

**BRIEF NOTE ON DISMISSAL OF WRIT PETITION, BY HIGH COURT OF DELHI,  
CHALLENGING THE JURISDICTION OF LOKAYUKTA DELHI**

High Court of Delhi dismissed a Writ Petition of the Ex-Municipal Councillor challenging the jurisdiction of the Lokayukta to entertain complaint against the acts of a 'public functionary' prior to becoming a 'public functionary'.

The Hon'ble High Court of Delhi has endorsed the interpretation of the Lokayukta that it can take cognizance of an 'act' even if committed prior to a person becoming a 'public functionary', if the wrong continues even after his becoming a 'public functionary'.

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7400/2011 & CM No.16785/2011

SHRI NATHU RAM NAGAR ..... Petitioner  
Through: Mr. Avinash Lakhanpal, Advocate

versus

THE COMMISSIONER MUNICIPAL CORPORATION  
OF DELHI & ORS. .... Respondent  
Through: Mr. Sanjay Poddar, Sr. Adv. with Ms.  
Mini Pushkarna, Advocate for MCD  
Mr. Abhijat with Mr. Harsh, Adv. for  
Lokayukta.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**ORDER**  
**19.12.2012**

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In the present petition filed under Article 226 of the Constitution of India, a challenge has been laid to the order passed by the Lokayukta, Delhi on 30.09.2011. On 10.10.2011, the learned Single Judge then dealing with the matter noticed that the plea was that the Lokayukta did not have jurisdiction under the Lokayukta and Uplokayukta Act, 1995 (hereinafter referred to as the said Act), and despite the objections, no finding has been returned qua those objections.

A perusal of the impugned order shows that the allegation against the petitioner, who was an ex-municipal councilor, is that he has encroached, and continues to encroach upon a large piece of public land where Rajan



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Babu Tuberculosis Hospital was to be set up under the aegis of the MCD. The alleged encroachment continues till date.

We find from a reading of the impugned order that from para 17 onwards, the preliminary objections raised by the petitioner have been dealt with. One of the pleas raised was that the enquiry was barred by limitation as the same was initiated after the expiry of five years from the date when the petitioner ceased to be a public functionary. In this behalf, it has been pointed out to us that in para 17 of the impugned order the period when the petitioner was a councilor has been noted as 1992-1997 and 1997-2002. This was apparently a typographical error as, undisputedly, the petitioner served as a councilor from 1997-2002 and 2002-2007, an aspect which has been corrected by the Lokayukta vide a subsequent order dated 30.01.2012. Thus, this objection really does not survive.

The second limb of the preliminary objection emanates from a plea that on the date of the alleged encroachment in the year 1995, the petitioner was not a public functionary. The Lokayukta has opined that the continuance of possession itself gives rise to a fresh cause of action. We find no infirmity with this view as it a continuing wrong, if it is so.

The petitioner relied upon certain judicial proceedings of the trial court qua the relief of injunction where the petitioner claimed to be in settled possession. In those proceedings it has been observed that the question of ownership has not even been gone into. There apart, there has been no proper defence to those proceedings.

We may note that the most material aspect is that the observation made in the impugned order is only a prima facie view of the matter and the petitioner is required to respond to on merits so that a final view can be



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taken by the Lokayukta. This is not a matter for intervention at this stage by this Court.

Learned counsel for the petitioner has drawn our attention to an order dated 04.01.2011 in the case of the petitioner, where the concerned Additional Commissioner holding the charge of Land and Estate Department of MCD has been called upon to look into the matter and submit before the forum any plan of action for removal of encroachment. This certainly cannot be construed as a direction to the Commissioner, but is only an endeavour to find out whether any action has been proposed against the encroachment and, if so, what would be the action.

We, thus, no reason to entertain the petition and thus the petition and the application are dismissed.

Interim order stands vacated.

**C.M. No.1003/2012**

The application for impleadment of the Lokayukta has become infructuous and is accordingly disposed of.

**SANJAY KISHAN KAUL, J**

**VIPIN SANGHI, J**

**DECEMBER 19, 2012**

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