

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-493/Lok/2010

LOKAYUKTA ON ITS OWN MOTION

In Re- Ms. Preeti Behn, Original Informant AND

Shri Harishankar Kashyap, Councillor, Respondent.

ORDER

1. The present inquiry was initiated on the basis of information supplied by Ms Preeti Behn, Municipal Councillor in respect of whom an inquiry was being conducted for an ongoing construction in Jhilmill Colony, Shahdra, Delhi-32. She complained of being singled out for raising unauthorized construction, while number of powerful and well connected "Public Functionaries", i.e. MLA's and Councillors continued to enjoy the benefit of unauthorized construction and violation of Municipal bye-laws in properties owned or occupied by them as well as encroachment of public land.
2. Based on the information so provided by Ms. Preeti Behn, this Forum called for a status report from the Municipal Authorities in respect of the properties mentioned in the list furnished by Ms. Preeti Behn. The status report received, gave details of the properties of 68 "Public Functionaries" in which either there was unauthorized construction or an encroachment on public land. Pursuant to status report received, inquiries against several "Public functionaries" were initiated.
3. A Notice No. C-493/LOK/2010/7908 dated 06/12/2010 U/s 7 read Section 2(b) of Delhi Lokayukta and Upalokayukta Act, 1995, (herein after referred to as the Act), was issued to the respondent Dr. Harishankar Kashyap, a Municipal Councillor, a "Public functionary" within the definition of the term as per Section 2(m) of the Act.

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This notice was issued to respondent / Public functionary for raising unauthorized construction of 33.20 Sq. mtr in Property No. 32/234, Trilokpuri, Delhi without any sanctioned building plan. As per the report submitted by the MCD, the size of the plot was 18.49 sq. mtr which was having 100% coverage at ground floor and the first floor. The total covered area was 33.20 sq. mtr. However, this construction was raised before 22/09/2006. Hence as per the MCD report, it could be regularized as per the laid-down policy of regularization of resettlement colonies.

4. In response to the Notice, Dr. Harishankar Kashyap appeared and stated before the Forum that he would get the construction regularized by paying the necessary charges / fees for the compoundable area. He undertook to demolish the unauthorized construction which is non compoundable, while seeking regularization of the unauthorized construction which could be regularized. On 06/4/2011, it was stated by the officials of the Municipal Corporation of Delhi that the ground floor hall and first floor hall are built on a plot area of 20.5 Sqr. mtr. and the respondent is residing with his wife and seven children in the said house. The excess coverage of 5.1 Sq. mtr. only was non compoundable. Sh. J.P. Verma, Executive Engineer (B) II / Shahadra (South Zone), EDMC had stated before the Forum that as per the standard plan in the resettlement colony comprising 20.5 sq. mtr. of plot Floor Area Ratio (FAR) 180 is allowed while presently FAR of 200 exists in the property in question. Thus, there is an additional construction of 5.1 sq. mtr. which as per the present norms is non-compoundable. However, he also stated that Delhi Urban Shelter Improvement Board (DUSIB) was the concerned authority dealing with the norms and Development controls established for the resettlement colonies as per the Master Plan – 2021. As regard the demolition of the non compoundable construction of 5.1 sq. mtr. as per the present norms,

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it was submitted that the Delhi Laws (Special Provision) Act is in operation and by virtue of that no demolition can be carried out.

5. Dr. Harishankar Kashyap again gave the undertaking that if the Developmental Control and norms in resettlement colonies increasing the FAR to 350 as per the Master Plan 2021 is not made applicable and no revision in the extent of FAR is made, with unauthorized construction of 5.1 sq. mtr. still remaining non-compoundable, he shall demolish the unauthorized construction within a month of such decision. The matter was adjourned sine-die, awaiting the finalization of the norms on regularization. The notice was thus kept in abeyance pending determination of the norms.
6. As per the direction, the registry had put up the matter before the Forum after six months for review and a report from MCD was called. The Executive Engineer (B) II / Shahadra (South Zone), EDMC submitted the report that the colony in which the property falls is a resettlement colony and the then Slum and JJ Department of DDA had allotted the same on the basis of lease to allottees. As per the standard plan released by the then Slum and JJ Department, DDA 100% coverage was allowed at the ground floor and 78.67 % over the first floor. Thus, as per the report the excess coverage at the first floor was actionable but the action could not be taken as the construction was existing prior to the Feb., 2007 and it was protected till December 31, 2014 as per the provision of Delhi Laws (Special Provision) Act,2007.
7. On the basis of this report, notice was again given to the respondent, at the same time report was also called from DUSIB with regard to the Development Control and norms and permissible FAR limit in the resettlement colonies to ascertain whether any norms have been fixed by virtue of which non-compoundable construction in the premises in question can be regularized.

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8. Sh. Jeet Ram, Architecture, DUSIB appeared for the department and made the statement that the question of application of the increased 350 FAR, as contemplated in Master Plan, Delhi – 2021 to resettlement colonies, is under consideration. He further submitted that a policy for granting of free hold rights in resettlement colonies is under consideration and the policy decision is expected within 3 – 4 months. Once regularization is permitted for the resettlement colonies then MCD can allow regularization of the additional construction.
9. The respondent, Public Functionary gave a statement that in case increased FAR under Master Plan Delhi 2021 is not made applicable to resettlement colonies and the additional coverage of 5.1 sq. mtr., in his premises remains non-compoundable, he shall demolish the construction and conform to the bye-laws as applicable.
10. In the instant case respondent Public functionary has voluntarily undertaken to demolish the unauthorized construction in his premises No. 32/234, Trilokpuri, Delhi, if the proposed policy of increase in FAR to 350 is not made applicable to resettlement colonies. As on this date as per the existing norms, the construction to the extent of 5.1 sq. mtr. is non compoundable which is liable to be demolished, but is protected by the Delhi Laws (Special Provision) Act, till December, 2014. The respondent “Public functionary” however, has been very candid and forthcoming in admitting the mistake and willing to rectify the same in case the policy to be framed is not to his benefit and his construction to the extent of 5.1 sq. mtr is to remain unauthorized and non-compoundable. The respondent Public functionary in the present case is in beneficial enjoyment of an unauthorized construction all though he has the hope that there will be a policy change and the principle of an increase 350 FAR would be applicable to the resettlement colonies as well.

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11. Notwithstanding the above, respondent being a Public Functionary and representative of his Constituency is required to set a higher standard of conduct than an ordinary citizen. It is his duty rather an obligation as a Public functionary to inculcate law abiding tendency and practices among his Constituents. To achieve this, Public functionary must himself strictly abide by the law and should not enjoy the fruit of any illegal, unauthorized act. The mushrooming growth of unauthorized construction in unauthorized and authorized colonies including encroachment on public land has converted the metropolis of Delhi into a concrete jungle where structures are being raised without proper provision for safety and architectural controls. Such buildings / structures endanger the life's of citizens as is evident from some recent incidents where Multistorey buildings raised without any sanctioned plan and unauthorisedly, without following the safety norms laid-down in the building bye-laws, have crumbled down causing loss of life. One of the cause for this menace of unauthorized construction and encroachment on public land is the shortage of housing in the city, but this cannot be justification for encroaching a public land or raising unsafe structures. The "Public Functionaries" who represent the people need to come forward and educate the people by their act and conduct. The "Public Functionaries" must show their commitment to an orderly growth of city and set an examples for others. This Forum appreciates the fact that the respondent "Public functionary" has in this case voluntarily undertaken to demolish the unauthorized construction if it remains non-compoundable.
12. In view of the facts of the present case and the undertaking given by the respondent, it would be appropriate to dispose of the matter holding and observing as under :
- (i). The respondent "Public functionary" shall abide by the undertaking given by him before this Forum to the effect that he shall demolish the unauthorized construction to the extent of 5.1 sq. mtr in the



premises No. 32/234, Trilokpuri, Delhi which is non-compoundable in case the proposal of 350 FAR is not implemented with regard to resettlement colonies.

- (ii). In case the Public Functionary / respondent fail to the demolish the property in question in the eventuality of the proposal of extending the 350 FAR is not extended to the resettlement colony and the protection under "Delhi Laws Special Provision Act 2011" comes to an end then the Corporation would be free to proceed against the property in question in accordance with law.
- (iii). It is also recommended to his Excellency the Lt. Governor, U/s 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 place on the 'Public Functionary' a burden higher than that of an ordinary citizen, of compliance with requirements of law.

Accordingly, 'Public functionaries' should avoid acquisition and purchase of properties and of raising unauthorized construction or being in beneficial enjoyment thereof when it involves violation of Municipal bye-laws or where adherence of law 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 Lt. Governor for his Excellency's consideration and to the parties concerned i.e. the Corporation for information and compliance.

Thereafter, the file be consigned to record.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA, DELHI

Dated : 17/05/2013

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