

**BFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-1754/LOK/12**

Shri Rajesh Garg

.... Complainant

Versus

Shri Raj Kumar Chauhan, Minister, GNCTD &
Shri Vijender Gupta, Ex-Municipal Councillor Respondents

PRESENT:-

1. None for the Complainant.
2. Shri Vivek Tandon, Advocate, Counsel for Respondent No.1 and Secretary, PWD, Govt. of Delhi.
3. Shri P.K. Aggarwal, Advocate, Counsel for DDA.
4. Shri R.K. Dabral, Deputy Director/LM/NZ/DDA
5. Shri Sushil Jain, AE (B).

JUSTICE MANMOHAN SARIN (ORAL)

ORDER

1. Complainant, Rajesh Garg, filed this complaint against Shri Raj Kumar Chauhan, Minister, Government of NCT of Delhi and Shri Vijender Gupta, the then Chairman, Standing Committee, MCD, respondents herein, alleging that they had abused their position and failed to act in accordance with the norms of integrity and conduct in delaying action by the statutory authorities i.e. DDA, PWD and MCD, against the media house 'Punjab Kesari'. The latter had encroached upon public land and

MS

road, raised unauthorized constructions and constructed a boundary encompassing the PWD road and DDA land.

2. The Complainant, in support produced records of RTI queries and responses. He deposed on oath that pressure was sought to be brought upon him for not pursuing the RTI proceedings and complaint of encroachment against the media house by said public functionaries through their associates.
3. By a reasoned order dated 18-12-2010, notice was issued to Shri Raj Kumar Chauhan and Shri Vijender Gupta to show cause as to why inquiry be not initiated under Sec. 7 r/w Sec. 2(b)(i) of the Delhi Lokayukta & Uplokayukta Act, 1995.
4. Respondent No.1 Shri Raj Kumar Chauhan filed reply. He averred that he had at no stage given instructions to any official or persons whereby any unauthorized activity including constructions and/or encroachment on public land were to be permitted. As regards attending functions organized by various persons etc. he averred the same are not related to the duties to be performed by him in his capacity as a public functionary. He further stated that the authorities were at liberty to undertake action against any unauthorized construction or illegal activity carried out by any person, more particularly Punjab Kesari.
5. Shri Vijender Gupta, in his reply filed, averred that he has never used his power or influence to help anybody as alleged. Further attending public functions organized by a media house or owner of a media house does

not suggest involvement of the deponent (respondent) in the alleged illegal act of unauthorized construction or encroachment. The complaint has been called to be a motivated one.

6. In the meanwhile, notices had simultaneously been issued to the PWD, DDA and NDMC (North Delhi Municipal Corporation) to ascertain from the said authorities their stand regarding encroachment of public land and road by the media house. It is not necessary to go into details of the status reports and affidavits filed by the DDA and PWD. It is sufficient to notice that the DDA has admitted that the lessee of Plot No.2, namely, The Hind Samachar Ltd., the publishing house owning Punjab Kesari, had encroached upon 2200 Sq Mtrs of DDA land in Plot No.1 by constructing pucca structures in the form of canteen, installing printing press machines etc. Further, this encroached portions as per layout plan is slated for allotment to the Institute of Printing Technology.
7. PWD, in the affidavit filed on 21-02-2013, accepted that the media house has encroached over area admeasuring 1469 Sq. Mtrs of public road. PWD also claimed that they had issued notices to the Manager of Punjab Kesai to remove the encroachment but there was no action taken. Rather, in November, 2012, the media house sought to justify the occupation of the land on account of security agencies being present there to ensure the security of the owner who has Z-Category security cover. However, as per PWD, no authorization for such occupation or confirmation from the security agencies was forthcoming. Moreover, the argument of the land being occupied by security personnel is only stated to be

rejected in view of the installation of printing machines and canteen and other paraphernalia of the media house on the public land of DDA as well as installation of structured gates being put on public road to block the entire road so as to encompass it within the complex of media house, without there being any evidence of any residence of security personnel, as per Counsel for PWD.

8. By notices issued, this Forum desired to know the plan of action of the statutory authorities to remove the encroachment and recover the road.

It would be recalled that the allegation of the Complainant was that on account of the political patronage enjoyed by the media house of the two public functionaries, i.e. respondents herein, no action was being taken. The unauthorized occupation had continued with impunity from the year 1985. It was gratifying to note that the PWD did act resolutely, at least now, by clearing major encroachments on the road on 12-02-2013 and 13-02-2013. Mr. Vivek Tandon, Counsel for PWD, states that whatever remaining encroachments are there would also be removed.

9. As regards DDA, as anticipated by this Forum, initially the matter was sought to be enmeshed in the quagmire of inter-departmental procedural wrangles. This led this Forum to pass the order dated 06-02-2013 for the Director (Lands) DDA and Deputy Commissioner, Civil Lines Zone, MCD to file their affidavits, stating their action plan for removal of encroachments with specific

MS

dates. The directions given on 6th Feb 2013 were not complied with till 21-02-2013.

10. On 21-02-2013, the Director (CL), DDA, regretted the non-compliance of directions given in the Order dated 06-02-2013 for filing of affidavits giving the action plan for removal of encroachments from public land. He sought time till 21-03-2013. As per the status report filed on 21-03-2013, the programme for removal of encroachment had been returned by the Director (LM) requiring the demolition order on prescribed format with all details approved by the HOD, being the Commissioner (LD) to be sent.

With a view to resolve these procedural difficulties, the Pr. Commissioner (LD) and Pr. Commissioner (LM) were required to set the house in order. A meeting was also required to be held by the Pr. Commissioner (LM) and Pr. Commissioner (LD) with the Deputy Commissioner, Civil Lines Zones, New Delhi Municipal Corporation, to evolve a concerted action plan to be acted upon.

11. On 29-04-2013, Counsel for the Corporation claimed that the DDA had sought the return of files on the ground that the building activities had not been transferred. Corporation claims that pursuant to the requisition the file was returned to DDA. Mr. P.K. Aggarwal and Shri Sushil Jain, AE (B) submit that in fact the controversy with regard to building activities being transferred or not need not affect the action against removal of encroachment, as reference to building activities was in the context of the additional unauthorized constructions that had been carried

out by the media house in the plot allotted to it and in its occupation i.e. Plot No.2, while now they were concerned with removal of encroachment from public land in Plot No.1, which belongs to DDA and the road for which PWD has already taken action to remove encroachments.

12. There was a meeting held by the Commissioner (LM) and Commissioner (LD) and based on the minutes of the meeting dated 08-04-2013, while it was recognized that there was no court case or stay granted by any court against removal of encroachment on Plot No.1, Wazirpur Printing Press Complex, and the demolition order passed by the HOD, i.e. Commissioner (LD) could be implemented by the LM Department. Further, that there was no confusion or details required with regard to dimensions of the area where demolition is proposed.
13. Surprisingly, in Para-5 of the minutes, it is recorded that, "after discussions, it was concluded that demolition is major/sensitive and as per instructions dated 15-01-2013 of the Hon'ble Lt. Governor, all such demolitions are to be approved by the Lt. Governor before being carried out, hence, the proposal for demolition be forwarded to the Lt. Governor for his approval immediately".
14. Accordingly, a direction was given to make the file available so that the instructions dated 15th Jan 2013 of the Lt. Governor could be perused. I have perused the instructions dated 15th Jan 2013. Paras 1 & 2 of the said instructions dated 15th Jan 2013 make it clear that the observations of Hon'ble Lt. Governor regarding "no

12

major demolition programme” to be undertaken without his approval, were in the context of unauthorized Colonies slated for regularization which had existed prior to 2002. The said colonies enjoyed the protection under The National Capital Territory of Delhi Laws (Special Provisions) Act. It is in that context that the observations were made that the approval of the Lt. Governor should be obtained when action was being taken for removal of unauthorized constructions in colonies, which have been slated for regularization and enjoyed the benefit of the protection under the statute. There also fresh encroachments were permitted to be removed.

15. It defies credibility or any conceivable logic to see how the said observations can be remotely linked and brought in service to support a clear case of encroachment on public land which the DDA, the statutory authority, itself finds an unauthorized encroachment of its land, which is to be freed.
16. Admittedly, there is no unauthorized colony or the case of any protection under The National Capital Territory of Delhi Laws (Special Provisions) Act, being available there. Not only this, the said encroachments are inextricably linked with the road from which the PWD has removed the encroachments and these very instructions record that those structures which are not protected under The National Capital Territory of Delhi Laws (Special Provisions) Act, are to be removed.
17. In these circumstances, it is not understood how an individual media house has been allowed to continue with its unauthorized occupation and encroachment for

MS

such a long period. It is a case where encroachment deserves to be removed forthwith. Subsequent thereto proceedings for recovery of damages as per law can be initiated.

18. Surely, action against the media house that is found to be violating the law is not to be held back on the ground that it may hurt the latter's sentiments involving the fourth estate, or the same cannot render it sensitive. Moreover, it cannot be regarded as major initiative considering it is an individual case in an area of 2200 Sq. Mtrs of DDA, the land controlling statutory authority for the metropolis.
19. With these observations, I would recommend to the authorities concerned that they should perform their statutory obligations at least at this stage.
20. Copy of this Order be endorsed to the Vice Chairman, DDA, Pr. Commissioner (LD), DDA, and Pr. Commissioner (LM) DDA, forthwith.
21. Re-notify the matter **on 16-05-2013 at 2.30 PM** for further proceedings. The file of DDA is returned.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

Date: 03-05-2013

HEMANT