

**BEFORE THE HON'BLE LOKAYUKTA**  
**Justice Manmohan Sarin**  
**Complaint No. C-495/Lok/2010**

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Lokayukta on its own motion in Re:

Ms. Preeti Behn, Original Informant

And

Ms. Lata Gupta, Councillor Respondent

**ORDER**

Pursuant to information by Ms. Preet Behn, Councillor, giving details of construction without approval allegedly carried out by Public Functionaries i.e. MLAs and Councillors, a notice dated 6<sup>th</sup> December, 2010 was issued under section 7 read with 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 to the Respondent in respect of premises No. WB-9, Ganesh Nagar, Shakarpur, Delhi. In terms of the notice the entire construction i.e. 260.89 was unauthorized being without a sanctioned plan Sq.ft. out of which 33.61 Sq. ft. was non compoundable which could not be regularized and was required to be demolished.

2. The Respondent was duly served and represented through Sh. Hari Om Gupta, Advocate initially who sought time to file reply. It was represented in the proceeding that the property did not belong to Respondent Councillor Lata Gupta but in fact belong to her mother in law Smt. Kusum Gupta. It was claimed that Smt. Kusum Gupta herself had applied for regularization. The premises were located in unauthorized regularized colony. The construction on second floor was said to be non compoundable. However, that was computed by including the stilt area. It is common ground with MCD that if there is no construction in the stilt area and same is used for parking then it is not be included in the covered area. The Respondent admitted that during the election period a wall had been erected there to enable sitting during the elections meetings. However the Respondent stated that the wall would be demolished so that the area of stilt is not included. There was also some discrepancy with regard to the area of the plot. The original sale deed shows 92.5 Sq. Yards, while the current sale deed was for 108.8 Sq. Yards. On inspection of the site the actual area has been found to be 98.07 Sq. Yards, resulting in excess area of 5.57 Sq. Yards, more than the area that was area originally purchased. However, MCD took the position that the said 5.57 Sq. Yards in excess would not be treated as encroachment based on the following:

"It is submitted in cases of unauthorized/regularized colonies generally area of plot and sizes varies either side at site with

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respect to the ownership documents. In case of excess land in possession cannot be considered as encroachment on government land since at the time of regularization of colony the available road widths were taken."

3. The application submitted for regularization by Respondent's mother in law has not been accepted by MCD since chain of ownership was not complete, as there was only POA and Agreement to sell coupled with Will etc. The efforts were made by the Respondent to find registered owner but they were not being successful. It has been stated before this forum that the request was also made to the Commissioner, EDMC for a policy decision to permit the transactions on the basis of agreement to sell accompanying POA to be recognized which is still under consideration.

4. Moreover it is submitted that the construction in question is over 10 years old being constructed in the years 2002-03. It is also the case of the Respondent that after the demolition of wall in the stilt area there would be no unauthorized construction on the second floor. The actual question which would remain would be regularization by formal sanction of the plan.

5. Respondent in her statement recorded on 9.11.2012 and in affidavit filed on 8.11.12 averred that the premises are owned by her mother in law and presently protected under the National Capital Territory of Delhi Laws (Special Provisions) Act as the construction is prior to 8.2.2007. Further that in case no relief is granted prior to 31.12.13 she would not derive any benefit from the property in question and vacate.

6. Considering the circumstances that the premises are owned by her mother in law who stated to be 75 years old, it is also stated that it is because of necessity of looking after old mother in law that the Respondent and her husband are staying in the premises. Further she had tried to locate the registered owner so that they could get the documents executed from him but have not been successful. Her Ward has been changed and therefore she is desirous of shifting from the premises and is making sincere efforts. Furthermore she has undertaken to vacate from the premises and would not derive any benefit from the premises if the same is not regularized by December, 2013.

7. From the foregoing, it would be seen that the premises do not belong to the Respondent. Premises have the status of being unauthorized because of non sanction of the plan in an unauthorized regularized colony. The regularization application or plan is not being entertained in the absence of the completion of chain of ownership through a registered owner. Necessity of staying in the premises with her mother in law is on account of her being old and to look after her. The above circumstances do not disclose a willful

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or intentional violation of norms of conduct and integrity. Moreover the construction is protected under the 'National Capital Territory of Delhi Laws (Special provisions) Act, 2011. In such cases, it would meet the ends of justice as long as there is bonafide earnest attempt by the concerned public functionary not to violate the norms of integrity and conduct.

8. In the instant case, the premises do not belong to the Respondent. She has undertaken to vacate the same by 31<sup>st</sup> December, 2013 if no decision is taken and the premises are not regularized by MCD. This is a fit case where time should be granted to the Respondent. The undertaking given by the Respondent is accepted. The case stands disposed of in the above terms. Notice is discharged with the liberty to the East Delhi Municipal Corporation to revive the proceedings in case the Respondent does not vacate the premises in question by 31<sup>st</sup> December, 2013 or if there is no regularization.

  
(Justice Manmohan Sarin)  
Lokayukta

Dated: 27-11-2012  
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