

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT CASE NO.C-512/LOK/2010**

Lokayukta on its own motion

In Re- Ms. Preeti Behn, Original Informant AND
Shri Asif Md Khan, MLA.

ORDER

1. The present inquiry is one of the numerous inquiries initiated on the basis of information supplied by Ms. Preeti Behn, regarding unauthorized constructions and violations of municipal bye-laws in the properties owned or in occupation of 68 'public functionaries', i.e. Councillors and MLAs.

This was a sequel to the inquiry initiated, in which Ms. Preeti Behn had been issued notice regarding her unauthorized construction in Jhilmil Colony, Shahdara. She complained of being singled out, while the 68 'public functionaries' continued to enjoy the benefit of unauthorized constructions in violation of municipal bye-laws and even, in some cases, encroachment on public land.

2. Based on the information provided by Preeti Behn, status report was called for from the municipal authorities in respect of properties mentioned in the list furnished by Ms. Preeti Behn. Pursuant to the status reports received, inquiries against several 'public functionaries' were initiated. A notice No.C-512/Lok/2000/7927 dated 06-12-2000, under Sec.7 r/w Sec. 2(b) of the Delhi Lokayukta & Upalokayukta Act, 1995 (hereinafter referred to as the

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'Act'), was issued to the respondent/MLA. Notice was issued for unauthorized construction, i.e. without any sanctioned plan, of 114.96 Sq. Mtrs on the first floor of property bearing No. 306, Main Road, Paschimi Zakir Nagar, Okhla, Jamia Nagar, New Delhi, which was compoundable and total of 41.91 Sq Mtrs being the non-compoundable area in the entire property.

3. The respondent filed a reply on 10-12-2000, wherein he claimed that the total area was 112.87 Sq Mtrs from ground floor to third floor and there were different owners for all the floors. He admitted that he had been residing in the property since 18-08-2000. Further, the first floor of the property had been purchased from one Smt. Waseem Jahan, W/o. Shri Syed Aftab Ali, in the same condition including projections on government land. The said seller had executed a GPA and Agreement to Sell in favour of the respondent's wife, Ms. Fehmina Khan. He claimed that they had not made any addition or alteration or fresh construction on the first floor. He claimed that if any inquiry was to be conducted, it may be conducted against the previous owner Smt. Waseem Jahan, W/o. Shri Syed Aftab Ali, from whom they had purchased the built up first floor. He also furnished copy of the GPA and the Agreement to Sell executed by the wife of Syed Aftab Ali in favour of his wife Ms. Fehmina Khan.
4. In the course of proceedings, several reports were submitted by the MCD and the final position that emerged is that Plot No.306 Main Road, Paschimi Zakir Nagar, Okhla, Jamia Nagar, New Delhi, was located in an unauthorized colony earlier known as Village Joga Bai

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and now known as Zakir Nagar. The total area of the plot is 114.96 Sq Mtrs and there was 100% coverage from ground floor up to third floor. Thus, the total extent of unauthorized construction without sanctioned plan comes 451.48 Sq. Mtrs out of which 41.91 Sq. Mtrs was totally non-compoundable. The said colony, in the meanwhile, had been granted regularization, thus, having the status of unauthorized regularized colony.

5. In the event owners of different floors of the premises in question applied to the MCD for regularization, but these applications of individual floor owners could not be considered. Therefore, all the owners moved a joint application for regularization on 10-05-2011.

The Municipal Corporation pointed out that applicants seeking sanction of building plans were required to file affidavits in respect of ownership of plot/property based on registered Sale Deed, however, in these cases they were claiming ownership only on the basis of GPA and Agreement to Sell. Based on the directions given from time to time the case was also referred to the Town Planning Department for clarification regarding size of plot, right of way, number of storeys / dwelling units, setbacks etc. The Town Planning Department confirmed the plot in question was part of Layout plan of Zakir Nagar with residential user. Further the development controls were as per MPD-2021. The permissible FAR was found to be 100% ground coverage with 350 FAR, for construction already existing as on 22-09-2006.

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6. The regularization application could not be processed further as the respondent/public functionary and the respective owners failed to furnish a plan indicating the portion to be demolished to bring the structure within the permissible FAR despite Corporation's letter of 09-11-2011 asking the 'public functionary' and the owners to indicate the excess area to be demolished in Yellow colour. The obstacle being faced was that unless the covered area of 41.91 Sq Mtrs as finally found to be non-compoundable is not removed, the application for regularization of unauthorized construction cannot be processed further. Additionally, the applicants were also required to show the documents of ownership, which as per the current policy, insistence is on the registered Sale Deed, whereas the owners here are in possession only of GPA and Agreement to Sell. This did not meet the MCD requirement of ownership.

It brought the matter to an impasse in as much as the respondent 'public functionary' and the other joint owners have not indicated a pro-rata distribution of the non-compoundable area of 41.91 Sq. Mtrs, to be demolished from respective floors.

7. In cases where there is a single owner then he can have a choice of choosing the area to be demolished or removed to bring the structure within the compoundable limits. However, where there are different owners, unless they entirely agree on pro-rata removal of unauthorized construction and the areas there-for, it is difficult to resolve the matter. The criteria of treating the last portion which was last constructed as unauthorized would also not be workable as it would prejudice and jeopardize only the third floor owner.

8. At this stage it would be appropriate to notice the applicability of the provisions of The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011. It is common ground that the constructions in question, being prior to year 2006, in an unauthorized regularized colony, are protected till year 2014. Hence, no action for demolition in enforcement of the provisions of the municipal bye-laws can be taken. Especially, in this case, where the respondent verily claims that there have been no additions, alterations made by him to the property as it had been purchased by him in the year 2000.
9. Another difficulty as already noticed is, following the judicial pronouncement by the Apex Court by which the executions of GPA, Agreement to Sell and Receipt coupled with possession are not to be regarded as transferring any title. Hence, till the Corporation takes a policy decision, specially, in cases which were earlier agricultural land and where plotting has been carried out or where unauthorized colonies are being regularized on the basis of occupation or the revenue records of the original owner with transfer by Agreement to Sell, GPA, the regularization cannot move forward.
10. It is in this background, that we have considered whether the respondent can be proceeded against and held to be in breach of the norms of integrity and conduct expected of a 'public functionary'. In the instant case, the respondent claims that he himself had not carried out any unauthorized construction, alterations or addition and had purchased the property in the same condition in the year 2000.

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Accordingly, there has been no willful breach of any norms of integrity and conduct by him. Further, it could be said that by proceeding to submit an individual application for regularization first and later on jointly, he has shown his inclination to comply with the requirement of law to bring the construction as per the municipal bye-laws and obtain necessary sanctions.

Moreover, it would be an exercise in futility and no useful purpose would be served by continuing with the inquiry or making a recommendation for removal of the unauthorized construction as status quo is to be maintained till year 2014.

11. In the instant case, the respondent is ex-parte and is not available, but in similar cases, it has been contended by some of the public functionaries that given the housing shortage and requirement of being close to the constituents, the public functionary at times has to have a place of residence or abode or working place in unauthorized colonies, pending regularization of unauthorized colonies where constructions have been raised. Regularization requires the finalization of Development norms and certain policy decisions on floor-wise basis and recognition of ownership.
12. In the instant case also, representations have been made to the Corporation for allowing regularization individually floor-wise, without insisting on the joint application by all. Further, guidelines and policy decision on acceptance of transfer by means of GPA and Agreement to Sell by the agriculturists whose names are recorded in the revenue records as owner would also need to be taken, in case of unauthorized regularized colonies which have

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come up on lands which were earlier agricultural lands / village.

13. In view of the foregoing discussion and notwithstanding the concerns noted above, a 'public functionary' who is an elected representative of his constituency is required to set a higher standard of conduct than an ordinary citizen. He has to be a role model for others to follow. It is his duty, rather, an obligation as a 'public functionary' to inculcate law abiding tendencies and practices among his constituents. This can be achieved only if the 'public functionary' himself strictly abides by law and does not enjoy the benefits of acts which are not authorized by law.

14. In the instant case, even though the respondent is in beneficial enjoyment of unauthorized construction, it was not in his power and control to have the same regularized, and though he himself had not raised the unauthorized construction, he has taken steps to seek regularization.

It would, therefore, be appropriate, in these circumstances, to dispose of this matter holding and observing as under:-

- (i) The respondent 'public functionary' should earnestly follow up the joint application for regularization, seeking either a decision on the policy of regularization floor-wise, if feasible, and acceptance of execution of GPA and Agreement to Sell by the original recorded owner in favour of the occupier/applicant as proof of ownership in cases

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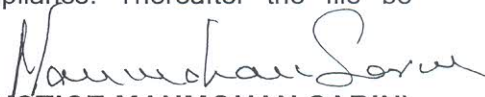
of unauthorized regularized colonies, which have come up on agricultural land.

- (ii) In case the 'public functionary' fails to obtain regularization for the property in question, the Corporation would be free to proceed in accordance with law upon the protection under the Delhi Laws (Special Provisions) Act, 2011, coming to an end.

15. It is also recommended to His Excellency, the Lt. Governor, under Sec. 16 of the Act, that an 'advisory' be issued to 'public functionary' reminding him of his sacrosanct duty as 'public functionary' to abide by the norms of integrity and conduct, which places on 'public functionaries' a burden higher than that of an ordinary citizen, of compliance with the requirements of law.

Accordingly, 'public functionaries' should avoid acquisition and purchase of properties or being in beneficial enjoyment thereof when it involves violation of municipal bye-laws or where adherence to municipal bye-laws is not feasible on account of such properties being located in unauthorized colonies.

A copy of this Order containing the above recommendation be forwarded to the Hon'ble Lt. Governor and to the parties concerned as also to the concerned wing of Corporation for compliance. Thereafter the file be consigned to record.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

DATE: 12th April 2013

HEMANT