

**BEFORE THE HON'BLE LOKAYUKTA**  
**Justice Manmohan Sarin**  
**Complaint No. C-106/Lok/2009/**

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Lokayukta on its own motion in Re: In the matter of unauthorized construction in the tenements and encroachment on public land in Jhilmil Colony, near Vivek Vihar, Phase -II, Delhi -110095

And

In the matter of inquiry u/s 7 read with 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 in respect of conduct of Ms. Preeti Behn, Municipal Councillor - Respondent

**Report**

**Facts**

1. An anonymous complaint dated 6.4.09 was received in the office of the Lokayukta, alleging illegal encroachment/construction on government land in Jhilmil Colony, in connivance with officials/functionaries of Delhi Police and MCD. Plots wherein encroachment and unauthorized construction was carried out were mentioned as A-99, A-237, A-238 and A-239, in front of A-22 in Jhilmil Colony. The complaint contained serious allegations with potential of complicity of official personnel and public functionaries, even though no public functionary was initially named. In view of particulars, where public land had been encroached, amalgamated into a plot and unauthorized construction raised, it was considered necessary and expedient to have a preliminary inquiry carried out to ascertain the factual position. An investigator under section 13 of the Delhi Lokayukta and Upalokayukta Act, 1995, hereinafter referred to as "the Act" was deputed to conduct a preliminary inquiry as to the state of construction.

**Preliminary Inquiry**

2. The preliminary inquiry revealed that one of the public functionaries Smt. Preeti Behn, Municipal Coucillor either

owned or had interest in Plot No. A-99. The original plot was 57.50 Sq.Yards approximately, which after encroachment became 150 Sq.Yards. The Investigator reported that large scale construction was being carried out in full swing by a builder Sh. Madhu Ahuja. Plot Nos. A-237,A-238 and A-239 which were originally 57.5 sq. yards had also been substantially increased in size by encroachment. There were instances of conversion of residential plots for commercial use.

#### **Issuance of notice and proceedings**

3. Notice was directed to be issued on 4.6.09, to Noticee/Respondent Ms. Preeti Behn, to show cause as to why inquiry should not be held under section 7 read with section 2(b)(i)&(ii) of the Act for her conduct, not being in accordance with norms of integrity and conduct, which ought to be followed by public functionaries. Notice was also issued to Municipal Commissioner to ensure that no construction other than what was sanctioned and was in accordance with municipal bye-laws takes place in property Nos. A-99, A-237,A-238 and A-239, Jhilmil Colony, near Vivek Vihar, Phase-2, Delhi. A detailed report was also called for from the Commissioner, MCD, regarding extent of encroachment and nature of construction on or before 8<sup>th</sup> July, 2009 in these properties.

#### **Appearance of Respondent**

4. In response to the show cause notice, Smt. Preeti Bhen appeared on 8<sup>th</sup> July, 2009 and desired to file a comprehensive reply to the Show cause notice to set out the factual position in her case as well as explain the position in respect of the entire colony. As per her preliminary oral submissions, she had purchased half of the Plot No. A-99 and raised construction thereon. She submitted that there were numerous constructions in Jhilmil Colony whereby the original size of the plot had lost its very meaning and significance,

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since almost all the constructions were on expanded sizes of plots. By way of illustration, she stated that there was a widow colony in the neighbourhood, where allocations had been made to widows. Almost all the allotments had been sold out and instead 'Swam Sidh Colony' had emerged. Time was given to her up to 30<sup>th</sup> July to file written reply. In the meantime, Municipal Commissioner was also directed to ensure that no construction other than the one which had been sanctioned and was in accordance with the municipal bye-laws takes place in the concerned properties. A detailed report as directed earlier was again called for.

#### **Proceedings in Inquiry**

5. On 30<sup>th</sup> July, 2009 adjournment was sought on behalf of Ms. Preeti Behn on medical grounds. Matter was adjourned for filing of reply. The Dy. Commissioner, Shahdara South Zone, MCD filed a report confirming that in plot No. A-99, construction work was in progress on ground and first floor with projections on road and street. This report was on the basis of visual inspection from outside since officials were not allowed to see the building from inside. He also pleaded non availability of record with their Zone i.e. Shahdara South Zone and stated that same would be available with Shahdara North Zone. This was urged as an explanation for not being able to stop the ongoing construction. The desirability of acting promptly in matters, where public functionaries were involved was emphasized to the MCD officials, lest the ordinary citizen gets an impression that they are some, who escape the rigours and application of law.

6. On the next date of hearing ie on 18<sup>th</sup> August, 2009, Respondent Ms. Preeti Behn moved an application, questioning the assumption of jurisdiction by this forum on the basis of an anonymous complaint. She also desired to have the copy of the anonymous complaint. It was observed that

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the order directing notice clearly brought out that upon receipt of the anonymous complaint, a preliminary inquiry was got done which, inter-alia, revealed interest of the Respondent in plot bearing No. A-99, Jhilmil Colony, where unauthorized construction was being carried out. The basis of issuance of notice and assuming jurisdiction was duly disclosed in the order. Typed copy of anonymous complaint was also made available to Ms. Preeti Behn.

**Version of Respondent**

7. Ms. Preeti Behn's statement was also recorded on 18.8.2009. She deposed that she was a lone, harassed woman, separated from her husband and not having any place of residence. She said that there was no sanctioned plan in the entire colony. She could not reside in a Kacha premises, hence carried out the construction. She claimed that similar constructions had been carried out in the entire colony. Further, that she had borrowed money from a widow Smt. Paramjit Kaur to buy  $\frac{1}{2}$  of the plot. She claims that she had carried out construction with the knowledge of MCD. She stated that if she was unable to make payment to Ms. Paramjit Kaur, the property will go to latter. She said out of the plot of 57 Sq. Yards, on the other half portion, a three storey structure was constructed four years back. Only ground floor was built in the half of the plot purchased by her, which was in a dilapidated condition.

8. During the course of these proceedings, MCD issued 'stop work' notices for premises No. A-99, B-238, Jhilmil Colony and the same were pasted on the site in the absence of owners. SHO was also asked to submit a report with regard to the action taken pursuant to the orders passed by MCD under section 344 of MCD Act. Notice was also directed to be issued to Addl. Commissioner, Slum and JJ to apprise the forum of the original allotment made in respect of plots

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bearing No. A-99, A-237, 238, 239. Direction was also issued to Ms. Paramjit Kaur to produce the agreement entered into with Ms. Preeti Behn in respect of plot No. A-99.

**Sale of Plot / Premises No. A-99**

9. On 1st September, 2009, Ms. Preeti Behn claimed that she had sold plot No. A-99, Jhilmil Colony, for a consideration of Rs. 5.65 lacs to Ms. Paramjit Kaur, which was the value of constructed premises including the stamp duty. She claimed that she had no interest left in property No. A-99 now. Further she owned ground floor of A-120, DDA LIG flat Jhilmil Colony, which is rented out to a South Indian couple. She had also entered into a Memorandum of Understanding with Ms. Paramajit Kaur for sale of Flat No. 120A and had received 4.50 lacs as earnest money with balance sale amount of 25 lacs payable by 10<sup>th</sup> August, 2009. She had purchased property No. A-99 from the money she received from one Sh. Billu Man. She had purchased property No. A-99 for 4.55 lacs in the month of November/December. In other words the case put forward is that she had entered into an agreement for the sale of Flat No. 120A and received earnest money, which she utilized for purchase of property No. A-99 from Sh. Billu Mann and raised construction thereon. Now she claims to have sold plot No. A-99 to Ms. Paramjit Kaur for Rs. 5.66 lacs. The statement of Smt Paramjit Kaur supporting the above version was also recorded, wherein she claimed to have agreed to purchase the DDA flat No. 120A from Preeti Behn and paid Rs. 4.50 lacs. As there were problems in construction of Plot No. A-99, Ms. Preeti Behn has agreed to transfer the said premises after construction to Ms. Paramjit Kaur. She stated that the final price for DDA flat at 120A had not been decided. She was very close to Preeti Behn, who had given her a lot of support. It would be settled between them.

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10. The motive behind the above transactions is not far to seek. It is an attempt to make the inquiry proceeding initiated by the Lokayukta infructuous by transferring the property owned by the Public Functionary, Ms. Preeti Behn. This objection is being dealt with in the later part of this report.

**Allotment terms – A-99, Jhilmil Colony - permissible viz actual construction.**

11. The original scheme of allotment of tenements at Jhilmil Colony covered refugees from Pakistan. A report from the Land and Lease Section of Slum and JJ Department submitted in respect of Plot No. A-99, Jhilmil Colony was called for. One Sh. Krishan Lal was the original allottee of the plot admeasuring 59.5 Sq. Yards. Copy of the perpetual lease granted together with the Conveyance Deed and Building plan were placed on record. The length of original plot was 45 ft with width of 11ft 10". The permissible construction on the plot was one room with an open cooking verandah and front set back and rear court yard of 7 ft. and 11". It was clarified that although not shown in the plan which had been prepared on the basis of a community toilet, the owners/allottees were permitted to construct a toilet in the verandah. The original owner Sh. Krishan Lal had transferred the lease rights in favour of one Smt Chint Kaur, widow of Late Sewa Singh vide a registered sale deed dated 23.4.90. There is no other transfer or mutation on record, with the Department.

12. As per SHO Vivek Vihar, intimation of ongoing construction at Plot No. A-99 was given to MCD, which is responsible for controlling and regulating any unauthorized construction and for taking action for its demolition. But MCD only sought assistance, when the construction was completed. He placed on record intimation dated 28.5.09 along with the Action Taken Report.

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The Dy. Commissioner, MCD was directed to carry an inspection of the property Nos. A-99, A-238, A-239 and A-239 and report the total area covered by these properties and constructed area on each floor. Further information regarding the total number of plots and flats and tenements allowed in Jhilmil Colony under the scheme was also sought for purposes of exercise of discretion u/s 16 of the Act for making suggestions, which is being dealt with later on in the report.

**Analysis and Evaluation of Conduct of Respondent- Ms.Preeti Behn in the light of her objections.**

13. Respondent Councillor Ms. Preeti Behn has candidly admitted that she purchased  $\frac{1}{2}$  of the plot bearing No. A-99, Jhilmil Colony, for the purpose of her residence. When she purchased  $\frac{1}{2}$  of the plot, the other  $\frac{1}{2}$  had already been built up to three storeys about 4 years back. She purchased the plot from one Sh. Billu Mann in the month of November-December 2009. Ground floor was built up but in dilapidated condition. She did not get any plan sanctioned. In fact she contended that the constructions in the colony are without sanctioned plans with anyone. She raised construction as she could not stay in a 'kachha premises'. On the humanitarian side, she urges that she is a lone woman separated from her husband and needed a place of residence. Therefore, she carried out the construction.

She also alleges that she has been singled out for hostile discrimination as numerous other Councillors, Legislators had raised unauthorized construction in their premises and were living happily. This aspect will be adverted a little later.

She urges that unauthorized construction has been carried out with the knowledge of officials of MCD and even their higher officers and their staff is party to the unauthorized construction i.e. in pari delicto. She urges that the original Standard Plan on the basis of which tenements were allotted



for Jhilmil Colony to refugees has lost its relevance in the last 4-5 decades. Double and three storey houses have sprung up in the colony and relevance of single room tenements with asbestos sheet and open verandah have lost all meaning.

14. From the foregoing, it is clear that Ms. Preet Behn while being a Municipal Councillor had purchased  $\frac{1}{2}$  of the plot and raised unauthorized construction without sanction. The plot in question under the terms of the lease was also a single entity plot and hence there would also be violation of the terms of the lease or the conveyance. The Municipal Councillors, who are often referred to as City Fathers, are expected to be role models for compliance with the municipal laws. There can thus be no excuse for the said Councillors themselves indulging in unauthorized constructions and encroachments, on the plea that the same was widely prevalent. A case of violations of norms of conduct in terms of section 2(1)(b) is clearly made out against Ms. Preeti Behn on the basis of her own admission.

15. Now coming to the legal objections raised by the Respondent, the first objection raised was on assumption of jurisdiction. It was urged that jurisdiction could not have been taken on the basis of an anonymous complaint which did not mention the premises number of the Respondent. It was clarified in the proceedings and the order issuing notice was that after receipt of an anonymous complaint, a preliminary inquiry was directed and Investigator in his report disclosed unauthorized construction in house No. A-99, Jilmil Collony, wherein Respondent had interest. The basis of notice was even disclosed in the order directing issuance of issue notice on 4<sup>th</sup> July, 2009. The objection thus was misconceived. The objection regarding proceedings being time barred, having been initiated after 5 years of the unauthorized construction was again misplaced as admittedly the Respondent after

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purchase of ½ of the property had carried out unauthorized construction, while holding office as Municipal Councillor. Further this was a case of ongoing construction when notice was issued and in the events to follow the premises was sealed on account of continuing unauthorized construction.

16. Now, taking the plea of dropping the proceedings on account of Respondent allegedly not holding any interest in property No. A-99, Jhilmil Colony due to transfer of property No. A-99, Jhilmil Colony by execution of sale deed in favour of Ms. Paramjit Kaur .

Any act of a Public Functionary, which is not in accordance with norms of integrity and conduct that ought to be followed, is actionable as an "allegation" under section 2(b) of the Act.

Cognizance of any such allegation and conduct can be taken up to a period of 5 years from its date. In the instant case, notice for unauthorized construction had already been issued in respect of unauthorized construction admittedly being carried out by the Respondent-Councillor at A-99, Jhilmil Colony. A subsequent act by which the said premises are sought to be transferred cannot defeat the cause of action or obliterate the misconduct already committed. Hence the plea of inquiry being dropped pursuant to the sale of the property has only got to be stated to be rejected. Moreover, in this case it also appears, given the admitted relationship of interdependence between the Respondent and the purported purchaser, that it is not an arms length transaction but entered in to in a futile attempt of creating a ground.

Ms. Paramjit Kaur the purported purchaser had stated that Preeti Behn is her support in life and she lives with her throughout during the day. It is only during the night that she goes back to her children. Hence as discussed, the

transaction between the two is not an arms length transaction but entered into for the purpose of creating a futile defence in the present case.

It is noteworthy that even the final price has not even settled between the Respondent and the Purchase further showing that it was not an arms length or bonafide transaction. This plea accordingly also deserves to be rejected.

17. Coming to the last plea of hostile discrimination and the Respondent being singled out, it may be noticed here that the Respondent in fact during the course of the proceedings did provide a list of Councillors, Legislators, Ministers of the Govt. of NCT of Delhi along with details of their property numbers, having unauthorized construction. As indicated by this forum to the Respondent that if any such information would be forthcoming, then this forum was committed to perform its statutory functions. Accordingly after verification of the actual status with regard to the allegations of unauthorized constructions, notices to public functionaries in about 61 cases were issued regarding unauthorized construction and required to show cause in respect of the allegations of failing to observe the norms of conduct and integrity expected of them. This has resulted in corrective action being taken by public functionaries. In large number of cases demolition of unauthorized construction and non regularizable portions were carried out and compoundable portions are regularized by payment of regularization fees, thus conforming to the building bye-laws. Accordingly, this grievance of the Respondent of hostile discrimination also does not sustain any longer, with action initiated against those whose misconduct was shown or proven.

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**Recommendation with regard to the misconduct of Ms. Preeti Behn,**

18. Ms. Preeti Behn, as discussed, had admittedly carried out unauthorized construction in the plot which also, has encroachment on public land. This clearly shows violation of the norms of conduct expected to be followed by the public functionaries. As recorded earlier, certainly municipal councillors are expected to abide by the municipal laws and are expected to be role model for the citizens. However, considering the following circumstances of Ms. Preeti Behn namely;

- i. Her claim of being a lone harassed woman who carried out the construction since she does not possess any adequate residence.
- ii. The death of her husband.
- iii. The premises in question namely A-99, Jhilmil Colony having already been sealed, thereby preventing and ceasing beneficial enjoyment of unauthorized construction by the Respondent.
- iv. Most significantly her courageous action and yeoman service in providing information and particulars of 61 Public Functionaries in Delhi namely, Councillors, Legislators and Ministers in Delhi having unauthorized constructions in their properties. This resulted in initiation of action against the said Public Functionaries, with the said Public Functionaries being brought to book and made to conform to municipal bye-laws and consequent augmentation of municipal revenues by payment of regularization fee to MCD by the defaulting public functionaries.

19. The above are extenuating and special circumstances in her case, which commend to the undersigned to recommend to His Excellency that ends of justice would be met if a recommendation for her token suspension for one day from

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the House is made to the Municipal Corporation of Delhi.  
Recommended accordingly

**Directions for survey – Encroachment in Jhilmil Colony**

20. The directions for a survey were given to understand and fathom the extent of unauthorized construction and encroachment on public land. Executive Engineer (B), SSZ informed vide a letter bearing No. D-8814/EE (B-I)/SH /09-10 dated 7.2.09, that the team constituted to carry out the survey met with resistance from the residents and occupiers. Hence it was not possible to measure each and every premises or tenement. Most of the tenements were found to be encroaching on government land with increased size of allotted plots. Almost all the flats had been constructed unauthorisedly, having more than ground floor and up to three floors.

21. The above shows the extent of encroachment of public land and unauthorized construction in Jhilmil Colony. The Slum and JJ Department of MCD states that responsibility for action against encroachment and unauthorized construction was of the General Wing of MCD, due to transfer of colony in the year 1985. Apart from the inquiry in respect of the conduct of the Municipal Councillor Ms. Preeti Behn for being involved in unauthorized construction and encroachment, the inquiry has revealed facts which have shown the extent of unprecedented encroachment of public land and unauthorized construction, which has continued unabated.

22. Given the extent of encroachment of public land and unauthorized construction, it was considered appropriate to issue notice to Commissioner, MCD and Chief Secretary, GNCT of Delhi to ascertain their position and stand on the following:

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- (i) Whether MCD and Govt. of NCT of Delhi propose to remove the encroachments on public land and / or unauthorized construction at Jhilmil Colony, if so, the time frame therefor?
- (ii) In case the answer to the first question is in the negative then whether there is any scheme for regularization of the encroachment on public land and unauthorized construction by payment of fine/compounding fee/or for sale of land encroached upon at market price. ?

23. The matter was adjourned from time to time to afford opportunity to the Respondent and others to have their say. Time was sought on behalf of the MCD on the plea that the Commissioner had fixed a meeting for discussing these issues. The MCD expressed its inability to proceed in the absence of layout plan and demarcation by Land and Development Officer, Govt. of India. After initial passing of the buck, lay out plan was found to be with the Slum and JJ Wing itself and they filed copy of the same on record. In the meanwhile, GNCT of Delhi in response to the queries raised by this forum made the following statement:

"Presently there is no scheme in contemplation or consideration of the Department of Urban Development, Govt. of NCT of Delhi for sale of the encroached land to occupants or regularization or allotment of encroached land in Jhilmil Colony. As per internal instructions, prevalent since 1999, the aspect of unauthorized construction, encroachment and their removal are to be dealt with by the MCD and DDA"

24. Directions were issued to inform the Chief Secretary, Govt. of NCT of the aforesaid stand of the Government of NCT. The MCD was also required to file its response in view of the fact that the lay out plan had been traced. In the meanwhile Ms. Preeti Behn, Municipal Councillor had moved a private member's resolution/Bills before the Standing Committee of the Corporation seeking the regularization of the extra land and the excess constructed area. The minutes

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of the Slum Committee on resolution of the private Member had not yet been confirmed and only after they are confirmed, it would be sent to Commissioner for report. Slum and JJ Department clarified regarding the structures shown in the lay out plan. It was clarified that originally the roof over the individual room allowed was of tin / asbestos sheet. Common toilets were provided block wise. However, subsequently occupant/allottees were permitted to construct toilet in the 'Verandah' of individual flats as per Slum and JJ Department. Considering that individual tenements in a block were adjacent to courtyard, the increase in size of the plot in the individual tenement could either be on the public road or open area as available. He further submitted that under the provisions of Master Plan-2021, before granting regularization of any additional construction or height, encroachment on public land was to be removed and cannot be regularized.

25. Based on the facts and documents that have come on record, Jhilmil Colony is one of the 36 Slum Colonies that had been built up by the predecessor of DDA i.e. Delhi Improvement Trust. These were single storied tenements with a covered area of 16'x6" x 11'x6" i.e 57.50, sq. yards with an open verandah at one side and cooking verandah on the other side. Open area measuring 10" x 11'.6" on the front side and open area measuring 16'x7'.5" x 11'.6" on the rear side. A total number of 1190 tenements were built by the Delhi Improvement Trust and initially were meant to be allotted to the refugee families from Pakistan. The allotment process was done during the year 1956-57. Refugees and other unauthorized occupants were granted lease hold rights by the Slum and JJ Department. Even in the year 1999, the Ministry of Urban Development, Govt. of India had made modification in the scheme for conversion of lease hold tenure into free hold in Delhi. The conversion to free hold was

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granted even if there was misuse and unauthorized construction in the premises. This was done on the basis of Point 6 of the policy dated 28<sup>th</sup> June, 1999, issued for conversion of lease hold tenure into free hold. Point 6 of the policy is reproduced for facility of reference.

*'It has been decided that the unauthorized construction or misuse of the buildings constructed on leased premises ought to be taken care of by the NDMC/MCD/DDA, etc under their laws/regulations. Accordingly the lease administering authorities may permit conversion of all leased properties irrespective of any building violations or use violations that may exist.*

In view of the foregoing, despite their being unauthorized construction or misuse of buildings constructed on leased premises, conversion to free hold was permitted.

26. In the event and with the passage of time i.e. over 5-6 decades, unauthorized construction and encroachment of public land was rampant and went about unchecked in Jhilmil Colony. There was also the transfer of services from the then Slum and JJ Department to Engineering Wing of the Corporation in terms of order No. F.11/83/85-LSG-6220 dated 25.7.85. The Engineering Department of the MCD after taking over worked out certain deficiencies in services and at that time had asked for a sum of Rs. 34,13,750/-, in respect of deficiencies of road, SW drains etc for Jhilmil Colony.

As noticed in the narration of facts and events earlier in the report, the lay out was finally traced with Slum & JJ Department. A perusal of the lay out plan, copy of which is annexed with the Report as annexure -I, shows that originally even a toilet was not planned with the single tenement and common latrine and toilet blocks were provided in the lay out to cater to each block of tenements. However, this position underwent a sea change and the Municipal Corporation of

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Delhi reported back after a visual inspection that only about 25 out of 1190 tenements were single storied without possible encroachment of public land. Rests were double or three storied structure with many premises being put to commercial use. In fact, no survey was possible in view of the resistance faced by the team. As regards the extent of encroachment, the Dy. Commissioners, Shahdara South Zone while ruling out large scale demolition, noted that all the properties are old and occupied. Properties have encroachment of more than 100 sq. mtrs of government land and huge unauthorized construction has been carried out. Original allottees have sold out their plots to third persons.

Even as regards  $\frac{1}{2}$  plot of A-99 Jhilmil Colony, for which there is sale deed for 24.04 Sq. Mtrs. is stated to be of the size of 135.41 sq. Mtrs. It has encroached upon public land making the size of plot to 135.41 sq. Mtrs. The MCD had initially taken the plea that in the absence of the lay out plan, it was not possible to have a proper demarcation of the tenements. Further that the demarcation should be done by L & DO, Govt. of India, who had allotted the tenements and only thereafter the extent of areas where encroachments have taken place could be verified. As regards the unauthorized construction, the Building Department of MCD as per policy has to take action.

27. With a view to give an idea of the extent of unauthorized construction as against the original tenements of one room with asbestos sheet, photographs of premises A-99, A-237, A-238 and A-239 are being annexed as annexure- II (colly). From the foregoing, massive unauthorized construction and encroachment in almost all the premises can be inferred. We are confronted with a situation where in the last 4-5 decades, unauthorized construction has been continuing unabated with encroachment and transfers. As a

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consequence, original allotment and conveyance have virtually lost all meaning. On a question as to whether there was any proposal to remove the encroachments on public land, the response of the Govt. of NCT of Delhi, as noted earlier was :-

"Presently there is no scheme in contemplation or consideration of the Department of Urban Development, Govt. of NCT of Delhi for sale of the encroached land to occupants or regularization or allotment of encroached land in Jhilmil Colony. As per internal instructions, prevalent since 1999, the aspect of unauthorized construction, encroachment and their removal are to be dealt with by the MCD and DDA"

28. A perusal of existing policy and the provisions of Master Plan-2021 would show that MPD-2021 permits 90% coverage on the plots up to 100 sq. mtrs and 100% for construction existing as on 22.2.2006. This would be in respect of residential plotted housing as per the provision of 4.4.3 (A) of the MPD-2021. Even if the above criterion was to be applied, there is yet another obstacle. Under the above clause, as per point No. xvi of the terms and conditions, a pre-condition is *"encroachments of public land shall not be regularized and shall be removed before the local body grants sanction for regularization of additional construction or height"*. In other words, there is no provision for regularization of additional construction as long as encroachment of public land remains. In the instant case, we are confronted with a massive encroachment of public land. It would appear that a regularization scheme with a provision for removal of encroachment of public land would remain a non starter in view of the extent of encroachment.

29. To sum up, we are confronted with a situation where in the last 50 years the impasse of encroachment of public land has continued uninterrupted. The administration or the

Government of Delhi, irrespective of the party in power, has not shown any political will to remove or resolve it. Not only this, the unauthorized construction has also continued without any attempt for its demolition. Municipal Corporation authorities, tacitly accept that action on such a large scale for removal of encroachment or demolition was not possible. In fact, it is even difficult to complete a survey to ascertain the factual position in respect of each of the tenements.

30. In these circumstances it appears that the following courses of action are available for resolution of this impasse and stalemate staring at us in defiance of law in our vibrant democracy committed to Rule of Law.

1. Removal of encroachments upon the government/public land and demolition of structures built thereon and thereafter, regularization of the compoundable structures and heights as permissible under the norms of MPD 2021 or modified standard plans as applicable, within a stipulated time frame say of six months. However, in the alternative, if the above is not practical or feasible, in view of almost more than 90% of the tenements having encroachment on public land and constructions of double or three storied structures thereon, then a comprehensive scheme for in situ regularization/ development in Jhilmil Colony of the existing structures, be formulated keeping inter alia, the following factors in mind.

1. Allotment of the encroached/ extra land in occupation subject to a maximum size of total plot, say 100 -150Sq. mtrs. Extra land in occupation being allotted to the occupants at market rates or such other rates as may be considered just and reasonable in the circumstances. While fixing the rates, the principle that an encroacher should not gain or be at a premium and the rates fixed operate as a deterrent for future. Regularization of the additional constructions applying

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the norms of MPD 2021 or modified standard plan, as applicable for plots up to 100-150 Sq. mtrs, for plotted housing.

2. For determining the limits or criteria applicable under the scheme, the authorities may take into account the following factors.

i. Structural stability of the premises to be kept in mind, while deciding divisibility of plot.

ii. Avoiding major demolition or dislocation to the extent feasible.

iii. Adequate arrangements for common utility services, roads, sewages and water lines, structures constructions/ encroachments coming in their way or hindering the free circulation pattern, to be removed.

iv. Provision of essential community services and removal of encroachments from the areas originally designated for said purpose, as feasible within the colony.

v. Whenever land is required for any facility and the structures thereon, need to be demolished in public interest, there may not be any compensation but relocation may be done based on availability of land within the colony or elsewhere.

vi. Compounding and regularization charges and allotment rates for land to be fixed in a manner so as to make in situ scheme self financing, to the extent possible.

vii. Pending the implementation of the above measures, there should be complete freeze on any construction without approval in the colony. Stringent measures should be taken to ensure that no construction material is allowed to be carried into the colony for unauthorized construction.

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3. The various factors mentioned above for consideration in the framing of in situ development scheme, are purely in the nature of suggestions u/s 16 of the Act and are not intended to be exhaustive. It would be for the experts to frame and formulate the detailed provisions of the in situ development scheme, including fixing allotment rates applicable for proportionate interest in land in case of claims being staked for ownership of particular flats. The detailed provisions would need to be based upon a comprehensive survey and detailed evaluation of factual position on the lines recommended or such other factors as may be found relevant.

  
(Justice Manmohan Sarin)

Lokayukta

Dated : 29-12-2011  
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