

**BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-485/Lok/2010**

Lokayukta on its own motion in Re:

Ms. Preeti Behn, Original Informant

And

Mr. Amrish Singh Gautam, MLA

Present:

1. Mr. Viraj R.Datar, Advocate Amicus Curiae and Mr. Chetan Lokur, Advocate.
2. Ms. Praveena Gautam, Advocate for Respondent.

Order

1. Following information furnished by Ms. Preeti Behn, Councillor regarding premises and buildings constructed without sanctioned plan and unauthorized construction contrary to the building bye-laws by numerous Public Functionaries, ie. MLAs and Councillors, notices were issued in 61 such cases, after obtaining status report from the MCD. The present case is one of the said cases where notice was issued to Sh. Amrish Gautam, MLA, Respondent herein for unauthorized construction, returnable on 10th December, 2010.

2. Factual matrix of the case may be noted. Notice was issued in respect of the property No. 10/160-161, Khichripur, Delhi -110092 to the Respondent. Premises are located in a resettlement colony. No building plan had been sanctioned. There was unauthorized construction of 107.74 meters, out of which 73.16 Sq. mtrs was compoundable, while 36.98 meters on the second floor was non compoundable. Further, two plots of 22.5 sq. yards were amalgamated into one plot of 45 Sq. Yards.

3. The Respondent filed an initial reply on 6th January, 2011 claiming that the allegations were on account of

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opposition wanting to bring down the prestige of ruling party MLAs and the complaint was said to be with the purpose of defaming the Respondent in his Constituency. Respondent also claimed that there were two plots No. 160 and 161, each having 22.5 Sq. Yards. He claimed that he purchased the consolidated property on 6th July, 1989. He had only carried out alterations and renovation work. He had approached DDA and MCD for carrying out alterations and renovation but there was no provision available in the Master Plan applicable in respect of resettlement colonies for any sanction or approval. The construction has been there for the last 21 years and this was sought to be raked up to cause embarrassment to the Respondent.

4. The case and its proceedings since December 2010 till date, have witnessed variations in stand and approach of the Respondent. It had been emphasized to the Respondent that the substance of the issue was of propriety of Respondent as a Public Functionary abiding by norms of conduct and integrity, by not deriving any benefit from the property which had unauthorized construction or was built without sanction. At one stage, the Respondent had indicated his willingness to give an undertaking to have the premises regularized and the non compoundable portion demolished after availing benefit under the Master Plan-2021. This being a resettlement colony, where plots had been allotted against demolition slips, to enable the persons being evicted and whose abodes were being demolished to be relocated. The resettlement colony had a Standard Plan which permitted 100% coverage on the ground floor and 80% on first floor of 22.5 sq. yards plot.

5. During the course of proceedings the Respondent questioned the jurisdiction of this forum to proceed against him on the ground that notification appointing him Dy. Speaker had been issued on 23rd December, 2008. It was claimed that by virtue of section 2(m)(iii), the Speaker and Dy. Speaker of Legislative Assembly were excluded from the definition of Public Functionary. The notice in the instant case having been received by him on 7th December, 2010. The proceedings initiated on the basis thereof were nonest and per-incuriam. The matter was adjourned from time to time to enable the Respondent objector as well as Amicus Curiae to complete their research on the question of jurisdiction. Hearing on the objections as to the jurisdiction was finally heard on 9th May, 2011 and the order was reserved.

6. Vide orders 30th May, 2011 with detailed reasons, the preliminary objection was dismissed and it was held that the proceeding as initiated were not barred. Apart from the interpretation of section 2(m)(iii) and the constitutional scheme as manifested in Article 178 and 212 read with Section 18(3) of Govt. of NCT of Delhi Act, it was held that the Dy. Speaker could not claim immunity in respect of private acts and it is only in exercise of power and acts in relation to the proceedings of the legislative assembly which are protected. Moreover in this case it was held that cause of action with regard to beneficial enjoyment of non sanctioned and unauthorisedly constructed property arose in 2008, when the Respondent was an MLA. He became Dy. Speaker only on 23rd December, 2008 while prior to that he was MLA. Thus infringing act was also done by him of which cognizance could be taken up to 5 years related to the period 2007-08 when he was an MLA.

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7. In the event, the Respondent challenged assumption of jurisdiction by this forum also in the High Court vide WP(C) No. 4769 of 2011, titled Amrish Singh Gautam Vs. Office of Lokayukta. The said Writ Petition was dismissed as withdrawn.

It may be noted that Respondent had earlier claimed that he had taken steps to regularize the portion of the property which were compoundable and agreed to demolish in case development norms pursuant to the Master Plan, do not permit the said construction.

8. Notice was also issued to Delhi Urban Shelter Improvement Board (DUSIB) to clarify the position in respect of a single person owning two plots under the scheme in the resettlement colony as also regarding original allotment letters in case of Plot No. 10/160 and 161. The Respondent had claimed that he purchased the entire property from Shanti Devi. In the instant case, it was learnt that two demolition slips for two adjacent plots were issued to one Survir Singh Rawat and on his demise his widow Shanti Devi succeeded as owner of the plots. Respondent claims having acquired the two plots as a result of GPA and Agreement to sell being executed in his favour by Shanti Devi. It was also inquired from the DUSIB whether there was any provision whereby the feasibility of amalgamation of two plots could be considered, especially when there have been cases of allotment of two plots as part of sterilization incentive.

9. Ultimately, the Respondent took the position that he would divest from himself of his interest in the property and also cease his usage of plot was so as to to end the conduct, which would tantamount to his having beneficial enjoyment of unauthorized or non sanctioned construction. The Respondent initially filed POA in favour

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of his sons. The same was not accepted by this forum. It was pointed out what was contemplated was an arms' length transaction and disassociation of the Respondent with the said proprieties. It would be of no avail if for instance the Respondent transferred the property but continued to reside there. On the 1st of May, 2012, Respondent MLA submitted that the Respondent has ceased his beneficial enjoyment of the property in as much as the Respondent is not residing there and was not deriving any benefit from the property. He wanted to furnish an undertaking that transaction between him and his sons regarding transfer was an arms' length transaction and on valuable consideration.

10. Pursuant to the statement made and affidavit of undertaking dated 11th September, 2012 affirmed that he has been residing at 6, Flag Staff Road since October, 2009. He had divested his interest in the property in favour of his sons. Further that he neither resides nor has any intention to reside in said property. Further that he does not derive any kind of benefit out of said property and he has no objection if the Corporation proceeds in accordance with law in respect of the said property for any violation or deviations. Affidavit and undertaking have also been filed by the sons of the Respondent, namely, Avinash Gautam, Avnish Gautam and Harsh Gautam, confirming transfer of rights and interest in the property in their favour after undertaking that they would apply for regularization of property in accordance with municipal laws and also seek permission for amalgamation of two plots and pay charges for such regularization as may be applicable. Further they would carry out necessary changes in the property in conformity with the applicable laws. The memorandum of family

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settlement and the supplementary memorandum, of family settlement dated 9th September, 2012 and 11th October, 2012 has also been placed on record in terms of which Respondent ceases to have any interest in the property which vests in his sons, who are independent and not dependant on the Respondent.

11. Upshot of entire narration is that the Respondent has finally accepted the jurisdiction of this forum and he has undertaken that he has no objection to the Corporation talking any action against the said property for violation of municipal laws and deviations. His sons to whom the interest has been transferred pursuant to the memorandum of family settlement have also undertaken to apply for regularization and amalgamation of the plots to the authorities and pay the necessary charges and carry out the required changes as per the legal requirement.

12. The provisions regarding observance of norms of integrity and conduct though being of vital importance in building up polity committed to a corruption free society and probity in public life demand that these provisions be applied pragmatically, especially when confronted with continued decline in moral fabric, scams in public life etc. This is to ensure that the pursuit of these norms is not brushed aside as an idealistic utopian goal not achievable and being repeated in a formal ritualistic manner, without adherence. The first thing therefore to be aimed is to create an awareness of the norms and their non observance being regarded as deviant behaviour. It is, therefore, necessary that in interpreting these norms a pragmatic approach is adopted where the Public Functionary is made conscious of his duty and the requirement to abide by these norms.

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13. The Public Functionary in the instant case by ceasing to reside in the property with unauthorized construction and declaring his intention of not residing there or deriving any benefit therefrom, recognizes and accepts the moral responsibility of abiding by norms. Further he has divested himself of all rights in the property even though they are transferred to his sons. Here the sons have also accepted that they would abide by the municipal regulations and pay necessary charges. In these circumstances, I think it is a fit case where nothing further is to be achieved by continuing the proceedings and notice can be discharged against the Public Functionary. The affidavit of undertaking filed by the present owners namely, Avnish Gautam, Avinash Gautam and Harsh Gautam be brought to the attention of the concerned Municipal Commissioner for processing of the regularization application and for consideration in case amalgamation is permissible under the regulations or provision of Master Plan-2021. Municipal authorities shall be free to proceed against the said property if regularization is not applied for within 4 months or is rejected.

14. Notice is discharged with the above observations.


(Justice Manmohan Sarin)
Lokayukta

Dated : 21st Nov 2012
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