

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-490/Lok/2010

Lokayukta on its own motion in Re:

Ms. Preeti Behn, Original Informant
 And

Ms. Anjana Pracha, Councillor Respondent

Present:

1. Mr. S.U. Mirza, Counsel for Respondent with Respondent in person
2. Mr. Ashish Mohan, Director, DUSIB
3. Mr. R.M. Lal, Consultant (Planning), DUSIB
4. Mr. Jeet Ram, Architect, DUSIB.

ORDER

1. Following the information furnished by Ms. Preeti Behn, Original Informant regarding unauthorized constructions and irregularities in the premises belonging to the Public Functionaries, the above was one such case where after obtaining status report from the MCD, a notice had been issued to the Respondent Public Functionary under section 7 read with Section 2(b) of the Lokayukta and Upalokayukta Act, 1995.

2. The premises in question located at 6/358, Trilok Puri was allotted to Sh. Shyamu, S/o Sh. Bhajan by DDA under the Delhi Development Authority (Jhuggi Jhopri) Removal Scheme. The construction had to be in accordance with the Standard Plan, which permitted ground floor and half 1st floor.

3. The premises as per the status report given by MCD had a total construction of two and half floors, comprising 55.47 Sq. Mtrs without any sanctioned plan. Out of this 36.98 Sq. Mtrs would come within the compoundable limits, being the construction that was permitted as per the Standard Plan and 18.43 Sq. Mtrs are non compoundable. The construction was said to be without sanctioned plan and hence treated


MS

as unauthorized. The Respondent Public Functionary was found to be residing in the premises.

4. The case of the Respondent Public Functionary is that the premises were allotted to her father in law Sh. Shyamu, who had raised the construction prior to her marriage. She simply married into the family and resided in the premises. She was in no way responsible for the said construction and was only residing with her husband.

5. The issue nevertheless arising for consideration would the desirability of a Public Functionary being in beneficial enjoyment of a property, which was unauthorized even though she had not personally carried out any unauthorized construction or contributed to it.

6. During the course of proceedings before this forum, one of the questions raised was that in the resettlement colonies or in the jhuggi jhonpri colonies, the norms as per Standard Plan were applicable in terms of the Allotment. The construction permissible was far less than that allowed for plots of similar sizes in other areas under the municipal bye-laws or development controls under the Master Plan 2021. Based on the Development norms as per the Master Plan-2021 for residential area below 32 meters, maximum ground coverage is 80% with FAR of 350 and permissible dwelling units are three. In these circumstances, it was enquired from DUSIB as to whether there was any proposal for modifying the Standard Plan norms. Initially it was urged that this was to be done by the Building Department of MCD, while MCD officers contended that it was the responsibility of the authority. In terms of the provisions made under clause XIX 4.43 Master Plan 2011, power for modifying the Standard Plan vested in the authority that had initially made the allotment. The matter was therefore referred to the Additional Commissioner (Engineering), MCD and the CEO, DUSIB for resolution in a



joint meeting and copies of the order passed were directed to be sent to them. The DUSIB filed a Note before this forum, pointing out the statutory authorities MCD and DDA, which were the controlling authorities of building activities should be taking the decision in the matter.

7. As far as DUSIB was concerned, they were of the view that the benefit of new norms of building activities should not be frozen based on the Standard Plan drawings made long time back and towards this end they were expecting a decision of Govt. of NCT of Delhi and were following up the same. Today a Note signed by Director (Land), DUSIB has been placed on record by Mr. Ashish Mohan, Director (DUSIB). The Note is a short one and is being reproduced for facility of reference in this order.

"Subject: Building activities in JJR / Resettlement Colonies.
Ref: Lokayukta in case of M/s Preeti Behn Compliant No. C-490/Lok/2010

May kindly refer the directions of Hon'ble Lokayukta dt. 21.02.12. In this regard, it is submitted that a policy on grant of freehold/ownership rights to the allottees/occupants of JJR colonies has been framed and placed before a Committee chaired by Worthy Chief Secretary, GNCTD. An agenda in this regard was approved in the 6th meeting of DUSIB held on 23.02.12, wherein it was decided that a Committee consisting of Secretary UD, CEO DUSIB, CEO DJB, Pr. Secretary to Chief Minister under the chairmanship of Chief Secretary, GNCTD may examine all the issues involved including the conversion of license fee to free hold, premises for each category, permission from Govt. of India etc in order to come up with recommendation which are legally tenable.

In pursuance of the above, two meetings have been held on 07.03.2012 and 24.04.2012. Once this scheme is finalized by the DUSIB, the same shall be put up before the Delhi Cabinet for clearance. Subsequently, the same shall be forwarded to Ministry of UD, GOI for final concurrence. Nothing remains pending with the DUSIB in this regard. "

8. As per this Note, a policy has been framed for grant of free hold ownership rights to the allottees/occupants of JJR colonies and placed before the Committee chaired by Chief Secretary for working out modalities for granting of free

hold rights to the allottees/occupants of JJR colonies. It is stated before me that on conversion to free hold, FAR of 350 would be allowed with three dwelling units. Hence it would leave in the instant case no unauthorized construction as the entire construction would be compoundable. The policy decision to convert these tenements/ holdings to free hold and formation of Committee to work out modalities or Developments norms, are indicative of the property which is presently unauthorized and partly non compoundable becoming compoundable by virtue of conversion to free hold.

9. Another factor is that the property is enjoying protection from demolition under the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011.

10. Keeping the above factors in mind, it appears that it would not serve public interest if on the basis of existing norms the Respondent is proceeded against further in these proceedings. The Respondent has stated on oath and given an undertaking which is also endorsed by her husband on his behalf and of his brother that they would not carry out any structural addition or constructions in the meanwhile. Further that in case conversion is not allowed, they would abide by Standard Plan Norms and remove the unauthorized construction themselves, failing which MCD would be free to proceed there for. In these circumstances, in my view no useful purpose would be served by continuing these proceedings against the Respondent. The notice is accordingly discharged. The MCD is at liberty to revive these proceedings in the event of conversion to free hold not being allowed within a period of two years and consequently the Respondent failing to remove the non compoundable portions.

MS

11. Before parting with the case, certain recommendations in exercise of jurisdiction under section 16 of the Lokayukta and Upalokayukta Act, 1995 are called for. It has become almost usual for those in power irrespective of the Party either in State or in the Municipal Corporation, to hold out sops and assurances, especially for weaker sections of society by announcing welfare schemes, populist measures without thorough evaluation of their feasibility and implementations for short term electoral gains or image building. This kindle hopes and aspirations in the hearts of millions, without there being a realistic time frame for the implementation. Very often these remain unfulfilled assurances as has been seen in the case of Rajiv Ratan Awas Yojna for housing and the regularization of unauthorized colonies. It is, therefore, recommended to his Excellency the Lt. Governor to ensure that prior to the announcement of any such scheme to the Public or to the Press by the Government or Authority, same should be preceded by thorough evaluation of its workability, feasibility and implementation within a specified time frame. Further, in case the scheme is dependent or contingent on approval by Central Government such as in the instant case, the Ministry of Urban Development, Government of India, then the said fact should be highlighted equally so that the citizens fully understand and comprehend the limitation or conditional nature of scheme.


(Justice Manmohan Sarin)
Lokayukta

Date: 22.05.2012

rk