

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-589/Lok/2010

Lokayukta on its own Motion

In Re:- Enquiry u/s 7 read with section 2 (b) of the
Delhi Lokayukta and Uplokaykta Act, 1995

AND

Ms. Preeti Behn Original Informant

Vs.

Sh. Veer Singh Dhingan, MLA Respondent

Present:-

1. Sh. Viraj R. Datar, Mr. Chetan Lokur Advocates,
Amicus Curiae.
2. Sh. P.N. Mishra and Ms. Chetan Verma Advocates for
respondent.
3. Sh. Ajay Arora, Standing Counsel MCD & Sh. Sanjay
Kumar EE (B), ShahdaraNorth, EDMC.

ORDER

1. The present inquiry is one of the many inquiries initiated on the basis of the information supplied by Ms. Preeti Behn, Councillor regarding unauthorized construction and violation of Municipal Bye-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, Delhi. She complained of being singled out, while 68 "public functionaries" continued to enjoy the benefit of unauthorized

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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 the properties details of which were furnished by Preeti Behn. Pursuant to the status reports received, inquiries against several "public functionaries" were initiated including in the instant case.

3.1 Status report in the instant case revealed that the premises occupied by the 'public functionary' was situated at 631, Village Tahirpur Sarai, Delhi an urban village. Accordingly, a sanction plan was required and in the absence thereof, the construction to be treated as unauthorized construction, even though it may be within the permissible limit i.e. FAR. The plot area is 60 sq. yds. The construction is only of 1450 Sq. ft. on all floors as against 1890 sq.ft. permissible on 350 FAR. Projection of "Chhajja" on municipal land was also reported but same is protected under a notification by MCD. The status report thus raised the question of the 'public functionary' being in possession/occupation of house constructed without a sanctioned plan and not even getting it regularized.

3.2 A notice dated 31.1.2011 bearing No. C-589/Lok/2011/8859, 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.

3.3 Notice was duly served upon the respondent. Appearance was entered by Sh. P.N. Mishra, Advocate on behalf of the respondent.

4. Respondent stated that the entire constructed area is within the permissible limit and the deviations being compoundable, he

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would move a regularization application, for sanction of the plan.

4.1 Regularization application was submitted on 7.3.2011. Counsel for respondent informed this Forum that all the documents sought by MCD with regard to the regularization of the construction have been submitted, except the ownership documents. It was claimed that there was no record of ownership available of village Tahirpur from the days of British Rule prior to Independence and the status of inhabitants was that of occupants.

4.2 Respondent contended that he was in lawful possession of the premises since 1973 and prior to the said date one of his uncles Sh. Phullu was in occupation of the said premises till his demise. It was submitted that in these circumstances factum of possession which was duly supported by his Ration Card, Election Identity Card and Passport, giving the premises in question as the address of the respondent as his residence be accepted instead of insisting on the documents of ownership. It was further argued that it has been admitted by MCD that no house tax was being levied on the houses situated in the said village.

5.MCD was asked to verify the factual position. During the proceedings from May, 2011 till the order was reserved on 17.04.2013 various directions were given from time to time to ascertain the position with regard to availability of the revenue records and status of the land on which premises was built.

5.1.A co-joint reading of the response of MCD and the communication of Deputy Director (LM) East Zone, DDA dated 22.02.2012 reveals that House No. 631 Village Tahirpur was a

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part of Khasra No. 523 min. to 526 min. Further that the land in question had been acquired vide Award No. 8/1969. The land had been notified under Section 22 (i) of the Delhi Development Act vide Notification No. F.8(49)/63 L & H dated 23.2.1972. Later on it was transferred to the Engineering Department of DDA for development of Dilshad Garden Housing Scheme for residential purposes. It was earlier known as Jhuggi cluster called Tahirpur Sarai near Dilshad Garden. It was reported that in the last 30 years the occupants have converted jhuggies into pucca structures.

5.2 In his communication the Dy. Director (LM) further stated that since these structures are prior to February 2007, the same were protected under the provisions of National Capital Territory (Special Provision) Act 2009 which is extended upto 31.12.2014.

5.3 In view of the fact that the land on which the premises is built falls in Khasra No. 523 min. to 526 min. of village Tahirpur and the land being subject matter of the Award, directions were issued to ascertain whether compensation had been paid and whether the public purpose for which land was acquired still subsists?.

5.4 In the affidavit filed by Sh. Harmeet Singh, Director LM, DDA it was stated that the land in question falls in Khasra No. 523/5 min. to 526/5 min. of village Tahirpur and is acquired land of DDA, placed at the disposal of DDA vide Notification u/s 22 (i) of Delhi Development Act. The land was transferred to Engineering Department of DDA for Dilshad Garden Housing scheme. In the said affidavit it was further averred that the compensation for the acquired land was deposited with the LAC in revolving fund and the possession of the land was handed over to DDA by the LAC. He however could not confirm as to whether the

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compensation of the land in question was paid to its legitimate owners or not. He further stated that the plan for implementation of the acquisition is existing. Land under reference is encroached and structures thereon are existing prior to year 2002 and the same are protected under the National Capital Territory (Special Provision) Act 2009 extended upto 31/12/2014.

6. The position which gets crystalized is that the land in question was originally jhuggi cluster known as Sarai Tahirpur which has been converted into pucca structures over a period of time. Land has been acquired, Compensation was stated to be deposited in the revolving fund without any details of its being released to the original owner or not being available. Though it has been claimed that the possession of the land in question was handed over to the DDA but the same appears to be a mere paper transfer as in fact the actual physical possession of the land in question remained with private persons who were in occupation of the land and had built structures thereon. It is admitted by DDA as well as by MCD that the said structures are protected under the National Capital Territory (Special Provision) Act 2009 extended upto 31/12/2014.

7. Now coming to the question of violation of Municipal Bye Laws by the "Public Functionary". There is no dispute that the structures were raised much prior to 1973 possibly by the uncle of the respondent. Moreover the structures as raised are within the compoundable limits or within the permissible FAR for a plot of 60 sq. yards. In other words the only violation is that the structure has been raised without getting the building plan sanctioned. It is stated that no building plans were required to be sanctioned when the structures were raised as it was a rural

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village and the sanction of building plan came to be required only upon urbanization of the village.

8. Id. Amicus Curiae has placed reliance on the Mange Ram and Ors. Vs. UOI & Ors. CWP NO. 6425/1998 as also Harijan Kalyan Samiti & Ors. Vs. Govt. of NCT of Delhi & Ors. Reported at 2010 III AD (DELHI) 513.

8.1 In para 18 of the later judgment possession of the petitioners was protected till a decision with regard to regularization of the unauthorised construction was taken. In the event of the colonies not being regularized notices were required to be served upon all of them for making alternative arrangements.

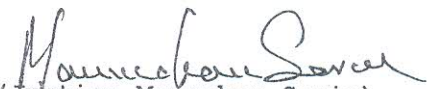
9. But in view of the affidavit of the respondent, Ex.CW-1/1 it may not be necessary to go into these aspects as the respondent Veer Singh Dhingan, MLA in his affidavit has stated that he has vacated the said premises i.e. H. No. 631 Village Tahir Pur Delhi and has been residing at D-1, LG-8, Dilshad Colony, Delhi. In the said affidavit, he has further averred that he has no concern with the said property and he shall not claim any right, title or interest in future. In their report, the MCD authorities confirmed that the respondent is not residing at the said house and his married sons are residing there.

9.1 In these circumstances, the respondent has ceased to be in the beneficial enjoyment of construction without a sanctioned plan. Moreover the respondent had done all that he could have done and which was within his powers to adhere to the norms of integrity and conduct expected from him by seeking regularization. At present he is not in the enjoyment of the demised property or the unauthorised construction.

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10. In these circumstances, notice of inquiry initiated against the "public functionary" is discharged. Nothing stated however shall effect the right of Municipal Authorities to proceed in the matter further in accordance with law, after the expiry of the protection granted under the National Capital Territory (Special Provision) Act 2009 extended upto 31/12/2014.

Dated 4th July 2013
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(Justice Manmohan Sarin)
Lokayukta, Delhi