

BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-619//LOK/2011

In the matter of:-

Shri Arun Rai Informant
Versus
Shri Ram Singh Netaji, MLA Respondent

ORDER

1. By this order application moved by the Respondent under Order-XVIII Rule-3A of the Civil Procedure Code seeking a direction that the Complainant should be examined first before any other witness can be examined, is being decided.
2. Second application moved by the Respondent under Order-XXVI, Rule 10 CPC seeking a direction for summoning of (i) Mr. P.C. Dhyan, Consultant, (ii) Mr. Manish Tanwar, Draftsman, (iii) Sh. Giriraj Singh, Halqa Patwari, (iv) Sh. Rajinder Kumar, Kanungo (DDA), (v) Sh. Jai Prakash, Kanungo and (vi) Sh. Kuldeep Singh, SDM (Kalkaji), for being cross examined by the Respondent in connection with the demarcation carried out for the purpose of deciding the objection report filed by the Respondent is also being decided.

Let us consider the first application moved by the Respondent. Relying on Order-XVIII Rule 3A of the Code of Civil Procedure under which the plaintiff/Complainant is to be examined first before

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any other witness is examined in the case. Order-XVIII Rule 3A CPC is reproduced:-

“3A Party to appear before other witness – Where a party himself wishes to appear as witness, he shall so appear before any other witness on his behalf has been examined, unless the court, for reasons to be recorded, permits him to appear as his own witness at a later stage”.

3. Mr. Ravinder Sethi, Ld. Counsel for the applicant submits that in view of the above provision, the Complainant is to be examined first before any other witness can be examined. Besides, there is no cogent reason for his evidence to be recorded later and other witnesses to be examined first. He submits that the rationale for the above provision is that the complainant / informant should not be allowed to fill in the lacunae that are left in the evidence.

4. The proceedings before the Lokayukta are in the nature of a fact finding inquiry devoid of technicalities. Section 10 of the Delhi Lokayukta & Upalokayukta Act, 1995, in fact, enables the Lokayukta to frame its own procedure in each case based on the requirements subject to adherence to the principles of natural justice. The provisions of Civil Procedure Code do not apply or govern the proceedings before the Lokayukta. Thus, the Lokayukta is well within his rights to direct a witness to be examined prior to the Complainant or Informant depending upon the exigencies of the case.

I do not find, having regard to the facts and circumstances of the case that any prejudice would be caused by the examination of a witness prior to Complainant. The critical question in the case is,

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whether the construction by the Respondent is on acquired / encroached land of DDA or his own? This would depend primarily on revenue records and documentary evidence and not oral testimony of a witness, who may be examined before or later.

The above application was argued on 21-11-2012 and the case was fixed for recording of evidence on 14-12-2012, when the Complainant/Informant and Sh. R.S. Bidhuri, the witness, were both present as required. The statement of the Complainant was recorded first and he was extensively cross examined by Counsel for the Respondent and further cross examination was deferred to 07-01-2013 at 3:00 PM.

5. In these circumstances, in any case, with the Complainant/Informant having been examined first, the objection does not survive and the application has become infructuous. The above application under Order XVIII Rule 3A CPC is dismissed as having become infructuous and even otherwise being devoid of merit.

6. The second application is under Order-XVI Rule 10 CPC for summoning of the Revenue officials, the Consultant, Draftsman, Patwari etc. all involved in the preparation of the demarcation report by way of Total Station Machine Method. It is claimed that these persons were involved in the preparation of the demarcation report by way of Total Station Machine Method and their cross examination is required.

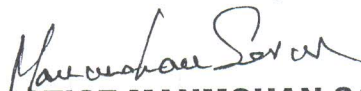
7. The cross examination of witnesses is sought on the premise that the same is necessary to decide the objections filed by the

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Respondent to the demarcation by Total Station Machine Method and its report. I am not persuaded that it is necessary to examine these persons involved in preparation of demarcation report based on the Total Station Machine Method for decision of objections. The objections which are sought to be raised are such as can be decided on the basis of record and report itself and are not dependent on the oral testimony of witnesses, e.g. the service or non-service of notice on Respondent is a fact to be seen from the record. Other objections are also verifiable from the narrative of the report and the record. Some of these are enumerated below:-

- i) Whether the mustatil pathar which were required to be located were located or not?
- ii) The distance of pathars, the fixation of reference points and the manner in which they were done, i.e. as per Aksh Sizra or Musavi of the area or not?
- iii) Similarly, whether physical demarcation procedure was mandatory to be followed or not?

None of the above is dependent on the oral testimony of witnesses. Considering the nature of the objections and the pleas urged, it cannot be said that the evidence of these officials who are sought to be examined is necessary for the purpose of deciding the objections to the demarcation report. The application, which appears to have been filed, to prolong and delay this fact finding inquiry by seeking the cross examination of these witnesses, is hereby dismissed.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

Date: 31st December, 2012