

BEFORE THE HON'BLE LOKAYUKTA  
Justice Manmohan Sarin

Complaint No. C-1599/Lok/2012

In the matter of inquiry under Section 7 read with Section 2 (b) (i) of the Delhi Lokayukta and Upalokayukta Act, 1995 in respect of unauthorized construction and encroachment against Sh. Bir Singh, Respondent herein.

AND

Sh. Ramesh Bhandari, President  
RWA, Sarita Vihar

Complainant/Informant

Vs.

Sh. Bir Singh, Councillor  
Dy. Mayor, MCD (South)

Respondent

Present :-

1. Sh. Bir Singh, Respondent in Person.
2. Sh. B.L. Jindal, EE (B) – II, Central Zone, SDMC.
3. Sh. B.S. Mina, AE, SDMC
4. Sh. S.C. Arya, AE/Enf. (H)/DDA.
5. Sh. Sandeep Dubey, JE/Enf. (H)/DDA.

**ORDER**

(1) This inquiry was initiated on a complaint purported to have been made by Sh. Ramesh Bhandari, President, RWA Sarita Vihar, alleging that Sh. Brahm Singh (President, Delhi State BSP) and his brother Sh. Bir Singh, Dy. Mayor, MCD (South) Respondent herein, had encroached upon DDA land by extending their flat No. A-67 and raised unauthorized constructions. Photographs in support were enclosed.

(2) On perusal of the complaint and photographs attached in support a show cause notice was directed to be issued to Sh. Bir Singh, Dy. Mayor, MCD (South) to Show Cause why the inquiry in terms of Section 7 read

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with Section 2 (b) of Delhi Lokayukta and Upalokayukta Act, 1995, be not held. Notice was also directed to be issued to the Dy. Commissioner, South MCD, bringing to his attention the alleged unauthorized construction and encroachment of land and statutory obligation to prevent the same, returnable on 13<sup>th</sup> July, 2012. Notice was also directed to be issued to Vice Chairman DDA regarding alleged encroachment on DDA land and unauthorized extension of the flat to enable action for contravention of the provisions of the Delhi Development Act and/or the terms of allotment, as applicable.

(3) While notices had been issued, a communication purporting to be from Sh. Ramesh Bhandari, President, RWA Sarita Vihar, was received. It was stated that he had not signed or sent any communication dated 4.6.12 (F.A) to this office and the office of the RWA, Pocket -A was not at A-32, Sarita Vihar but is at A-449, Sarita Vihar. Another communication received from one Sh. R.C Grover stating that the notice sent at his address i.e A-32, Sarita Vihar does not belong to the RWA and someone had forged the RWA's letter head and mentioned his residential address wrongly.

(4) From the foregoing, it is clear that the complaint in the instant case was a pseudonymous one sent as purporting to be from the President of the RWA.

The above is not unusual. It is being increasingly seen that a citizen or a common man is apprehensive and fearful of complaining against the acts of the powerful and mighty Public Functionaries. Therefore, resorts is had to sending either anonymous complaints or pseudonymous complaints. This forum has adopted a practice that whenever sufficient details and credible information appears to be provided, then the contents of the complaint may be verified. Once the information is found to be credible then the source or credentials of the Informant, do not matter.

Keeping with the above, the AD (I) of this forum was directed to verify the position by visiting the site. He confirmed that the constructions as reflected in the photographs were actually being done and local inquiries revealed that Sh. Bir Singh, Dy. Mayor, MCD (South) was the elder brother of Sh. Brahm Singh (President, Delhi State BSP) and the flat was being used as an office of the BSP.

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(5) During the proceedings on 13.07.2012, Sh. Bir Singh, Respondent was present. He deposed that he did not reside in the flat in question which was owned and registered in the name of his brother Sh. Brahm Singh (President, Delhi State BSP). He said his brother and family reside there. While his brother is there, they meet and entertain constituents and party workers at the flat. He stated that he had no objection if action was taken to bring this property in conformity with the MCD Bye-laws and DDA Regulations.

(6) Sh. S.C. Arya, AE/Enf., DDA deposed that the area in question had been de-notified. It fell under the jurisdiction of the MCD as regards unauthorized construction or its demolition. Regarding violation of allotment terms, action was to be taken by the Dy. Director, SFS, DDA who had been notified of the proceedings.

(7) The Ex. Engineer of MCD submitted a compliance report and informed of the demolition action taken to remove a wall built as also in puncturing the roof of the Porch. He said that a regularization application had been submitted, which was pending, for want of consent by occupants of all the floors.

(8) The forum would like to place on record its appreciation of the prompt action taken by the Ex. Engineer, MCD (South) even though the property belonged to the brother of the Dy. Mayor Sh. Brahm Singh, who himself was a President of BSP, Delhi Unit. Such prompt actions helps in resorting the faith of the common man that the Authorities are following Rule of Law without any discrimination.

(9) MCD was asked to file the regularization application of the Respondent on record and DDA to place on record the policy and procedure for permission and regularization of addition/alterations in DDA flats. The matter was posted for today i.e 23.07.2012. Sh. S.C. Arya filed a catalogue regarding the policy and procedure for Regularization of addition/alterations. The relevant clauses are 1 & 2 :-

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“Additional coverage permitted with prior permission :



- (1) Covering of courtyard and floor level terraces is allowed subject to fulfillment of building bye-laws and structural safety.
- (2) In three or four storeyed flats the owners at upper floor shall have the right to cover the area available as a result of coverage of courtyard terrace of floor below. In such cases the residents of DDA flats in a vertical stack served by the same staircase should give their consent and jointly apply for permission.”

In the instant case, it is stated that the joint application submitted was incomplete in the absence of consent of the 3<sup>rd</sup> floor owner which was now sought to be obtained.

(10) On 23<sup>rd</sup> July, 2012, Sh. Brahm Singh, owner of the Ground Floor flat No. A-67 voluntarily appeared with Sh. Bir Singh, Dy. Mayor. His statement was also recorded on oath. He informed that the construction of the porch covering the courtyard of his Ground Floor flat was made by the owner of the 1<sup>st</sup> floor Mr. Sunil Kumar Verma. He said he as well as Mr. Sunil Kumar Verma and Ms. Lipika Dutta Mittal owner of Flat No. A-69, 2<sup>nd</sup> floor had applied for regularization. “No objection or consent” of the owner of Flat No. A-70 was also being obtained.

Sh. Brahm Singh undertook in his statement to maintain status quo till regularization application was decided and not to make any addition or alteration. Further in the event of regularization application not being allowed within a period of three months, he would demolish the covered area of the courtyard and the porch built on the ground floor premises. He has also undertaken to ensure that while covering the courtyard, no portion of DDA or public land would be encroached.

The undertaking as given above is accepted. Sh. Bir Singh who also uses the flat, has on oath endorsed and confirmed the above undertaking.

(11) The position which emerges in this case is that an unauthorized construction in the flat in the shape of a wall has already been demolished. Sh. Brahm Singh is stated to be the owner of Ground Floor flat No. A-67. He is not a Public Functionary. However he has appeared before this forum voluntarily and given an undertaking.

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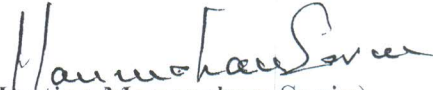
The courtyard has been covered upto the ground floor level which was punctured in the demolition action. The building of the court yard would have been permissible on prior permission being taken with all the flat owners in the vertical stack applying jointly. The 1<sup>st</sup> floor owner had raised the construction on the ground floor with the consent of Mr. Brahm Singh the ground floor owner.

(12) With a view to avoid unnecessary wastage of time and attrition when the construction is regularizable and application has been submitted, and further, with the undertaking of Sh. Brahm Singh endorsed by the Sh. Bir Singh, Respondent Public Functionary, that in case of regularization application not being allowed within 3 months, he would voluntarily demolish and remove these constructions, it appears reasonable to accept the undertaking given by Sh. Brahm Singh endorsed by Sh. Bir Singh.

The MCD would further ensure that regularization is confined to the flat premises and no part of construction in court yard encroaches upon public land or common land.

In view of the statements and undertaking given by Sh. Brahm Singh endorsed by the Sh. Bir Singh and pendency of the regularization application, the petition is disposed of with the direction that the MCD would ensure that in the event of regularization not being sanctioned or not being obtained by the flat owners within a period of three month, they would remove the unauthorized construction in accordance with law if not voluntarily done so by Sh. Brahm Singh.

**The notice in the inquiry is discharged on the above directions.**

  
(Justice Manmohan Sarin)  
Lokayukta

Dated 26<sup>th</sup> July, 2012

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