

**BEFORE THE HON'BLE LOKAYUKTA**  
**Justice Manmohan Sarin**

**Complaint No. C-593/Lok/2010**

Lokayukta on its own motion in Re:

Ms. Preeti Behn, Original Informant

And

Mr. Jai Kishan Das Gupta, Municipal Councillor

Present :-

1. Mr. Chetan Lokur, Advocate for Mr. Viraj R. Datar Advocate, Amicus Curiae.
2. Mr. Jai Kishan Das Gupta, Municipal Councillor, Respondent in person.
3. Sh. Vivek Sharma, ALO, Shahdara (North) MCD.
4. EE(B) Shahdara (North) MCD
5. Sh. P.K. Aggarwal, Advocate, Counsel for DDA.

**ORDER**

(1) This is yet another case, where notice had been issued to a Public Functionary for unauthorized construction on the basis of inputs received from Ms. Preeti Behn, another Municipal Councillor.

(2) The premises in question is A-28, New Seelampur, Delhi, located in Jhuggi Jhonpri Resettlement Colony having a plot area of 80 sq. yds. The premises had been built without any sanctioned plan. It had been booked for unauthorized constructions. Notice from the Municipal Corporation dated 24.05.2011, had been issued for having construction on the ground floor, 1<sup>st</sup> floor and 2<sup>nd</sup> floor as against the standard design plan.

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This was followed by a notice under Section 343 read with Section 344 (2) of the DMC, Act. Another notice of 6<sup>th</sup> June, 2011 was issued pointing out that no action had been taken on the Show Cause Notices sent earlier and if the present notice was not complied with, the Corporation would proceed to demolish the unauthorized construction itself. Resultantly, the case was put up for orders being passed for demolition. On 21<sup>st</sup> July, a vacation notice was also served.

(3) The Respondent Councillor in these circumstances, moved the High Court of Delhi in a writ petition, primarily urging that there was a vacancy in the office of the Presiding Officer, Appellate Tribunal, MCD and in the absence of the MCD Appellate Tribunal, High Court in writ jurisdiction was moved, seeking interim protection. The Ld. Single Judge of the High Court vide orders dated 27<sup>th</sup> July, 2011 taking judicial notice of the vacancy, granted interim protection. He directed that no coercive steps be taken till the challenge in appeal to the demolition order and vacation notice, with the application for interim stay, were taken up for hearing by the MCD Appellate Tribunal.

(4) The position that emerges is that the building is built without a sanctioned plan and the permissible FAR based on standard plan design of 80 sq. yds. is upto a single storey only. The High Court granted interim protection subject to the undertaking that there would not be further construction and the premises shall not be transferred to any 3<sup>rd</sup> party till the interim application is decided by the MCD Appellate Tribunal.

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(5) Sh. Sanjay Kumar, E.E (B-II), East Delhi Municipal Corporation also filed an affidavit confirming that the property had been booked as unauthorized construction. The total coverage of the property commencing from the ground floor, 1<sup>st</sup> & 2<sup>nd</sup> floor was 253 sq. mtrs. The entire construction was being treated as unauthorized construction in the absence of sanctioned plan. The matter in these circumstances, was directed to be listed before this forum after four months i.e 1<sup>st</sup> November, 2011. Subsequently, it was informed that the matter is fixed before the MCD Appellate Tribunal. It was further brought on record that the Respondent has ceased to be a Councillor. This forum noticed that one of the question being considered was violation of the norms of integrity and conduct by the Public Functionary, in raising construction, without a sanctioned plan.

(6) On 12<sup>th</sup> of October, 2012, the Respondent Councillor submitted before this forum that he had ceased to be a Councillor and that the property in question was in the occupation of his two sons namely Ravinder & Rakesh. Further he stated that he himself was not living in the property but was residing at 1/11064, Ground floor, Street No. 7F, Subhash Park, Shahdara, Delhi. He submitted that he was not deriving any benefit from the property in question.

(7) The forum thereupon asked the Respondent Councillor to produce Memorandum of Family Settlement, if any, by which he relinquished his interest in the property in question, supported by an affidavit. MCD was asked to apprise the forum of any decision taken in the remanded case before the Appellate Tribunal.

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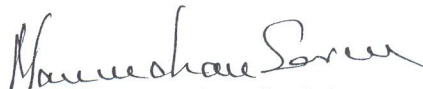
(8) In the events, that followed, Mr. Jai Kishan Das Gupta, Respondent Councillor filed his affidavit confirming that he was no more residing or using the premises bearing No. A-28, New Seelampur, Delhi – 110053 and had shifted his residence. He further confirmed that vide Memorandum of Family Settlement dated 5<sup>th</sup> of August 2012, he had relinquished ground floor in favour of his son Ravinder Kumar Gupta and 1<sup>st</sup> floor with roof rights to his son Rakesh Kumar Gupta. He undertook not to derive any benefit from the constructed premises. Memorandum of Family Settlement dated 21.10.2012 entered into between the parties whereby the former Councillor herein also relinquished his rights in shop No. 41, New Seelampur, Main Market, Delhi – 53, was produced on of record. The Respondent who is the owner of the entire property bearing No. A-28, New Seelampur, Delhi, relinquished all his rights in the property in favour of his sons. In nut shell leaving aside the references regarding dispensation in respect of other properties, the Respondent had divested himself completely from the premises in suit.

(9) The utopian and ideal situation would be where neither the Respondent Public Functionary nor any member of his family derives any benefit from an unauthorized construction or reaps the harvest of an illegal act of the Public Functionary. However, for the purpose of the definition of family in terms of explanation to Section 2 (b) (v) of the Delhi Lokayukta and Upalokayukta Act, 1995 it means “Husband, wife, sons and any unmarried daughter living jointly with the Public Functionary”. Applying the definition under the Act, the requirement would be for the sons and unmarried daughters living jointly with him. In the instant case, the sons are not residing with the Public Functionary and Public Functionary is living independently in another premises.

Moreover in view of the status quo protection provided under Section 3 (2) (iv) of the Delhi Laws (Special Protection) Act, 2011 where the premises are protected against demolition, the idealistic or utopian pursuit of norms would not serve any useful purpose and remain a futile exercise. It needs to be recognized that an idealistic or puritan pursuit of ideals which is not in sync with ground realities and prevalent norms in the society, can not succeed . It needs to be tempered with a pragmatic approach, whereby only the gross violations and breach of norms are punished while cases where the Public Functionary either atones for what he has done by undertaking not to reap benefit of non-sanctioned construction.

In these circumstances, the Respondent Public Functionary would remain bound by the terms of Memorandum of Family Settlement and his undertaking not to derive any benefit from the unauthorized construction, the MCD would be free to proceed in accordance with law and as per the prevalent development norms under the Master Plan in respect of the premises, which are stated to be in the occupation of the sons of the Respondent, once the protection of the Delhi Laws (Special Protection) Act, is no longer available.

With these directions **the Show Cause Notice issued against the Respondent Councillor, is discharged.**

  
(Justice Manmohan Sarin)  
Lokayukta

Dated : 7<sup>th</sup>.01.2013

Rekha