

**BEFORE THE HON'BLE LOKAYUKTA**

**Justice Manmohan Sarin**

**Complaint No. C-1500/Lok/2012**

**In the matter of :-**

**Sh. Gian Dev Gupta**

**Complainant**

**Vs.**

**Sh. Anil Sharma, Councillor/Former Dy. Mayor of Delhi**

**Respondent No. ....1**

**Sh. S.K. Mehra  
Commissioner, MCD**

**Respondent No. ....2**

**Sh. S.K. Middha  
Retd. Dy. Commissioner, South Zone,  
Green Park, New Delhi.**

**Respondent No. ....3**

**Sh. Gourav Chattervedi  
Licence Inspector, MCD South Zone,  
Green Park, New Delhi.**

**Respondent No. ....4**

**ORDER**

- (1) The Complainant Sh. Gian Dev Gupta, filed the above complaint in form No II & III against Sh. Anil Sharma, Councillor/Former Dy. Mayor of Delhi Respondent No.1 herein being a Public Functionary. Three other proforma Respondents impleaded were Sh. S.K. Mehra, the then Commissioner, MCD, Sh. S.K. Middha, the then Dy. Commissioner, MCD (South Zone) and Sh. Gourav Chattervedi, Licence Inspector, MCD (South Zone) Respondents No. 2, 3 & 4 herein.

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- (2) Before delving into the allegations made in the Complaint, it would be pertinent to note that earlier also a pseudonymous Complaint bearing no. C-470/Lok/2010 against Respondent No. 1 Sh. Anil Sharma, had been received. The said complaint had similar allegations regarding holding of Benami Properties etc. It was also enquired into. A Local Investigator Sh. V.B. Bansal, former Asstt. Commissioner, Income Tax (Retd.) was deputed to carry out the field enquiries and report. The Local Investigator did not find the allegations to be correct. The Lokayukta duly considered the Complaint as also the report of Local Investigator and closed the inquiry, by a reasoned detailed order dated 13.07.2011, holding that allegations were not established. A copy of the said order is being annexed as Annexure – I for facility of reference and to be treated as part of this order, for supplementing the order on matters not being dealt with again by this order.
- (3) Prior to the present complaint, the Complainant had filed another Complaint in this office bearing No. C-975/Lok/11 against Respondent No. 1 Sh. Anil Sharma. It was lacking in material particulars and was dismissed as withdrawn. Thereafter a letter dated 24.02.2012, was sent to this Institution which was registered as Complaint No. C-1370/Lok/2012. This Complaint was neither in Form – II nor was supported by prescribed affidavit. The Complainant was required to file a proper Complaint. This led to the filing of the present complaint bearing No. 1500/Lok/2012.

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(4) The Complainant has made allegations regarding 'pucca structures' having been built up in the Kashmere Market, R.K. Puram, with the intervention of Respondent No. 1 in connivance with Licencing Inspector, Respondent No. 4. Pucca structures were allegedly built while 'Temporary Tehbazari' had been granted. It is alleged that by misusing his influence Respondent No. - 1, actually put majority of BJP workers as tehbazari holders. Some of the tehbazaris though in the name of others, are infact owned by him (Respondent No. 1) and held "Benami". It is alleged that Respondent No.1 has been unauthorisedly running a Motor/Service station i.e Sharma Auto Mobiles on "green land" owned by DDA at Khasra No. 225, Mochi Gaon. Respondent No. 1 is accused of having built commercial shops contrary to the directions of DDA & MCD. Encroachment on public land, is alleged.

(5) The Complainant alleges Respondent No. 1 holds and is in possession of several 'Benami Properties' in and around Satya Niketan and at village Mochi Gaon. Further, that the Respondent No. 1 got 'Public Toilet' demolished and the land underneath was amalgamated with their Plot No. 93, Chanakya Academy, New Delhi. Misuse and abuse of position to gain undue favour for himself and other persons and making of pecuniary gains, is alleged.

(6) Number of allegations as noticed above regarding encroachment on public lands at Mochi Gaon, properties at Satya Nikten being held Benami, were also earlier made in the complaint bearing No. C-470/Lok/2010. The said allegations had been inquired into and found to

be incorrect by the local investigation on the basis of official record and information gathered. The enquiry was closed vide order dated 13.07.2011.

(7)The Complainant during these proceedings was duly given an opportunity and access to the earlier inquiry report and findings, with liberty to point out and bring any additional fact or evidence or circumstance, to the attention of the forum, which had not been considered earlier. Further, it was considered expedient to hold a preliminary inquiry inter alia with regard to the current status and alleged involvement of the Respondent No. 1 in the allotment of tehbazaris at Kashmere Market, R.K. Puram, to BJP workers and holding some Benami sites himself, as alleged by the Complainant.

(8)A direction was issued to the Dy. Commissioner, MCD (South) to produce from record recommendations or any letter/representation by Sh. Anil Sharma, Respondent No. 1 for allotment or conversion of the Tehbazari sites to Pucca structures, for his party workers or evidence of any allotment of sites to Respondent No. 1's relations at his behest or recommendation.

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(9)Complainant was also given an opportunity to support allegations in the complaint by inputs or furnishing details and particulars. This was apart from pointing out any fact or evidence which was not considered in the earlier inquiry. Additionally, Complainant was given liberty to file any documents or record obtained by him to support his allegations. Complainant's statement was partly recorded on 2<sup>nd</sup> July, 2012. The matter was adjourned to 13<sup>th</sup> of August, 2012, when his remaining statement was also recorded. At the request of the Complainant,



directions were also issued to SDMC to produce the record in respect of allotment of sites at Kashmere Market to Jaipal, Ashok Dilen, Ritika Aggarwal and Rani Chugh as the Complainant contended the same would reveal involvement of the Respondent No. 1 in allotment of Tehbazari sites to BJP Workers.

(10) The Complainant was also required to file an affidavit with regard to the alleged involvement of Sh. Anil Sharma, giving facts as ascertained by him. Any material evidence or facts which had not been considered during the earlier inquiry into the Complaint No. 470/Lok/2010 but were now available, could be urged. Complainant filed affidavit dated 13.09.2012. The said affidavit, however, did not reveal or deal with the role of the Respondent in allotment of any Tehbazari site. He wanted time to produce documents obtained through RTI to demonstrate what he termed as "grabbing of land" in Khasra No. 224 and 225, Arakpur Mochi Gaon.

**Evaluation of allegations in Complaint :-**

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(11) Let us first deal with the allegations regarding involvement of Respondent No. 1 in the allotment of Tehbazari sites to BJP workers due to his influence and recommendation. In this regard on 02.07.2012, statement of Complainant Sh. Gian Dev Gupta was recorded on oath, partly. He deposed having signed and verified the complaint and its due institution. He reaffirmed the facts stated in the complaint. He stated that Jaipal, Ashok Dilen, Ritika Aggarwal and Rani Chugh, were got allotted tehbazari sites by Respondent No. 1, as they were political workers of BJP. He claimed serious irregularities and aberrations in allotment of these sites and their conversion into "Pucca Structures". Complainant alleged forgery and tampering of documents to secure

allotment. He claimed that the Respondent Councillor naturally would be in the knowledge of all these wrong doings. The remaining statement was recorded on 13.08.2012.

(12) Complainant Mr. Gian Dev Gupta deposed that all the four persons named, were political workers from Respondent No. 1's ward and associated with him. They had applied for sites and were allotted sites because of the influence and proximity with Respondent No. 1. He claims that Respondent No. 1 got the mutation done in their favour after the deadline i.e 31.03.2010. Hence the same was illegal. Jaipal out of the four sold the site, but others continue to possess the same. It was put to the witness that as per Status report of MCD, there was a Zonal Vending Committee comprising Dy. Commissioner of the Zone as Chairman, with a sitting Additional District Judge also a member. This was adequate to ensure fair play. Official from SDMC stated that there was not a single recommendation of Sh. Anil Sharma on record. Complainant claimed the above Ward Committee to be a farce. He submitted that neither Respondent No. 1 nor his relations were officially allotted any site. Only the workers of BJP were allotted sites. He clarified that according to him Respondent No. 1 had not taken any money to get the sites allotted. But he used his influence, to secure sites for BJP Workers. The record of allotment of these four persons were summoned, no irregularity or evidence of involvement of Respondent No. 1 was noticed.

(13) It may be noted that the affidavit filed by the Complainant does not disclose the role of Respondent No. 1 in allotment of any site to his party workers or reveal any additional facts not considered in the earlier

inquiry. During the course of proceedings, he admitted that he did not have any direct evidence with regard to Respondent No. 1's role in the allotment of sites at Kashmeri Market and in particular the allotment to four BJP Workers.

(14) It has been ascertained from SDMC that not only the applications for mutation of all these four allottees but of many others were received after the stipulated date. Mutations were done after the prescribed date in numerous other cases, hence these four cases can not be called an exception. No adverse inference can be drawn against the Respondent No. 1.

(15) The matter was adjourned to 14.01.2013, at the request of Complainant. It has been confirmed by SDMC that not only mutation of these 4 persons was done but in all 60 names were mutated after 31.03.2010. Hence no special favours were shown to these four persons. Record does not reveal any involvement of Respondent No. 1 in the mutation of the sites of BJP workers.

(16) The Complainant himself admitted that it was not his case that the Respondent No. 1 had taken any money or taken any illegal gratification for sites allotted or that he personally or his relations had been allotted any sites. It was his case that Respondent No. 1 had misused his influence to get the sites allotted to BJP political workers.

(17) Curiously, on 04.02.2013, when Respondent No. 1 was to respond to the allegations made and on which this forum felt clarification or his version was required, the Complainant who had been heard earlier made a volte face



and asserted that he had not given opportunity of being heard. Even though the said assertion was factually wrong and contrary to record, with a view to remove any sense of dissatisfaction, the Complainant was given an opportunity to address the forum again. Complainant, however, said that he had already put on affidavit whatever he had to submit and he had nothing more to add.

(18) Notice had been issued to Mr. Anil Sharma, Respondent No. 1 to obtain his version regarding his relationship with Jaipal, Ashok Diler, Ritika Aggarwal and Rani Chugh, in the allotment of their sites and to examine him to ascertain the truth regarding the involvement if any, in the allotment of Tehbazari sites to BJP workers as alleged and amalgamation of public toilet land with their property No. 93, Chankya Academy, Satya Nikean, New Delhi.

(19) Sh. Anil Sharma in response to the notice, appeared. His statement on oath was recorded. He candidly admitted that he knew all the 4 persons namely Jaipal, Ashok Diler, Ritika Aggarwal and Rani Chugh and described exactly the capacity in which he knew them. Jaipal was known being relation of the President of the Mandal of BJP. Ashok Diler and Riti Aggarwal were known being the workers of BJP. He categorically denied any role in recommending them for allotment of Tehbazari sites or for getting their mutation done. He clarified that they were not allotted sites in his ward but had been allotted sites in other wards. He tendered Exhibit RW-1/1 and RW-1/2 being responses to his RTI queries which vindicated his stand. He also explained why some of the Tehbazari site holders were permitted to construct their sites as pucca. Especially those who had shifted from Dhaula Kuan and had been allotted the sites at Kashmere Market. He

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denied there being any allotment in his favour, his wife or any of his relations. This was also confirmed by the record of SDMC.

(20) Accordingly, as far as the Tehbazari sites are concerned, there is nothing on record of Corporation to implicate Respondent No. 1. There is also a ring of truth in the statement of Sh. Anil Sharma, who candidly admitted and accepted his acquaintance with concerned party workers, but clarified that he had not recommended their cases for allotment in his ward. These persons got allotment in other distant wards with which he had nothing to do.

(21) It is therefore held that the allegations of the Complainant regarding Respondent No. 1 having used his influence for getting allotments to tehbazari sites and holding them Benami have not been established. Till date no particulars have been furnished. Complainant has failed to even show anything prima facie in support of his allegation. It was vaguely claimed that there were instances of forged documents. However, the nexus or link of those has not been shown with Respondent No. 1. The allegation of Respondent No. 1's role in allotment to the four BJP workers, has not been established. It has not been shown that these four persons were irregular or they were shown any special consideration. There is nothing shown to indicate the role of the Respondent No. 1, infact the allotments were in distant wards and not in Respondent's ward. No adverse findings can be given on the bald plea that no allotments could take place without the knowledge of the Dy. Mayor or Respondent No. 1.

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22. Regarding the allegation of having got the public toilet demolished and amalgamating the land underneath with property No. 93, Chanakya

Academy, Satya Niketan, New Delhi Respondent No. 1 relied on RW-1/1 tendered by him. As per RW-1/1 the proposal of demolition of toilet block had been put up by DC (South Zone) as per the recommendation of the Ward Committee of South Zone. After the approval of the Commissioner and the House, toilet block was got demolished vide Resolution/Order No. 321 dated 21.9.2007 passed by the House. Accordingly, Respondent No. 1 submitted that he personally could not be held responsible or liable for the said demolition. It has also been clarified by SDMC that the land which was underneath the toilet continues to be in possession of SDMC.

(23) Let us now consider the alleged encroachment in Arak Pur Bagh Mochi Gaon by the Respondent No. 1 and his family. Further, that due to the Respondent's influence as Public Functionary the Statutory Authorities have not been taking any action to remove encroachments, unauthorized construction on Govt. land by the Public Functionary and his family in Khasra No. 224 & 225.

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Firstly, this matter has been gone into in the earlier inquiry also when it was noticed that unsubstantiated allegations were being made against the Public Functionary and his family members. The Respondent No. 1's grand father Sh. Sri Chand had been found to be a original Chulha Tax Payer. His father was holding the land as a direct descendent. After duly going over the records that had been tendered, it was held that no case was made out. As noted earlier, opportunity was given to the Respondent No. 1 to furnish any additional information or point out any fact or piece of relevant evidence that had not been considered in the earlier inquiry. Nothing has been forthcoming, except the repetition of same allegations in different form.

(24) The Complainant as President of the Society Khushi Sewa Sansthan filed a writ petition (C) No. 2000 / 2012, wherein Respondent No. 1 with his father Sh. Madan Lal Sharma, were impleaded as Respondents apart from the State, DDA, MCD and Department of Archaeology.

The case of the Complainant was that the statutory authorities had failed, by their inaction to prevent encroachments and illegal constructions. In particular, Complainant made specific allegation against Respondent No. 1, his father and family for having raised constructions on the wall adjacent to the Burj monument which was under the control of Department of Archaeology. Complainant also claimed that a commercial complex and large numbers of shops had been built by Respondent No. 1 and his family. Business of automobiles was also being carried out. Complainant sought a mandamus against Delhi Development Authority and Municipal Corporation of Delhi to demolish the structures and encroachments on Govt. land comprised in Khasra No. 225 in village Arakpur Bagh, Mochi Gaon, Delhi.

(25) The above lands in village Arakpur Bagh, Mochi Gaon were comprised in Khasra No. 225 and the adjacent lands were acquired when the capital was shifted from Calcutta to Delhi. As the acquired land was not utilized, the residents of the village continued to reside there. There were about 85 families in the village, on whom the government levied Chulha Tax and recovered the same.

The grandfather of the Respondent No. 1, Shri Chand was an original Chulha Tax payer. It is the Complainant's allegation that apart from the land for which Chulha Tax was being paid, the Respondent No. 1 and his family have encroached upon and occupied far more land. As



regards village Arakpur Bagh, Mochi Gaon, the Complainant made the very same allegations in the Writ Petition made in the Complaint.

The South Delhi Municipal Corporation tendered Judgement delivered by the Division Bench No. 1 of the High Court in WP (c) No. 2000/2012 titled Khushi Sewa Sanstha Vs. State and Ors.

The respondent has produced the record, the pleadings/replies and counter affidavits filed by his father. It is not necessary to delve at length on these, as the DB 1 in its judgment has succinctly analyzed the issues and given directions as discussed herein after.

26. The Division Bench considered and examined the issue of encroachment by unauthorized occupants, unauthorized constructions and their eviction at Arakpur Bagh, Mochi Gaon. As per the Judgement, which quotes the earlier decision of the Single Bench in Smt. Shakunta Narang Vs. DDA, it is brought out that family members of Sri Chand, who was a Chulha Tax Payer in the village Arak Pur Bagh Mochi were fully entitled to get the benefit arising out of him being a Chulha Tax Payer. It is an admitted position that Sri Chand S/o Mohan Lal was the grandfather of Sh. Anil Shamra, Respondent No. 1 Public Functionary who is admitted as a Chulha Tax Payer of Arak Pur Bagh Mochi Gaon.

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27. The Division Bench held that the proper perspective was to view the entire village of Arakpur Bagh Mochi as an unauthorized colony and then to deal with the same. The Division Bench specifically noticed that apart from the Chulha Tax Payers such as the Respondents No. 1 Public Functionary's Grand father and their family members, who are protected, it would be arbitrary to single out just 14 other structure holders, being those who had

purchased their properties from original Chulha Tax Payers for eviction. It would be seen that not only the descendent of original Chulha Tax Payers but even transferees from Chulha Tax Payers are being accorded the protection and benefit of the village being treated as unauthorized colony. The court observed that "I feel that in the current context, it will be rational to view the entire village of Arakpur Bagh Mochi as an unauthorized colony and to deal with it as such, in accordance with the guidelines finalized by the Government of India. Rights over the plots occupied by original Chulha Tax Payer and their descendants will be regularized in accordance with the Government of India's policy announced in 1983. The others will be called upon to pay the price of land at the L&DO rates plus other applicable charges. All other steps for the provision of infrastructure and regularization of building will be taken as per the guidelines".

28. The court also referred to the Delhi Laws (Special Provisions) Act, 2011 in terms of which the structures that had come up on or before 08.02.2007, were protected. In view of this, the Respondent No. 1, Public Functionary and his family members in occupation of the structures as descendants of the original Chulha Tax Payer Sri Chand, get the protection from demolition and eviction even under Delhi Laws (Special Provisions) Act, 2011.

29. The Complainant was required to establish that Respondent no. 1 failed to act in accordance with the norms of integrity and conduct or had abused and misused his position to obtain gain or favour for self or someone else. Further, he was actuated in the discharge of his functions by improper or corrupt motives or personal interest. On the consideration of the allegations in the complaint, pleadings, record as produced and the evidence led the Complainant has singularly failed to prove the allegations.

30. Barring a general and bald statement that 'Tehbazari sites' could not be allotted without the knowledge and consent of the Deputy Mayor, nothing specific has been shown that in the allotment of 'Tehbazari sites' there was a recommendation by the Respondent No.1.

31. As per Complainant, allegation was only made to show that BJP workers had got the allocation of 'Tehbazari sites'. Further that it was his perception (anumaan) that the Respondent would have played role in these allotments. It has been shown that the four persons who are said to be BJP workers and were allotted sites in distant wards and not in the ward of Respondent No.1.

32. During the proceedings, at one stage the Complainant put forward the case that some of the Tehbazari's at Kashmere Market were held by Respondent No. 1 as Benami, Complainant subsequently stated that he is not claiming that these were Benami Tehbazari sites, but he was referring to the 'Benami property in Satya Niketan. The said allegation also has been found MS to be without any substance in the previous enquiry report. Regarding the role of the Respondent No. 1 in getting mutation and transfer, Respondent No. 1 categorically stated that no application for transfer or mutation has ever been put up before him as Councillor or Deputy Mayor. He did not recommend even a single case.

MS 33. Coming to the allegations of running Maruti Authorized Service Station, the Respondent No. 1 explained that the same is owned by his father Sh. Madan Lal Sharma and managed by his younger brother Sh. Atul Sharma. He has no interest or share in it. Moreover, the Maruti Authorized Service station was established in the year 1998. Prior to that his father had a small repair shop in 1960, Respondent No. 1 became a Public Functionary



in the year, April, 2007 on being elected as a Councillor. Respondent No. 1 states that he lives on the second floor, while his father and younger brother live together on the ground floor and his uncle lives on first floor. Respondent No. 1 stated that neither his father nor his brother owned any commercial shops. These commercial shops belong to his grandfather's brother and their family members Zile Singh, Sh. Rajinder Singh, Sh. Rattan Lal and Sh. Kamal. Respondent No. 1 does not derive any benefit from these commercial shops.

34. The Complainant singularly failed to show that Respondent No. 1 either has any interest or has set up any of these ventures as a Public Functionary or even otherwise personally.

35. Regarding the Complainant's allegation that Respondent No. 1's grandfather as an original chulha tax payer could occupy only 164 or 244 Sq. Yd of land, while their family has 2300 Sq. Yd. land in Khasra No. 224 and 800 Sq. Yd. in Khasra No. 225. Respondent No. 1 submits that there is no limitation or ceiling as contended. The Minutes dated 6/9/2005 where reference is made to Resolution dated 18.07.1983 had proposed rate of Rs. 15 per Sq. Yds up to 200 Sq. Yds and thereafter rate of Rs. 150 per Sq. Yd. The above does not operate as a ceiling on holding as contended by the Complainant. In any case these holdings of land is what the Respondent No. 1's father inherited from his father without any contribution by the Respondent No. 1 and even before he became a Public Functionary, Respondent No. 1 has also placed on record the permission obtained by his father from Ground Water Authority for the bore well.

36. The exact entitlement of land holding etc. are to governed by 1983 policy of Government of India and on the basis of a holistic approach for the entire village in terms of judgment of the Division Bench referred to earlier.

37. In view of the foregoing discussion, it is apparent that the Complainant despite adjudication by various forums and even after the judgment of the Division Bench of the Hon'ble High Court in Civil Writ Petition no. 2000/2012, is persisting with allegations against the Respondent, which seem, to be stemming out of political rivalry and personal vendetta.

38. For inquiry under the Delhi Lokayukta and Upalokayukta Act 1995, the allegations against the Public Functionary have to be substantiated on merit and in such a case it would not be material if it they are being made by a political opponent. However, in this case Complainant has failed to establish any allegation in terms of Section 2 (b) (1) of the Delhi Lokayukta and Upalokayukta Act, 1995.

**The complaint is dismissed as being wholly devoid of merit.**

  
(Justice Manmohan Sarin)  
Lokayukta

Dated : 10 .05.2013

Rekha