivance with him. Moreover, the unauthorized occupation and encroachment has continued with continuous beneficial enjoyments to the Respondent thus providing continuing cause of action. Secondly, there are portions of land stated to be in occupation of the Respondent which are not being claimed as being held through Ms. Mai Kaur. There is no disclosure regarding how the Respondent got possession of these lands. In these circumstances, considering the gravity of allegations and the evidence that has come on record during the preliminary inquiry of prime public land of 6.57 acres of land being under illegal occupation and encroachment with involvement of Ex. Public Functionary who continues to enjoy its benefit, the matter certainly needs to be inquired into. The preliminary objections have no merit and ^{are} dismissed. Resultantly the application dated 4th January, 2011 is dismissed and application dated 25th March, 2011 stands disposed off.

These observations are based on a prima facie view of the matter and nothing contained herein shall prejudice any of the parties, who would have the right to submit their case on merits.


(Justice Manmohan Sarin)
Lokayukta

Dated : 30th Sept, 2011/ab