

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-585/Lok/2011

Lokayukta on its own motion in Re:

Ms. Preeti Behn, Original Informant

And

Mr. Jaswant Singh, MLA, Respondent

ORDER

1. The above inquiry is an off shoot of the input and information given by Ms. Preeti Behn, Councillor with regard to unauthorized and illegal constructions belonging to or in the beneficial enjoyment of "Public Functionaries". Based on the information received, status reports were called for from MCD. Notices under section 7 read with section 2(b) i) of the Delhi Lokayukta and Upalokayukta Act, 1995 were issued to Public Functionaries, including the Respondent MLA, based on the input and status received from MCD.

2. MCD in its initial report informed that the premises were located at No. 193, Village and Post Office, Khera Kalan, Delhi-110082. Plot area was 310 Sq. Mtrs and the premises comprised ground and first floor. The property being in rural village in 'Lal dora' area, was constructed sometime in the year 1978 or so. The Municipal Corporation claimed that the mandatory setbacks which were required to be left in the category as per the MPD-2021, namely, in the front and rear and side had not been left and therefore, 188.02 Sq. Mtrs on ground floor and 66.9 Sq. Mtrs on the first floor were to be treated as extra coverage.

3. In response to the notice issued under section 7 read with 2(b)(i) of the Act, the Respondent submitted a short reply on 28.4.2011, through his Counsel, averring that the property had been inherited by him from his forefathers and was within the 'Lal Dora' of 1908, Village Khera Kalan, Delhi. Further the property had been constructed by his late father in the year 1978 and he inherited the constructed property from his father in the year 1982. He had not raised any constructions over the said property. He submitted that building plans were not required to be passed as Building Bye-laws were not applicable to the rural village and MCD had no jurisdiction over the matter at the time of construction. He submitted that Varandah of the property was used for tethering cattle and storage of fodder etc. He enclosed photocopy in support showing the construction to be of the nature as is found in villages.

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4. During the course of proceedings in the inquiry, written submissions were filed on behalf of the Respondent as also the Amicus Curiae. Learned Standing counsel for MCD Mr. Ajay Arora also made his submissions. Compilation of judgements sought to be relied on by both Respondents as also the MCD were placed on record. However, for the disposal of this complaint, it is not necessary to delve into the said judgements.

5. Mr. Amit Rana, Counsel for Respondent, MLA submitted that the Notification of 17.01.2011 was prospective and the application of Building Bye-laws could not be made applicable retrospectively to constructions already existing. MCD and Amicus Curiae urged that the mandatory provisions concerning safety and height etc in Building Bye- laws were required to be enforced once the Bye laws had been promulgated. Matter has to be viewed also from the perspective of the provisions of the Lokayukta Act, which requires a breach of norms of integrity and conduct expected of a Public Functionary i.e. to say the Public Functionary by a willful act, breaches the norms consciously and voluntarily or to have beneficial enjoyment.

6. It is not in dispute that the construction was raised in 1978, while the Building Bye-Laws came in to operations in 1983. Reliance was being placed on the Notification dated 17.1.2011 issued under section 57 sub section (1) of the DDA Act, by which "The Building Regulations" for Special Areas , Unauthorized Regularized Colonies, Village Abadis, MPD 2021 were promulgated. Clause 3 of the said regulations provided for withdrawal of existing exemptions in the following terms....

"All existing exemption with respect to sanctioning of building plans in the village abadis will cease to exist from the date of notifications of these Regulations. "

7. Learned Counsel for Respondent submits that the said notification is prospective in nature as it comes into effect from the date of its notification. Besides, he submits that the effect is that the existing exemption with respect of sanction of building plan, namely providing that village abadi building plans need not be sanctioned stands withdrawn. This was prospective and hence would be applicable for new constructions or additional constructions. It cannot apply to constructions already raised as in the instant case in the year 1978. Mr. Ajay Arora joins the issue by urging that the exemption from getting building plan sanctioned did not provide a vested right and in the absence of any vested right flowing from the exemption withdrawal would have the effect on existing structures also, requiring them to be in accordance with Bye laws and requiring sanction

of Plan. He further sought to elaborate his point by urging that after withdrawal of exemption, the Building bye laws will be applicable. For instance if an existing building contravened the safety and height norms, then surely action could be taken to bring in conformity with the prescribed height.

8. The matter did not rest with this as the Counsel for the Respondent, MLA points out that there is no approved "lay out plan" for the village and in the absence of it, the entire exercise was an academic one and MCD could not even sanction a building plan, as per Notification. The MCD on the other hand contends that even where "approved lay out plan" was not there, Building Plan could be sanctioned as per provisions of Master Plan with rural development plan and development control regulations. Thus, maintaining that MCD was in a position to sanction the building plan, when submitted for regularization.

The submission regarding inability of MCD to approve plan without the "Approved Layout" was without prejudice to the basic contention that Respondent was not required to get any plan sanctioned for regularization.

8. Learned Amicus Curiae on the other hand had submitted that the entire purpose of enactment of Building Bye laws was not simply to place restrictions on constructions but to do so keeping in view the safety aspect of the construction. It is for this reason the Building Bye laws incorporated provisions of fire fighting, safety and other conditions to avoid hazardous constructions. Building bye laws will be applicable to rural villages in view of the judgment in the matter of B.L. Wadhwa Vs. GNCTD reported at 113(2004) DLT 263. He also submitted though the notification of 17.1.2011 comes into effect from the date it is notified, its application was to all constructions including those constructed prior to that date.

9. My attention has also been drawn to internal memo of Municipal Corporation of Delhi, which records certain decisions taken on 20th December, 2011 which has been placed on record. The record minutes the meeting held under the chairmanship of the Additional Commissioner (Engineering), MCD, Chief Town Planner, Chief Law Officer, Chief Engineer (Building) etc and the Standing Counsel, MCD. The said decisions are reproduced for facility of reference.

1. The existing residential buildings in Rural Villages as on 17.01.2011 and falling within the ambit of BBLs / MPD 2021 need not get any regularization. The said properties would not be acted against merely for want of regularization.

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- However, if such owners come forward for regularization, whether the charges are required to be recovered or not, is to be explained and interpreted. This issue can be referred to DDA in terms of Clause 1(iii) of the Notification dated 17.01.2011.
2. For the existing residential buildings in Rural Villages as on 17.01.2011 and falling within the ambit of BBLs / MPD 2021, where owners / applicants propose for fresh constructions / re-construct after demolishing the entire existing structure, the same will be considered for sanctioning as per the provision of BBLs / MPD 2021 / Notification dated 17.01.2011 / Office order No. TP/G/3426/11 dated 28.09.2011 and office order No. TP / G/4095/11 dated 09.12.2011 after ensuring the requisite charges applicable for fresh construction.
 3. For the existing residential buildings in Rural villages as on 17.01.2011 and falling within the ambit of BBL /MPD 2021, where owners / applicants propose for addition / alteration, the same will be consider for sanctioning as per the provision of BBLs / MPD 2021 / Notification dated 17.01.2011 / Office order No. TP/G/3426/11 dated 28.09.2011 and No. TP/G/4095/11 dated 09.12.2011 after ensuring the regularization of the existing structure.
 4. Those residential properties which are in existence as on 17.01.2011 and have become regularizable / compoundable under the relaxed norms of the Notification dated 17.01.2011, such properties can either be acted upon or else can be treated at a better footing than the properties which are neither compoundable nor conform to Building Bye-Laws 1983 / Master Plan 2021. How, such properties are to be acted upon is not clear in the Notification dated 17.01.2011. This issue too can be referred to DDA in terms of Clause 1(iii) of the Notification dated 17.01.2011.

10. The position which emerges is that undoubtedly when the existing construction was made in 1978 the building bye-laws were not applicable and there was no requirement for getting the building plan sanctioned. In the notice issued under section 7 read with 2(b)(i), we are concerned with the violations of norms of conduct and integrity by the public functionary personally. Undoubtedly in the instant case public functionary himself did not violate any laws since the construction was not even raised by him. He inherited it in 1982 and continuous to live there. Not only this there was no violation of any law or regulations in 1978, when the construction was raised. It is now only after the notification of 17.1.2011 that the applicability of the Building Bye laws and requirement of sanction of building plans is being raised. The submission of the Respondent that the requirement of sanction of building plan would be for new and additional construction and not those constructions which have been raised long before the Building Bye-laws were enacted, is a plausible one. It also finds support from the internal decision taken on 20th December, 2011 ^{by MPD} where it is provided that residential buildings in rural villages as on 17.1.2011 and

falling within the ambit of building bye laws, MPD 2021 need not get any regularization. The said properties would not be acted against merely for want of regularization.

11. In view of the foregoing and the internal decisions of the Corporation itself as taken, it cannot be said that there has been any conscious or willful violation on the part of the Respondent Public Functionary by failing to act in accordance with the norms of integrity and conduct, which ought to be followed. At best, the requirement of getting sanctioned plans or regularization for existing buildings is itself a debatable issue and may ultimately require judicial determination, if MCD was to change its internal decision. In the absence of any such clear legal exposition or requirement being spelt out, the Respondent cannot be faulted with for having beneficial enjoyment of property inherited by him in the village and built before the application of any of the municipal Building Bye laws. In these circumstances, the notice is discharged and file is directed to be consigned to record.

12. Nothing said in this order or observations made therein, which are solely for the purpose of deciding a notice under section 7 read with section (2(b)(i) of the Delhi Lokayukta and Upalokayukta Act, 1995, shall prevent the MCD from discharging its obligations in accordance with law as may be required.


(Justice Manmohan Sarin)
Lokayukta

Dated : 26th July 2012
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