

**BEFORE THE HON'BLE LOKAYUKTA  
Justice Manmohan Sarin**

**Complaint No. C-515/Lok/2010**

**Lokayukta on its own motion in Re:**

**Ms. Preeti Behn, Original Informant**

**And**

**Sh Jagdish Mangain, MCD, Councillor.**

Present :-

1. Mr. Cheten Lokur, Advocate on behalf of Mr. Viraj R. Datar  
Advocate, Amicus Curiae.
2. Mr. Hari Om Gupta, Counsel for the Respondent

**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 By- Laws in properties owned or in occupation or held by 68 "Public Functionaries" i.e Councillors, MLAs and Ministers.

Ms. Preeti Behn had been issued a notice regarding unauthorized construction in Jhilmil Colony, Shahdara. She complained of being singled out, while 68 "Public Functionaries" continued to enjoy the benefit of unauthorized constructions in violation of Municipal By Laws and even in some cases, encroachment on public land.

2. Based on the information provided by Ms. Preeti Behn, a 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 report received, inquiries against several Public Functionaries, were initiated.

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3. A notice dated 06.12.2010 bearing No. C-515/Lok/2010/7930 was issued to the Respondent in respect of the Property No. 791, 1<sup>st</sup> floor, Sukhdev Nagar, Kotla Mubarkpur, New Delhi. The under mentioned violations of Building By Laws were listed in the notice :-

(i) Unauthorized construction of 137.71 sq. mtrs. at 2<sup>nd</sup> floor without any sanctioned building plan which was compoundable but had not been regularized and 206.57 sq. mtrs in the entire property, being non compoundable, required to be demolished.

(ii) Projections on municipal land.

In support, extracts from the report received from MCD, were enclosed.

4. Respondent entered appearance through Sh. Hari Om Gupta, Advocate. He sought time to file reply, which was filed on 06.01.2011. The Respondent claimed that allegations in the notice to be false and baseless and intended to tarnish his image. Further, that Respondent was neither the owner of the property bearing No. 791, 2<sup>nd</sup> floor, Sukhdev Nagar, Kotla Mubarkpur, New Delhi nor he had carried out any unauthorized construction in the said property. Respondent admitted that his wife Ms. Anita Sharma had purchased one left side flat on the 1<sup>st</sup> floor portion of the property bearing No. 791/4 ad measuring 87 sq. yds. (approx.), out of the total plot area of 175 sq. mtrs. being part of Khasra No. No. 300, situated at Sukhdev Nagar, Kotla Mubarkpur, New Delhi. The purchase of flat was through a registered sale deed dated 09.09.2008, registered as Document No. 14,194 in Book No. I, Volume No. 8,808, on page 109 to 117, registered on 15.09.2008 with the Sub-Registrar-V, New Delhi. It was denied that there were any projections in violation of Building Bye Laws.

To sum up, the Respondent's case was that his wife had purchased a built up property and no construction or changes were made by them in the said property.

5. The property was situated in an unauthorized regularized colony. Hence, building plans could be sanctioned. In the absence of sanction of any building plan, the property was treated as an unauthorized construction by the Municipal Corporation.

6. Directions were given from time to time to the Municipal Corporation of Delhi to ascertain the extent of compoundable area as well as non-compoundable area which was required to be demolished. Based on the status reports filed by MCD from time to time, it eventually emerged that the property comprises structures from ground floor to 4<sup>th</sup> floor. It is located in unauthorized regularized colony. The Building Regulations in unauthorized colonies were governed by notification dated 17.01.2011 as notified by Delhi Development Authority. In terms of the said notification, sub-division of plot that had taken place upto the year 2007, were recognized. However, the rider to it was that while approving the sub-division, the ground coverage and FAR to be distributed on pro-rata basis in the sub-divided plots depending on the sizes, ensures that the sum total of the built up area and the ground coverage of all such plots shall not exceed the built up area and ground coverage, permissible in the un-divided plot. The objective being that by subdivision, the over all ceiling for the undivided plot was not crossed.

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7. In the instant case, regularization application was submitted by the Respondent's wife, however, in the absence of sub-division, it was required to be signed by all the co-owners to be processed as an undivided plot. The parties failed to furnish the documents to enable the Corporation to determine the issue of sub-division and to establish single entity of plot which was imperative to work out the FAR on pro-rata basis. In the event, the Respondent was duly notified, the short comings in the regularization application, which was rejected.

8. In the affidavit dated 12.03.2013, the Corporation calculated the non compoundable area on the basis of plot area of 146.32 sq. mtrs. as the basis of Sale deed and applied FAR of 300 with ground coverage of 75%. Based on this, the non compoundable excess area on the 1<sup>st</sup> floor worked out to 33.21 sq. mtrs. with 4<sup>th</sup> floor being totally non-compoundable. It was also notified that if the owners could establish that the structure had come up prior to 22.09.2006, the same would be entitled to 100% ground coverage and 350 FAR. In such an event, the non compoundable area for the 1<sup>st</sup> floor worked out to 14.92 sq. mtrs.

9. As noted, the application for regularization was rejected for failure to remove the short comings and non availability of necessary documents sought and also in the absence of sub-division, the failure of all the co-owners to come together and apply on the basis of undivided plot.

10. Not standing the above by virtue of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, being in force, status quo is to be maintained till the end of December, 2014. The structures enjoy the

protection against sealing or demolition action. Consequently, there can be no effective action taken by MCD for removal or demolition of the non compoundable or compoundable portions which are not regularized.

Besides, it is stated that the guidelines for framing of policy enabling individual floor owners to seek regularization based on sub-division, is presently under consideration by the MCD and the Government.

11. It is in this background that we have to consider whether the Respondent can be proceeded against and held to be in the breach of the norms of integrity and conduct expected of a 'Public Functionary'. In the instant case, though the Respondent claims that neither he nor his wife had carried out any unauthorized construction, addition or alterations and had purchased the property in the same condition in the year 2008. The Respondent has also filed through his wife, the regularization application and thereby shown his inclination to comply with the requirement of law to bring the construction as per the Municipal by-laws and obtain necessary sanctions. However, it has not been possible for the Respondent to either have a joint application moved by obtaining consent of all the other co-owners and in the absence thereof his application suffers from short comings pointed out by the MCD or even otherwise not maintainable as being in respect of part of the property i.e his flat only pending the finalization of the policy whereby individual flat owners could apply.

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 by virtue of Delhi Laws (Special Protection) Act, 2011.

12. In view of the housing shortage and requirement of being close to the constituents used by Public Functionaries to justify their position to have a place of residence or abode or working place in unauthorized colonies. Regularization of unauthorized colonies where constructions have been raised, has been a complex issue requiring provisions of infrastructure and basic amenities. Electoral Regularization would also require finalization of development norms as well as certain policy decisions and recognition of ownership of individual floors. In the instant case, the regularization application of the Respondent, has been rejected.

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, his wife living with him being part of family, had purchased it.

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 to have the joint application for regularization or seek a decision on the policy of regularization floor-wise, if feasible.
- (ii) In case the Respondent 'public functionary' through his wife 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.

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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: 17th May, 2013

Rekha