

**BEFORE THE HON'BLE LOKAYUKTA  
JUSTICE MANMOHAN SARIN  
COMPLAINT NO. C-586/LOK/2011**

**Lokayukta on its own motion. In Re- Ms. Preeti Behn,  
Original Complainant.**

**And  
Shri Mohan Singh Bisht, MLA, Respondent**

**And**

**In the matter of inquiry under Section 7 read with Section 2 (b) (i)  
of the Delhi Lokayukta and Upalokayukta Act, 1995**

Present:-

1. Mr. Viraj R. Datar, Advocate, Amicus Curiae with Mr. Chetan Lokur, Advocate.
2. Mr. Ajay Arora, Standing Counsel for MCD.

**ORDER**

1. Aggrieved by the proceedings initiated against her by this Forum and describing it as selective and discriminatory, Ms. Preeti Behn, Councillor, furnished inputs in respect of 60 Legislators and Councillors of Delhi, who had allegedly made unauthorized constructions or were living in abodes having unauthorized constructions without any action being taken against them by authorities including this Forum.
2. Pursuant to the above, this Forum issued notices to the Commissioner, MCD, calling for status reports in respect of the said properties and after verification and authentication of the same by MCD, notices to all the defaulting public functionaries namely MLAs and Councillors were issued.
3. The above case registered as a Complaint is one, where Shri Mohan Singh Bisht has been arraigned as a respondent, out of

the above mentioned sixty cases, particulars of which were furnished by Ms. Preeti Behn.

In majority of the above cases, public functionaries have fallen in line either after some contest or hesitation and removed the non-compoundable portions and got the compoundable ones regularized.

4. The case of Shri Mohan Singh Bisht is not one of the usual ones. It raises an interesting question regarding the propriety of an MLA or Public Functionary having a residential abode in an unauthorized colony and whether the same would amount to a breach of norms of good conduct and integrity expected of a public functionary of the class to which he belongs.

Here are the facts:-

Initially a report was furnished by MCD that the Respondent Shri Mohan Singh Bisht, MLA, was residing at F-4/4, Dayalpur, Karawal Nagar Road, Delhi, which was claimed to be an unauthorized regularized colony. It was reported that the construction was without a sanctioned plan and had projections of 'Chhajja' on municipal land. These 'Chhajjas', however, enjoyed protection under a Notification. The construction being without the sanctioned plan was treated as unauthorized, though compoundable. Accordingly, a notice under Sec. 7 r/w Sec. 2 (b) of the Delhi Lokayukta & Upalokayukta Act, 1995, was issued to Respondent.

In reply, the Respondent MLA Shri Mohan Singh Bisht, submitted that the premises F-4/4, Dayalpur, Karawal Nagar Road, Delhi, was situated in an unauthorized colony. It was not a case of an "unauthorized regularized" colony. The premises being situated in an unauthorized colony, building plans could not be submitted or sanctioned for the same. He submitted that the premises were situated in abadi of village Dayalpur Extension, Delhi 110094. Further, the said colony, appears at

Page No. 73, Regn No. 435 of the list of Unauthorized Colonies, slated for regularization. It was further submitted that the structure in the instant case was an old one, having been built in the year 1992. The premises in question also enjoyed the protection under The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, falling in the category of unauthorized colonies and village abadis, for regularization of which, guidelines have been issued by the Central Government.

Mr. Bisht also submitted that even as per the MCD's initial report the total covered area was about 100 Sq Yds. The entire construction was being treated as unauthorized only on account of absence of a sanctioned plan. He also made a statement that no further construction would be carried out by him pending regularization. He submitted that it was only a question of time for the colony to be regularized. Once it was regularized, the entire construction which was compoundable, would be got sanctioned.

5. This brings us to the question of propriety of an MLA or a public functionary residing in an unauthorized colony, where the construction is treated as unauthorized in the absence of a sanctioned plan. It is the contention of the public functionary that there is no violation of any law by him since it is only when the colony is regularized that an application for sanction of plan is maintainable.
6. The Amicus Curiae Shri Viraj Datar and Shri Chetan Lokur, Advocates, MCD Counsel and the public functionary were requested to address this Forum on the issue of a public functionary carrying out construction and/or residing in an unauthorized construction.

Mr. Bisht submitted that there was no provision in law against residing in a village abadi area where his premises were located. He stated that he represented the constituency known as "Karawal Nagar" which itself had 28 unauthorized colonies



and 11 rural villages. The premises in question were being used by him as Residence-cum-Public Dealing Office. Being a public representative of the area, it was his duty to make himself available to his constituents near their place of abode and be easily accessible to them. Hence, there was good reason for him to reside in the colony which in any case was now slated for regularization. There was neither any requirement of sanction of building plan nor the same would have been entertained for the construction of the premises. The premises as constructed are found to be within compoundable limits.

7. Mr. Viraj Datar submits that, in his view, a public functionary residing in a colony which is unauthorized is undesirable and is itself a breach and violation of norms and principles of conduct and integrity expected of them. He argued that general public rightfully expects high standards from their elected representatives, who are in public glare. These public functionaries ought to conduct themselves in accordance with the norms expected of them and lead by example and act as a torchbearer. It is this beacon of light which can spread far and wide to inspire the public and would also render them worthy of their position and enable them to gain respect amongst the public at large who have reposed confidence and trust in them. He submitted that just as the wrong doing of a public functionary is highlighted and sometimes blown out of proportion, a public functionary who conducts himself in accordance with the highest standards and norms of integrity and conduct, where others may have failed, will show the public functionary in good light making others voluntarily follow his example. It could have a ripple effect. He also dwelt at some length on the menace of unauthorized constructions, especially unregulated unauthorized constructions in unauthorized colonies, without adherence to safety norms, which have resulted in building collapses and loss of human lives.

8. He submitted that even if there was no requirement to get building plan sanctioned, in the village abadi area or in the unauthorized colony, where they cannot be sanctioned, the constructions there should conform to requirements of building bye-laws and regulations applicable in the metro, especially, as regards the height, number of stoerys, extent of coverage etc. Besides, he submits that the time had come for public functionary to lead by example so that the remaining citizens follow them even if there were no penal consequences flowing from non-observance. He submitted that the mere fact that the colony enjoyed protection under the Special Protection Act should not alter the position as regards the ethical requirement for the MLA of not residing in unauthorized colonies or encouraging unregulated constructions therein.
  
9. The Standing Counsel for MCD, Mr. Ajay Arora, had a different perspective in the matter. He submitted that even while filling up the nomination forms for election, the factum of residing in an unauthorized colony is not regarded as an offence or conduct which would debar the MLA or Councillor from contesting. This, according to Mr. Arora, was an indication that residing in an unauthorized colony was not treated as an act inviting disqualification per-se. Mr. Arora, next submitted that the development control norms, building bye-laws, FAR etc. were not static and these were determined and changed in accordance with the requirements of the citizens and society, necessity to provide housing and the availability of the infrastructure. He submitted that thus a colony which may be unauthorized could be regularized. Hence, the definition of what is 'authorized' in the context of 'unauthorized constructions' changes with changing times, e.g. coverage of mandatory setbacks which was not permitted earlier became permissible in MPD 2021 or for that matter non-carrying out of commercial activities from basement, permitting full-fledged



constructions in 'lal dora' etc. Thus, he submitted, in his view, it would not be reasonable to hold that the public functionary who is otherwise conforming to all the laws of the land, by merely owning or being in possession of premises in an unauthorized colony pending regularization, is violating the norms of integrity and good conduct.

10. He wanted to rely on the criteria regarding disqualification on election of a candidate being the touchstone. By the same token, he said, for election, disclosure of criminal cases involving moral turpitude etc, are required but living in an unauthorized colony slated for regularization neither involves moral turpitude nor any offence. He also emphasized on the submission of Mr. Mohan Singh Bisht, the respondent that he is residing in the same area and the colony as the members of his constituency to give him a better insight into their problems, apart from facilitating easy contact and accessibility. He, thus, urged that the public functionary was even justified on this ground to have the place of residence amongst them, lest he is regarded as an 'outsider' unfamiliar with their problems. He, accordingly, submitted that in his view the notice ought to be discharged and proceedings against Mr. Bisht be dropped as it was not within his power to remedy the wrong alleged against him.
11. Having heard the Ld. Public Functionary, Amicus Curiae and the Standing Counsel of MCD, I find that there cannot be any quarrel in principle with the submission of the Amicus Curiae that highest ethical standards of conduct and integrity ought to be prescribed and followed by public functionaries, who are to lead by example. It is only the due compliance with laws in its letter and spirit by the public functionaries which would give impetus to and enable pursuing with vigour the crusade against the menace of unauthorized constructions and haphazard development of unauthorized colonies by vested interests, land mafia etc.

12. Keeping the above in mind, it can be fairly stated that a public functionary should strive as far as possible to avoid being seen as encouraging in the setting up and mushrooming of unauthorized colonies and in any case being a party to raising of unauthorized and unregulated constructions, even though he may not be falling foul of the law.
  
13. While what has been stated above should be the utopian goal to be achieved, yet, at the same time it cannot be denied that a public functionary has a duty to his constituents of being easily accessible to them and towards that end, like in the present case, if he happens to be living in village abadi area or a colony that itself is slated for regularization, then it ought not to be considered violation of the norms of good conduct and integrity, as in the present case where the construction in question was made way back in 1992 and the construction carried out does not contain any non-compoundable areas and constructed area is fully compoundable once the building bye-laws are applied, enabling the sanction of the building plans on regularization of the colony.

The utopian goal has to be tempered with pragmatism and ground realities and the prevailing conditions in the society. While achieving the highest norms of integrity and good conduct could be the ultimate aim, the same ought not to be frustrated by insistence on norms and standards which are not attainable on account of prevalent conditions. In this case, hard reality is of there being nearly 1600 unauthorized colonies out of which for majority of the cases provisional certificates for regularization have been issued. Further, when a large and sizeable segment of the population is inhabitant of these colonies, the solution may lie in their in-situ development and preventing the coming up of more unauthorized colonies in future.



An illustration in point is Sultan Mohammad Bin Tughlak, who introduced the administrative and economic reforms of shifting the capital from Delhi to Daulatabad to control the Deccan, fiscal reform of copper currency against gold reserves. Both measures though beneficial, were drastic and too far ahead of times to succeed and miserably failed.

The highest ethical standards for good conduct and integrity being the utopian goal, needs to be achieved after creating strong public opinion and thinking conducive to their acceptability. Accordingly, these need to be tempered with pragmatic implementation in a planned manner, while working towards the ultimate objective.

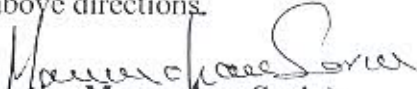
14. In the instant case, the premises, constructed area of which is compoundable, is being treated as unauthorized only on account of non-sanction of the plan which is not being permitted pending finalization of the regularization. The existing construction being well within the permissible area for construction as per size of the plot etc., the only hitch awaiting sanction of the building plan, is regularization of the colony which would enable applications for the regularization of the construction being submitted and approved.
15. Having expressed the views of this forum in general on the question and the norms of good conduct and integrity to be applied and observed, as far as the present case is concerned, it does not present any difficulty. The colony in question is slated for regularization. The construction was made in or about 1992, the construction itself does not exceed the parameters of building bye-laws and is compoundable. Once the colony is regularized, the construction can be regularized and the public functionary has undertaken not to carry out any further construction till regularization, hence, no useful purpose would be served in continuing with these proceedings, where the breach cannot be remedied as much as the plan cannot be



sanctioned till the colony is regularized. Besides, there is no willful omission by the respondent of any law or rule.

16. Considering these circumstances, no useful purpose would be served by continuation of these proceedings or adjourning them from time to time till regularization, which would be an exercise in futility. The notice is, accordingly, discharged subject to the condition that if, upon regularization of the colony, the respondent fails to have the premises regularized by getting the construction compounded within three months of the regularization then it would be open for the MCD to issue a notice for unauthorized construction at that juncture.

17. The case stands disposed of with the above directions.

  
(Justice Manmohan Sarin)  
Lokayukta

Date: 14<sup>th</sup> May, 2012

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