

**BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin**

Complaint No. C-1050/Lok/2011

Shri Arun Rai & Anr

Versus

Smt. Kamlesh, Municipal Councillor,
Ward No.27, Madanpur Khadar

Present:

1. Mr. R.S. Bidhuri & Mr. Arun Rai, Complainants with Counsel Mr. Abhijat Bal & Ms. Farha A. Khan.
2. Mr. Arun Kaushal, Advocate, Counsel along with Mr. Inder Raj, for Smt. Kamlesh, Municipal Councillor.
3. Mr. Umesh Tyagi, DC South.
4. Mr. Kuldeep Singh, SDM (Kalkaji)
5. Mr. Manish Makhija, Advocate, Counsel for Deptt of Revenue.
6. Mr. Mahender Pal, Deputy Secretary, Deptt of Urban Development.
7. Mr. M.K. Singh, Counsel for DDA.

Mr. Abhijat Bal, Counsel for the Complainant, at the very outset makes a request that the Enquiry Report filed by the Secretary (Revenue) may be permitted to be seen by them, which had been kept in a sealed cover pending perusal by this Forum. He submits that the request for its return and its re-requisition through the Chief Secretary had already been declined by this Forum. Ld. Counsel for the Secretary (Revenue) urges that on account of serious nature of the inquiry, it should be kept confidential. However, the Counsel for the respondent joins the Counsel for the Complainant in seeking the disclosure and availability of the report.

I find considerable merit in the plea of the Complainants' Counsel that the report is neither privileged nor does it have any bearing on national security, foreign relations or law and

order etc., which could be urged in support of a plea for it not being disclosed. Undoubtedly, the enquiry had been ordered by the Government itself to unravel the truth and take corrective measures. The report was submitted on 23rd November, 2011 and it has already been over two months. Further, the Provisional Regularization Certificates that had been issued have been cancelled following this report. The disclosure of the report is in consonance with transparency in functioning which is conducive to efficiency and probity in governance. Such disclosure is, therefore, in public interest. Besides any citizen can seek the same under the RTI Act.

No fetter can be placed on the contents of the report coming into the knowledge of the parties. Accordingly, the report is directed to be placed in the Court file and it would be available for inspection to any of the parties, if so desired.

The status report as directed vide Notice dated 25-01-2012 is filed by the Counsel for DDA. The same be taken on record. Copy has been provided to the Complainant as well as the respondent. Mr. Manish Makhija, Counsel for the Secretary (Revenue) seeks one week's time to file the report. Let the same be filed. Respondent has also tendered his reply to the complaint. The same is taken on record. Copy is made available to the Complainants' Counsel, who may file rejoinder thereto, if required, within two weeks.

The record produced by Mr. Mahender Pal, Deputy Secretary, Urban Development, is seen. The Court had asked him to demonstrate the process of approval in terms of Clause-3 followed by the Unauthorized Colony Cell and other departments culminating in the signing of the Provisional Regularization Certificates by the public functionaries. To begin with, this exercise needs to be done with reference to

the 3 Colonies which are mentioned in the complaint and in particular whether while processing these cases, to satisfy themselves regarding the existence of the said colonies in 2002, any reference or cross check was made with the aerial survey, as also the fulfillment of the condition regarding existence of 50% built up area as on 2007, prior to issuance of Provisional Regularization Certificates. In addition to the above, whether any physical verification at site in any of the colonies was resorted to, especially, if there was no corroboration from the aerial survey regarding the existence of the colony. Further, whether the land status report from the Revenue Department was obtained. Mr. Mahender Pal has also been asked to confirm that there is no other part-file concerning the subject matter, which has not been produced before this Forum. An affidavit to this effect be also filed that the complete record in this regard has been placed before this Forum.

It has also been clarified to Mr. Mahender Pal that an outline giving the processing of each of the three cases from the date of submission of the application till its culmination in the issuance of Provisional Regularization Certificate, has to be given and its passage through various authorities, incorporating therein the remarks made by them. An affidavit to the effect that there is no other record in relation to the decision making process regarding grant of Provisional Regularization Certificate be also filed.

Mr. Mahender Pal, seeks one week's time to be able to assist this Forum on the queries raised and demonstrate the processing of the applications in respect of these three colonies as a starting point. Mr. Mahender Pal, Deputy Secretary, Urban Development, while outlining the steps taken

while processing the applications of these three colonies which are the subject matter of the complaint, should give his comments thereon and tender the same before the OSD, Mr. Rakesh Syal.

List the matter before the **OSD, Shri Rakesh Syal, DHJS on 10-02-2012 at 11.30 AM.** Status report by the Revenue Department be also filed on or before 10-02-1012.

Re-notify on 01-03-2012 at 2.30 PM.


(Justice Manmohan Sarin)
Lokayukta

Date: 12-01-2012