

LOKAYUKTA ON ITS OWN MOTION

In Re - Ms. Preeti Behn, Original Informant AND

Shri Naresh Gaur, 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 violation of Municipal Bye-laws in the properties owned or in occupation of "Public functionaries" i.e. Councillors and MLA's. Ms. Preeti Behn was facing an inquiry before this Forum for raising unauthorized construction in her house located in Jhilmil Colony, Shahdara, Delhi - 32. She complained of being singled out while number of "Public functionaries" continued to enjoy the benefit of unauthorized construction in violation of the Municipal bye-laws and in some cases even encroachment of public land.
2. On the basis of the information provided by Ms. Preeti Behn status report was called from the Municipal Authorities in respect of properties mentioned in the list furnished by Ms. Preeti Behn. The name of the present respondent Sh. Naresh Gaur, MLA had also figured in the said list. Therefore, the report with regard to premise No. 1/1660 Panchsheel Park, Shahdara, Delhi occupied by Sh. Naresh Gaur was also called. The MCD reported that the house was constructed on a plot measuring 200 sq. yds. built upto second floor and as per the occupant building plan was sanctioned but the same was not produced. Therefore, the matter was listed for clarification on this aspect. This Forum was informed by the Executive Engineer,

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Building Department, Shahdara Zone that no sanction plan is available in the record of MCD with regard to the property in question. Therefore, the Forum proceeded on the basis that there is no sanction plan and shifting the onus on the owner / builder to produce the sanction plan, if any.

3. A notice No. C-585/LOK/2011/11555 dated 10/05/2011 was issued to the respondent Sh. Naresh Gaur under Section 7 r/w Section 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 (herein after referred to as the Act).
4. In response to the said Notice, the respondent appeared and sought time to trace the sanctioned plan and also stated that in case he is unable to submit the plan then he would move appropriate application for regularization of the construction on payment of the regularization charges. The respondent / "Public functionary" submitted regularization application to the MCD on 19/07/2011. The MCD however, took the objection that the plot under reference was "amalgamation" plot which cannot be regularized. It was also conveyed to the Forum, that the respondent has been conveyed the position in this regard.
5. The respondent however, disputed the factum of the amalgamation of the plot. Respondent case is that he had purchased the plot in question from one Smt. Bharpai Devi on 16/07/1982 who had executed Power of Attorney, Agreement to Sell and a Receipt of payment of consideration amount in his favour. A Receipt bearing No. 28 dated 19/02/1978 issued by M/s Panchsheel Garden Colonizers to Smt. Bharpai Devi was also given to the respondent which itself mentioned that the plot No. 74 in Block A, Panchsheel Garden, Shahdara was measuring 200 sq. yds. The respondent also submitted the affidavit of Smt. Bharpai Devi sworn on 27/06/2012 in which she deposed that she had purchased this plot No. 74 measuring 200 sq. yds situated in Village Uldhanpur in the Abadi of

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Navin Shahdara, Panchsheel Garden illaka , Shahdara, Delhi from M/s Panchsheel Garden Colonizer in the year 1970 and payment made in installments. She further deposed in the affidavit that there was no amalgamation of the plot after it was purchased and she had sold this plot measuring 200 sq. yds to Sh. Naresh Gaur in the year 1982. The respondent also placed on the record the copy of the GPA, Deed of Will, Affidavit of Smt. Bharpai Devi, Receipt and Agreement to sell on the record.

6. Sh. Naresh Gaur, Respondent had clarified that confusion with regard to the amalgamation of the plot had arisen since by mistake he had filed the papers of his plot located at Subhash Park alongwith the paper of plot in question to the MCD with the application for regularization. The MCD had filed the comments by the Dy. Law Officer with the introductory note of a JE (B), AE (B) and EE (B), Shahdara North. The Dy. Law Officer in his note stated that there is no link between the documents mentioned at Sl. No. 1,2 & 3 in application, hence, clarification would be required. The respondent had clarified that Sale Deed dated 27/06/2010 and 29/06/2010 (mentioned at Sl. No. 1 & 2 of the application). in fact have no relevance to the premises in question and these Sale Deeds relates to a plot in Subhash Park. The respondent had relied upon the Receipt No. 28 dated 19/02/1978 issued by M/s. Panchsheel Garden Colonizer and other documents executed by Smt. Bharpai Devi to claim his title to plot in question.
7. The factual position which emerges from the submissions made is that the plot in question i.e. 1/1660, Panchsheel Garden was purchased by the respondent in the year 1982 from Smt. Bharpai Devi who had executed Power of Attorney, Agreement to Sell, Receipt, Affidavit and Will in favour of the Respondent. These documents show that the plot purchased by the respondent was measuring 200 sq. yds. The receipt No. 28 dated 19/02/1978 issued by M/s Panchsheel Colonizer in favour of Smt. Bharpai Devi also

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mentioned the size of the plot as 200 sq. yds., so as per respondent's claim the question of amalgamation of the plot does not arise in this case because it was purchased by Smt. Bharpai Devi somewhere around 1970, which have been confirmed by her affidavit dated 27/06/2012. The cut of date for amalgamation of plot fixed by MCD is 16/02/1977. Therefore, the issue of amalgamation plot does not arise in this case, and it need not be gone into any further for the reason that the MCD would consider the claim of the respondent for the regularization of the construction applied by the respondent vide his application dated 19/07/2004 as per its rules, regulations and norms.

8. The respondent had undertaken before the Forum that he would get the construction regularized and pay the applicable charges to the Corporation on or before December, 2014. In case regularization is not allowed, the Corporation may proceed in the matter in accordance with law.
9. Despite the construction being without the sanctioned plan and thus unauthorized, it is protected by the Delhi Laws (Special Provision Act), 2011. The MCD also had placed on record internal note dated 04/12/2012, wherein it is stated that notice issued for initiating action against encroachment, unauthorized construction / development shall be deemed to have been suspended and no punitive and coercive action would be taken till 31/12/2014.
10. Thus, the respondent has protection of Delhi Laws (Special Provision Act), 2011 and MCD cannot take any punitive action like demolition or sealing of the property till December, 2014.

In such a situation it would be a futile exercise and would serve no useful purpose to continue with the enquiry or making any recommendation for removal of the unauthorized construction as the Delhi Laws (Special Provision Act), 2011 provide for maintaining

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status quo in the entire NCT of Delhi till December, 2014. This forum is conscious of the fact that an quantum increase in the population in Delhi has led to unabated urbanization with mushrooming growth of unauthorized constructions even in authorized colonies. There is a need to strike a balance between the ever increasing need of housing in the city and an orderly growth of the city by curbing unauthorized constructions and encroachment of public land. The construction without proper safe guards and without following the building bye-laws pose a hazard to life of citizens, therefore, there needs to be a check on such activities. Law by itself may not be sufficient to tackle this problem. Therefore, a general awareness in this regard is required. Who can bring it in a better way than the representatives of the people? If a "Public functionary", who is an elected representative of his Constituency, sets a higher standard of conduct, then an ordinary citizen would definitely follow him. A "Public functionary" has to set an example by strictly abiding by law which would inculcate law abiding tendency among his constituents as well.

11. The respondent, Sh. Naresh Gaur is a Member of Legislative Assembly of Delhi and is in the beneficial enjoyment of unauthorized construction which was raised by him in the year 1985. By applying for regularization of the construction on deposit of the regularization fee and charges, he has undertaken to abide by law. As on this date, however, he is protected by the Delhi Laws (Special Provision Act), 2011 and no punitive and coercive action can be taken against the unauthorized construction. In view of the undertaking given by the "Public functionary" that he would get his construction regularized and in case it does not get regularized, the Corporation may proceed in the matter in accordance with law, it would be appropriate to dispose of the matter by holding and observing as under :

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- (i) The respondent "Public functionary" would earnestly follow up the application of regularization on deposit of regularization fees / charges.
 - (ii) In case the "Public functionary" fails to obtain the regularization of property in question, Corporation would be free to proceed in accordance with law, upon the protection under the Delhi Laws (Special Provision) Act, 2011 coming to an end.
12. 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 recommendations 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 : 20th May, 2013.
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