

BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-494/LOK/2010

LOKAYUKTA ON ITS OWN MOTION IN RE:

Ms. Preeti Behn, Original Informant

And

Mrs. Indu Mishra, Councillor Respondent

O R D E R

In the instant case, following the inputs given by Ms. Preeti Behn, in respect of premises of several public functionaries, status reports were called for from the MCD. On receipt of the status reports, the cases where public functionaries were found to be in beneficial enjoyment of properties in respect of which there had been violation of Municipal Bye-Laws, cognizance was taken for inquiry under Sec. 7 r/w Sec. 2 (b) of the Delhi Lokayukta & Upalokayukta Act, 1995 (hereinafter referred to as the "Act"), to inquire into the 'allegations' of unauthorized construction, encroachment etc. in the said properties.

In the instant case, a Notice dated 6-12-2010 was issued to the Respondent, Ex-Councillor, Smt. Indu Mishra, who was elected Councillor from Ward No. 236, Gandhi Nagar, Raghuvarpura, in the year 2007. In 2012, she did not contest the election. The said seat is stated to have gone to the Congress. In terms of Notice dated 6-12-2010, following violations of the Building Bye-laws in property No. X/3741, Gali No.7, Shanti Mohalla, Gandhi Nagar, Delhi, were noticed:-

- i) Unauthorized construction of 207.22 Sq. Mtrs. without any sanctioned plan, which is compoundable, but has not been got regularized.
- ii) Projection on municipal land on ground and first floors – Compoundable.

On receipt of the said Notice, the Respondent filed a reply dated 8th March, 2011. It was averred that the said property No. X/3741, Gali No.7, Shanti Mohalla, Gandhi Nagar, Delhi, belongs to her son Aditya Mishra, S/o. Shri Vijay Mishra and not to her. The said house and construction were stated to be an old one. The Respondent claimed that during her tenure as a Municipal Councillor, no construction was carried out in the said property. It was further averred that the

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owner of the house Shri Aditya Mishra had sought compounding / regularization of the construction vide his Application bearing Diary no. 102 dated 20-07-2010.

It is averred that the Respondent, as a Municipal Councillor, has not violated any norms of integrity and conduct and there is no infringement of Sec. 2 (b) of the Act. Besides, it is stated that these constructions are more than five years old and the assumption of jurisdiction under Sec.8 of the Act is barred by limitation being beyond five years period of the alleged violation.

In the instant case, it is submitted that there has been sub division of the plot in as much as there are three or four shops on the ground floor, while rooms and residential accommodation exist on the first and second floors. Besides the cut-off date for such construction/sub-division is 16-02-1972, while the acquisition of the floor itself has been on or after 04-06-1992.

Curiously, there has been another interesting development in between. Due to some matrimonial problems, Shri Aditya Mishra, transferred all his interests in the said property in favour of the Respondent Councillor. Respondent Councillor, who is present, says that she has accepted the transfer by her son in favour possibly to avoid alimony claims.

The Respondent Ex-Councillor has also filed an affidavit to the effect that she is the owner of the first and second floor portion of the said property, namely, X/3741, Gali No.7, Shanti Mohalla, Gandhi Nagar, Delhi. The Respondent has undertaken to abide by the policy decision by the MCD/ Govt. of NCT of Delhi/Competent Authority, with regard to regularization of sub-divided plots, which is presently under consideration by them.

In case a policy decision is taken regarding regularization in favour of the Respondent Councillor, the requisite regularization fee and other charges as leviable and recoverable are payable, it shall enhance the availability of finances in the area to enable its development. Moreover, at this stage, no coercive action can be started in respect of the property in question since it is covered under the NCT of Delhi Special Provisions (Second Amendment) Bill, 2007.

Further, in view of the affidavit and undertaking submitted by the Respondent that in case regularization or concessions are granted in respect of the sub-divided plots, she would pay the requisite charges and fees there-for and have the building regularized and, however, if the policy decision is not in favour of the regularization, then she would abide by such decision and demolish the unauthorized construction, as they are determined in post policy decision.

It is hoped and trusted that by the time the matter is processed and policy decision is taken, there would either be further concession available or

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regularization in terms of the NCT of Delhi Special Provisions (Second Amendment) Bill, 2007, thus Smt. Indu Mishra, getting the benefit of relaxation in regularization policy. In case it is not feasible and the protection can no longer be offered, she has undertaken to remove the construction at her own costs.

From the foregoing narration, it would be seen that there was no overt or intentional act done during the tenure of the Respondent as Councillor, which would fall foul of Sec. 2 (b) of the Act.

In view of the affidavit filed by the Respondent/Ex-Councillor and the willingness to abide by the regularization policy and to pay charges as may be leviable, this is a fit case where the affidavit filed by the Respondent/Ex-Councillor is taken on record and for granting benefit under the NCT of Delhi Special Provisions (Second Amendment) Bill, 2007. Accordingly, the Complaint stands disposed of.

The MCD, however, would be at liberty to act in accordance with law if, after rejection of the regularization application and a policy decision is taken thereon, no action is taken by the Respondent/Ex-Councillor within four months thereafter for removal of unauthorized portions.

A copy of this Order be forwarded to the concerned Deputy Commissioner, EDMC, and thereafter the file be consigned to record.


(Justice Manmohan Sarin)
Lokayukta

Date: 26th September, 2012
Hemant