

**BEFORE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN**

COMPLAINT NO. C-545/LOK/2010

In the matter of:-

Shri Subhash Chandra Bansal Complainant

V/s

Smt. Nirmla Thakur, Municipal Councillor Respondent

Present:-

1. Shri Subhash Chandra Bansal, Complainant in person
2. Shri Bharat Gupta, Counsel for the Respondent
3. Shri Abhijat Bal, Advocate, Amicus Curiae

ORDER

1. Shri Subhash Chandra Bansal, R/o. A-5/44, Sector-17, Rohini, New Delhi, filed this Complaint alleging that the Respondent Councillor Mrs. Nirmla Thakur, a 'public functionary', abused her power and position to construct a temple by the name of Shiv Shakti Sanatan Dharam Mandir, over the vacant land in Sector-17, Near DDA Market, Rohini, Delhi.
2. He alleged that the said land had been specifically allotted by the DDA for the purpose of construction of Barat Ghar, instead, the Shiv Shakti Sanatan Dharam Mandir was constructed and is being run under the guidance and control of the Respondent's family. Accordingly, he alleged that she had failed to act in accordance with the norms of integrity and conduct that ought to be followed by 'public functionaries'.

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3. The second allegation that was made was that the Respondent Councillor had opened her office in one of the six shops that had been constructed on government land outside Flat No.E-175, Sector-11, Rohini. The shops being located on public land were demolished by the MCD twice, but were re-constructed by the owner of the Flat with the help of the Respondent and the Respondent again opened her office in the shop. The complaint is duly supported by his affidavit.
4. The Complainant had supported the first allegation made in the Complaint by documents filed along with the Complaint. Some of these documents were responses to the queries made under the Right to Information Act, by an associate of the Complainant, namely Shri Balu Ram Gupta, who was the President of the Residents Welfare Association. Reliance was also placed on number of press reports that appeared.
5. Notice to show cause was duly issued to the Respondent, who filed a reply through her Counsel. Respondent denied the allegations as being without any basis and on merits. It was pleaded that the Complaint was barred by limitation.
6. The Complaint was alleged to be a malafide one, having been filed on account of personal animosity, since the Complainant's wife had contested the municipal elections for Ward No.21 in the year 2007 and had lost to the Respondent. Complainant, thus, nurtured grudge against her. It was claimed that the Shiv Shakti Sanatan Dharam Mandir existed in Sector-17 since

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1994, while the Respondent got elected as a Councillor only in the year 2007. Hence, there was no question of the Respondent Councillor misusing her power or influence to build the temple.

7. The Society which runs the Shiv Shakti Sanatan Dharam Mandir, namely, the Shiv Shakti Sanatan Dharam Mandir Society itself was registered on an application submitted on 8th December, 1993, with Certificate of Registration, under the Societies Registration Act, being issued on 17-02-1994. The temple has been in existence since 1994. It is visited by devotees since then. Even in December, 2006, there was a mass protest when a decision was taken to open a liquor shop in the area as it was felt that the temple was near the proposed site of liquor shop. The matter was widely reported in the press.
8. The Respondent averred that while she was undoubtedly a member of the Society and its Treasurer, however, after winning the elections in 2007, she resigned from the Committee of the Society vide her letter dated 15-05-2007 addressed to the President. She had requested that in view of her public responsibilities, she be relieved of the responsibilities of the Society and if only specifically needed, she would attend its meetings etc. The Respondent also denied that the temple had been built on the land meant for the Barat Ghar (Community Hall), since in the reply to an RTI query itself, it

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is mentioned that "land measuring 698.47 Sq. Mtrs which is lying vacant has been ear marked for the Community Hall".

9. It was contended that the Complaint was wholly misconceived. There was nothing to indicate, leave aside, demonstrate or prove, the misuse or abuse of power by the Respondent as a 'public functionary' in construction of the temple.
10. As noticed, reliance by the Complainant was placed on the response given by DDA to an RTI query, vide letter dated 19-06-2009 and Para -(iv) & (v) of the same are being reproduced for facility of reference:-

“(iv) It has been intimated by the field staff that Shiv Shakti Sanatan Dharam Mandir is existing on a portion of land measuring 337.50 Sq Mtr, but as per the record available, the said land has not been allocated and allotted for construction of a religious place or temple by Institutional Land Branch of DDA.

(v) Land admeasuring 698.47 Sq. Mtr. Is lying vacant between Ojas Nursery School and ESS is ear marked for community hall”.

11. The Complainant filed his affidavit by way of evidence and also deposed on oath. He was duly cross examined. Respondent also led her evidence and deposed on oath and was cross examined. The Complainant did not press second allegation regarding operation of office by the Respondent in shops since

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the user had ceased. Thus, the allegation to be considered is only with regard to construction of a Temple on land which is not allotted, allegedly by the Respondent, while being a Public Functionary.

12. Mr. Abhijat Bal, Amicus Curiae, urged that from the foregoing what clearly emerges is that there has been no allotment of land for the temple and the structure raised is on land which has not been allotted to the Society for building of temple. The structure has been raised without authorization. Mr. Bal submitted that the factum of the Respondent being a member and office bearer of the society is not disputed even in earlier years. The Society's affairs are controlled and managed by the Councillor and her husband, who is the President of the Society.
13. Mr. Bal also submitted that reliance on Mark "Z" was of no avail since it, at best, shows that the Chairman, DDA, had referred the matter regarding allotment of land for the temple to the Commissioner (Lands), DDA. It does not even indicate a reference to the Religious Committee for clearance. Reference was also made to CW1/4 being a letter from Ex. Engineer (Northern Division) DDA to the Deputy Director (LM), DDA, which recorded that a religious encroachment on DDA land in the shape of temple existed since long back. It called upon the Deputy Director (LM) to fix a demolition programme for the same stating that it has already been referred to Religious

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Committee for clearance. The 'clearance' here refers obviously to 'demolition'.

14. It is the case of the Complainant that on account of influence of the Respondent, the construction of the temple has continued despite no land being allocated and allotted and the construction itself being unauthorized. The Respondent, it is alleged, has prevailed upon the statutory authorities and departments to neglect performance of their duties in not removing the encroachment and permitting the temple to continue on encroached land.
15. The Respondent, on the other hand, has urged that the temple having been raised since 1994, though in the form of a small room and structure at that stage followed by placing of idols, the complaint being preferred in 2010 against the Respondent was barred by limitation. The factum of the registration of the Society and the issuance of Certificate are in the year 1994, the allegation that the temple has come about as a result of the Respondent's abuse of power as a 'public functionary' stands falsified since she got elected nearly 13 years later. The existence of the temple has been shown in 2006 December when people protested against opening of a liquor shop in the area. The Respondent has not violated any norms of integrity and conduct in as much as once she became the Councillor, she herself withdrew from the official responsibilities of the Society. This indicates that she was careful not to do any act as

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a 'public functionary' which could be questioned. At this time, in 2006-07, the temple was wholly functional.

16. The Respondent further claims that the basic premise of the Complainant that it was built on the land earmarked for community hall has been found to be incorrect and the land for community hall is separately earmarked and is in the process of allotment. Similarly, the process of regularization of the temple and allotment of land would have been possible but for the complaints of few individuals such as the Complainant. The Respondent claims that large majority of the residents are devotees and visit the temple.
17. Upon a careful analysis of the pleadings, documents placed on record and the evidence, the position which emerges is as under:-
 - (i) The makeshift temple had come into being in the years 1994-97. The factum of registration of the Society demonstrates the same. The existence of the temple and its use, though the expansion, renovation and additional construction had taken place later, the initial setting up of the temple came about way back in 1994-97 when the Respondent was not a Councillor, hence, it cannot be said that the temple was constructed by the Respondent misusing and abusing her position as a 'public functionary'.

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- (ii) There is a separate allocation of 627 Sq. Mtrs for a community hall which is currently pending allotment and hence it cannot be said that the temple has taken the place of the community hall.
- (iii) The temple has been built on DDA land without any municipal approval for the construction raised.
18. In view of the foregoing discussion, it is held that the Complainant has not been able to establish the case against the Respondent for having raised the temple as a 'public functionary' since the temple came into existence well before she became a 'public functionary' in 2007. In the year 2010, when constructions and expansion took place, no direct involvement of the Respondent has been shown; rather, there is evidence that she had herself withdrawn from active work of the Society and running the temple on becoming a Councillor.
19. We now come to the question of what should be done to the temple which has been built on DDA land without any municipal approval. The learned Amicus Curiae, in support of his submission, that unauthorized construction of Temple, Mosque and Gurudwara etc. on public land and unsubstantiated claims with regard to their existence for long period ought to be discouraged, relied on Salmani Jamat Masjid & Educational Trust V/s Delhi Development Authority, reported at 96 (2002) DLT 143. The petitioners in the cited case had filed a Writ Petition to restrain the Respondent, DDA,

from demolishing the structure claimed to be a mosque, situated at Village Budela, New Delhi. It was further prayed that the petitioner and other religious minded persons of Muslim community be permitted to perform 'Namaz' and other religious rites. The petitioners had made an astounding claim of the mosque being in existence for over two hundred years and the acquisition and action by DDA was said to be infringement of their right to practice religion under Art. 25. The said Writ Petition was dismissed with costs by the undersigned, then sitting as a Single Judge, holding, *"there was no evidence available in the form of water/electricity bills or property tax or revenue records showing existence of mosque. Boundary wall was sought to be raised. The structure itself had been demolished in 1998, holding that the petitioner had even prima facie failed to show the existence or use of the structure as a mosque for 200 years. The Bench deprecated any attempt to justify encroachment on the ground of religion or alleged discrimination against a minority community"*.

20. The cited judgment can be of no assistance to the Amicus Curiae as, in the instant case, admittedly the Society managing the temple was registered and founded in 1994 and the temple had been established and was functional thereafter. There is also evidence of mass protest when a liquor shop was sought to be opened near the temple in the year 2006. Even the Complainant's own case is not that a temple was not in

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existence. His grievance has been that the temple has been unauthorisedly built on the land earmarked for Community Hall which, as we have noticed, has been found to be incorrect as there is separate earmarking of land for Community Hall.

21. Reference may also be made usefully to Smt. Nilam Sharma V/s Govt. of NCT of Delhi, reported at 109 (2004) DLT 807, another decision where a temple had been built within the Fire Station complex. Here, the petitioners wanted to settle inter-se disputes regarding the management of the temple through the Writ Petition claiming non-performance or discharge of statutory duties. It was held that the inter-se disputes could not be given a colour of statutory obligations. The Writ Petition was dismissed by the undersigned recording the statement of the Government Counsel that an inquiry had been ordered to ascertain as to how the temple was constructed within the Fire Station Complex and to fix responsibility there-for of the erring officers who allowed it. The Government Counsel had submitted that a policy decision had been taken in terms of which the Lt Governor had constituted a Committee to review all such cases and considering the individual situation and the sensitive nature on account of religious sentiments involved, to make recommendations. The Government approach was stated to be that initially persuasion would be used to have the idols of the temple shifted to suitable location as may be desired by the parties and in case the same fails, action would be taken to

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have re-possession of the land and premises in accordance with law.

22. In the case at hand, the admitted case of the parties is that there is no valid allotment of land by the Institutional Branch of DDA for the temple. Construction of the temple has been raised unauthorisedly. The Supreme Court has time and again stressed on the need for curbing encroachment on public land for religious purposes. Nevertheless this has continued. Cases end up being presented before the Courts as a *fait accompli*, which results in terse advice that it should not be permitted in any case in future. In Delhi, the Hon'ble Lt. Governor has constituted a Committee known as the 'Religious Committee' to review such cases. The Religious Committee is head by the Principal Secretary (Home) and the Joint Commissioner of Police of the concerned Range and the DCP (Special Branch) are its Members. The recommendations of the Committee are placed before the Lt. Governor for directions and orders.
23. It is high time that we recognize the stark reality that either influential local politicians or religious groups encourage unauthorized occupation of public land, the statutory authorities either on account of their laxity or on account of influence, which the local group or politicians wield, are loath to act and immediately remove the encroachment. Within a short time either a Temple, Gurudwara or Mosque comes up on a public land or a claim is made of it being in existence for

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long. Here, public and religious sentiment is also built up. The administration is presented with the possibility of apprehension of breach of peace and potential of its becoming a law and order problem. There is also a lack of will and determination on the part of the executive to deal with the situation. It is at this stage that *fait accompli* is presented before either the Religious Committee or Courts seeking allotment of such lands or regularization of encroachment. The Courts then deprecate the encroachment and give the advice of putting an end to it and not being permitted in future.

24. In these circumstances, this is a fit case for the Religious Committee to look into it and make its recommendation and the Lt. Governor to take a decision regarding allotment in accordance with the recommendation and the policy being followed.

Considering that this case discloses mal-administration and lack of vigilance and enforcement, whereby public land belonging to statutory authorities can be trespassed into and utilized at the whims and desire of the local politicians or influential groups without approval from the statutory authority or the MCD for construction, a suggestion as envisaged under Sec.16 of the Act is hereby made to the Hon'ble Lt Governor that it is time that His Excellency, the Lt Governor, puts in place a system whereby the land owning agencies and its designated officers are held accountable and

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responsible for any encroachment and illegal occupation of public land, whether for religious purposes or otherwise.

25. It is, therefore, recommended to His Excellency, the Lt. Governor, that in cases where even the Religious Committee recommends allotment of land to the occupant, it should be on terms that are prohibitive so that the realization dawns that unauthorized occupation of public land is not going to be a worthwhile exercise. The government in power, on its part, must desist from populism or vote bank politics on issues of encroachment on public land.
26. The Complaint is disposed of with the recommendation as above for putting in place a system, keeping in mind the factors outlined in Paras-22, 23, 24 & 25 hereinabove.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

Date: 7th December, 2012

Hemant