

BRIEF NOTE ON DISMISSAL BY HIGH COURT OF DELHI OF WRIT PETITION FILED BY NATHU NAGAR, EX-COUNCILLOR, CHALLENGING THE JURISDICTION OF LOKAYUKTA TO INQUIRE

Decks have been cleared by the High Court for inquiry by Delhi Lokayukta in respect of Shri Nathu Nagar, Ex-Municipal Councillor, for encroachment of public land acquired for Rajan Babu Tuberculosis Hospital. The inquiry proceedings had been stalled for over a year on account of a stay granted by the High Court.

In June, 2010, a pseudonymous complaint was received by the Lokayukta that about two and a half hectares of public land belonging to MCD, acquired for the hospital was encroached upon by Shri Nathu Nagar and other small time politicians in connivance with MCD officials and Delhi Police. The encroachment started surfacing after dissolution of the Monitoring Committee of the Delhi High Court. Several commercial and automobile establishments had come up.

The Lokayukta, on examination of the documents and record, issued a notice for inquiry vide Order dated 13-07-2010 to Shri Nathu Nagar, for violation of norms of integrity and conduct, misuse of position to obtain favour or gain. Notices were issued to Shri Nathu Nagar and MCD. The latter was directed to file a status report and site plan showing the various structures and boundaries thereof with user. There were several bottlenecks in obtaining information from MCD. It was after considerable efforts that a detailed site plan titled "Detailed Topographical Survey for MCD Land for Rajan Babu TB Hospital" was filed, delineating the encroachments.

There was encroachment by others like Jagdish Bros. & Play Way School etc. apart from Nathu Nagar. The management of RBTB Hospital was not even aware of the extent of land allotted and acquired for the hospital. The total encroached land was estimated at 6.57 acres of prime land, continued unabated without any action against the encroachers.

Nathu Nagar claimed to be in settled possession of the land having acquired the same from one Mrs. Mai Kaur. Reliance was also placed on a Suit for Injunction wherein he had been substituted for Mrs. Mai Kaur. With the said Suit for Permanent Injunction being decreed against the Union of India, DDA and MCD, they were restrained from dispossessing or interfering with possession of Nathu Nagar.

It is significant that only the WILL of Mai Kaur had been filed in the Suit for Injunction. Nathu Nagar was given repeated opportunities to produce the documents of title or Agreement to Sell/Purchase which, he claimed, were misplaced.

He had also pleaded limitation as a bar since he had ceased to be a Councillor since 2007 and in this case the purchase of land etc. was in the year 1995. Notices issued after five years were said to be barred by limitation. The alleged possession was claimed to as early as of 1978.

Significantly, the Lokayukta took the stand that even if the purchase or encroachment took place much earlier, Nathu Nagar was in continuous occupation and beneficial enjoyment of the encroached land and unauthorized construction. As he continued to derive benefit from them having beneficial enjoyment thereof, it was held that this provided a continuing cause of action. Moreover, Nathu Nagar had failed to produce any documents showing the dates on which the various portions of land were acquired by him.

The benefit of injunction restraining dispossession without due process of law does not enure to the benefit of a person who is substituted as a Plaintiff since the threat was to the plaintiff. In nutshell, there is encroachment on public land acquired under the Land Acquisition Act for the public purpose of Rajan

Babu TB Hospital, which is functional without the benefit of 6.57 acres of prime land under encroachment. There is evidence of unauthorized constructions.

Nathu Nagar filed a Writ Petition, given the legal vicissitudes, obtained a stay of inquiry by Lokayukta on the ground of limitation. The Lokayukta was not impleaded in the High Court as a party on the ground that it was a statutory body whose order only was challenged. In such cases, the defence by the land owning agency and Corporation is rather tardy; otherwise the encroachment would not have taken place in the first instance.

The Lokayukta moved the High Court for intervention in the Writ Petition as issues of jurisdiction were involved. Fortunately, the matter came up before a Division Bench presided over by Justice Sanjay Kishan Kaul on 19-12-2012. On the same date itself, by a reasoned Order dealing with all the pleas of the Councillor, it dismissed the Writ Petition and vacated the stay. The Division Bench has accepted the plea of the Lokayukta that continuance of wrongful act or possession itself gives rise to a fresh cause of action. The Division Bench also said that the Petitioner was free to set up his case on merit before the Lokayukta. The Court also found no fault with the Lokayukta calling upon the concerned Additional Commissioner of MCD to submit before the Forum a plan of action for removal of encroachments. It was not a direction but an endeavour to find out whether any action plan has been prepared against the encroachment, the High Court said.

Writ Petition was dismissed and the interim order vacated. In view of the dismissal of the Writ Petition, the application for impleadment by Lokayukta was treated as infructuous.

Hemant