

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin

Complaint No. C-516/Lok/2010

Lokayukta on its own motion in Re:

Ms. Preeti Behn

Original Informant

And

Sh Jamalludin, MCD, Councillor

Respondent

1. Sh. Viraj R. Datar, Mr. Cheten Lokur & Mr. Mayank Mikhail Mukherjee, Advocates, Amicus Curiae.
2. Mr. K.S. Zaidi & Mr. Saud Ahmed, Advocates for the Respondent Sh. Jamalludin.
3. Sh. Ajay Arora, Standing Counsel for MCD.
4. Sh. Bhushan Kumar, EE (B), CNZ, SDMC.

ORDER

1. The present inquiry is one of the many inquiries initiated on the basis of information supplied by **Ms. Preeti Behn, Councillor** regarding unauthorized constructions and violations of Municipal By-Laws in properties owned or in occupation of 68 "Public Functionaries" i.e Councillors, MLAs and Ministers.

This was a sequel to an inquiry initiated against Ms. Preeti Behn herself, wherein she 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 Bye Laws and even in some cases, encroachment on public land.

2. Based on the information provided by Ms. Preeti Behn, status reports were called for from the Municipal Authorities in respect of properties, details of which were furnished by Ms. Preeti Behn. Pursuant to the status reports received, inquiries against several Public Functionaries, were initiated including in the instant case.

A notice dated 06.12.2010, bearing No. C-516/Lok/2010/7931 under Section 7 read with Section 2 (b) of the Delhi Lokayukta and Upalokayukta Act, 1995 (hereinafter referred to as the Act) was issued to the Respondent Councillor. The notice, listed following violations/deviations from Municipal Laws in Property No. 85, Okhla Village, Jamia Nagar, New Delhi, there were:-

(i) Unauthorized construction of 150.60 sq. mtrs. without any sanctioned building plan out of which 131.77 sq, mtrs. was compoundable, but had not been regularized, while 18.83 sq. mtrs. was non compoundable, which had not been demolished.

(ii) Projections on municipal land.

(3) Notice was duly served. Respondent filed reply dated 06.01.2011. It was averred in the reply that the building had been constructed by his grand father, who was a land lord of village Okhla, in 1971. Further his grand father gifted the ground floor of the building to him to start office after he completed his engineering. It was averred that the Respondent got elected as a Councillor in the year 2007. He had duly mentioned in his election returns, the above premises as belonging to him. It is claimed that the building is situated in Lal Dora of village Okhla. The village itself has been urbanized. The building in its present state has been used all along by the family members without any objection by Municipal Authorities.

It is claimed that the non-compoundable area was negligible as MCD officials had not surveyed the property properly. Further, the demolition of the non-compoundable area would entail complications as the building was multi storied and irreparable loss and injury would be caused to the residents of the building. It was pleaded that the building was in existence since 1991, while the Act came into force in the year 1995. Respondent had not made any construction during his tenure as a Public Functionary.

Respondent also claimed that punitive provisions of the Municipal Corporation Act, could not be invoked in view of Section 2 (ii) of Delhi Special Provisions Act, 2009 and status quo was required to be maintained.

(4) During the course of hearing on 06.01.2011, Counsel for the Respondent did not press objection to the jurisdiction of the proceedings. It was stated that the Respondent would get the property regularized and pay the charges therefor. Further the non compoundable portions, if any, would be demolished of their own. Matter was adjourned to enable the Respondent to apply for regularization and the MCD was asked to process the application, expeditiously.

(5) It is not necessary to record in detail the day to day proceedings in the matter, except to notice that time was being given to the Respondent to apply for regularization and complete the process. Further, as the extent of the compoundable and non compoundable areas were being disputed, inspections were directed to be carried out by the MCD and reports to be submitted. Respondent was also permitted to raise objections to the non compoundable area as determined by the MCD, alongwith his Architect. The MCD officials were directed to

consider the objections and decide the same. These giving reasons proceedings went on from 10.02.2011 to February, 2012. During these proceedings, the Respondent who had earlier submitted that he would like his other family members to join in regularization application on 25.11.2011, did a volte face and stated that there were no joint owners and he was the sole owner. Thereafter, the Respondent on 12.01.2012, personally claimed that non compoundable portions have been removed by him. Further, that any non compoundable portions pointed by the MCD would further be demolished by him of his own volition, before the next date i.e 14.02.2012. The Respondent personally did not appear thereafter but was represented through his Counsel.

(6) Based on the affidavit of the Executive Engineer (B), SDMC as filed, the compoundable area works out to 138.36 sq. mtrs while the non compoundable area works out to 18.33 sq. mtrs. Additionally, a point of controversy is Respondent's claim that on the 4th floor, he has only a 'Mumty' i.e a structure is provided over the stairs for protection against rain etc. and for final access. MCD has filed photographs of the existing structure of the 4th floor. From the structure on the 4th floor, it is apparent that it is a room with toilet, which appears to be of recent origin. The construction on the 4th floor in any case is not compoundable. MCD has reported that the same has not been removed despite claims by the Respondent. We thus have a situation where the Respondent on ones hand in reply claims protection under the Delhi Special Provisions Act, 2009 while simultaneously claiming that he has removed the non compoundable portions.

In the proceedings, he stated and agreed to demolish the non compoundable areas but failed to do so. Undoubtedly, the provisions of Delhi Special Provisions Act, 2009 which has been extended from time to time, with the last one being of 2011 apply. These constructions enjoy the protection under the Act till 2014 and status quo is required to be maintained about them. Hence, no action for demolition in enforcement of the Provisions of Municipal By-laws can be taken by the Corporation. Especially, in this case where Respondent's claim is that the construction is of 1971, even though the 4th floor may be of later origin.

(7) At this stage, let us also consider the statement of the Respondent that he had himself not constructed or carried out any unauthorized construction personally and had inherited it or was gifted by his grand father. However, the above does not take into account the fact that as a Public Functionary, he is in beneficial enjoyment of unauthorized construction or a construction which is in violation of Municipal By-laws, especially when the 4th floor construction appears to be of a later origin.

(8) He has not ceased his beneficial enjoyment of the same, which itself could provide a cause of action for breach of norms of integrity and conduct expected of a Public Functionary. Not only this, the Respondent has himself been changing his position from having agreed to remove the non compoundable portions and getting demolished, by failing to appear subsequently and not abiding by his statement and claiming the benefit of Delhi Laws (Special Provisions Act), 2009.

(9) 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.

(10) In the instant case, even though the Respondent himself had not raised unauthorized construction but he has continued in its beneficial enjoyment and the construction on the 4th floor which he claimed to be a 'Mumty' has been found to be of a proper room with toilet and which is comparatively new construction. The conduct, in these circumstances of the Respondent has not been upto what is expected or required of a Public Functionary.

(11) Accordingly, he as a 'Public Functionary' should avoid utilization and enjoyment of properties or their beneficial enjoyment, when it involves violation of Municipal Bye-laws. The Respondent in these circumstances could have on his own violation demolished the non compoundable construction on the 4th floor of a room and toilet, which is non compoundable and which he had even agreed earlier.

(12) 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.

(13) 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 zone of Corporation for compliance. Nothing stated herein will come in the way of the Corporation from proceeding against the unauthorized constructions on the expiry of the protection granted under the Delhi Laws (Special Provision) Act, 2011, coming to an end or in demolition of the 4th floor construction if the same is found to be subsequent to 2007 and not entitled to protection under the Delhi Laws (Special Provision) Act, 2011.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

DATE: 24th June, 2013

Rekha