

**BEFORE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO.C-513/LOK/2010**

Lokayukta on its own motion in Re:

Ms.Preeti Behn, Original Informant
And
Ms. Darshana, MCD Councillor

Present:

1. Mr. Viraj R. Datar, Advocate, Amicus Curiae with Mr. Chetan Lokur and Mr. Mayank Mikhail Mukherjee, Advocates.
2. Mr. Ajay Arora, Advocate, Standing Counsel for MCD.

ORDER

1. The proceedings initiated in the present case are a sequel to the information given by one Ms. Preeti Behn, Municipal Councillor, against whom inquiry for unauthorized constructions in Jhilmil Colony, Shahdara, Delhi, was being conducted in Complaint No. C-282/Lok/2010. Ms. Preeti Behn, Municipal Councillor, forwarded a complaint/communication raising her grievance before this Forum that while proceedings had been initiated against her, she was, in fact, being singled-out, while no action had been taken against numerous powerful and well-connected MLAs and Councillors. She furnished a list of Councillors and MLAs giving particulars and properties having unauthorized constructions that had been either carried out by Public Functionaries themselves or they were having beneficial enjoyment of unauthorized constructions and encroachments.
2. Pursuant to the said receipt of information, 65 cases were initiated after scrutiny of status reports received from the Corporation.

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3. In the instant case on 6th December, 2012, a notice under Section 7 read with Section 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 was issued to the Respondent Smt. Darshana, MCD Councillor, in respect of property No. D-88. Bhagwan Nagar, Delhi-110014, As per notice dated 6th December, 2012, violations of the Buildings Bye Laws were found in as much as there was no sanctioned building plan for constructed area of 318.74 sq. mtrs out of which 278.74 sq. mtrs was compoundable, which had not been regularized and 39.82 sq. mtrs was non-compoundable which was required to be demolished. There are also projections on Municipal land which were compoundable. Based on the above, prima facie, the Respondent Smt. Darshana, Municipal Councillor was found to have failed to act in accordance with the norms of conduct which ought to be followed by the Public functionary and show cause notice as stated was issued to her.
4. Respondent, Smt. Darshana, appeared on 10th December, 2012 and submitted that she would come up with the proposal regarding demolition of the non-compoundable portions and regularization for the rest. On the next date, i.e 6th January, 2011, she stated that the property in question belonged to Sh. Sushil Kumar, her brother-in-law. A General Power of Attorney was issued by Smt. Ram Wati, her mother in law, the owner in favour of Sh. Sushil Kumar, as also a 'Will' executed by Smt. Ram Wati bequeathing the property to Sh. Sushil Kumar. Copies of General Power of Attorney and Will were produced.
5. From January, 2013 till August, 2013, the inquiry proceedings are replete with efforts made for

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regularization, directions being given to Municipal Authorities for processing of the regularization application, attempts at removal of difficulties and objections coming in the way of regularization and to ascertain the exact status and location of the property qua the regularization scheme for inclusion in the lay out plan of colonies approved for regularization. The concerned colonies were Sunlight Colony, Jiwan Nagar, Bhagwan Nagar, Sidharth Nagar etc. It is not necessary for the purpose of this order to delve into details or narrate the directions and the developments from time to time. It would suffice to broadly summarize the position, with regard to the ownership and user, location of the property and the feasibility of it being incorporated in the lay out plan of the colonies in question for regularization.

6. Regarding the ownership of property, as noted Respondent's mother-in-law as purchaser of property is stated to have issued General Power of Attorney and Will in favour of her son Sh. Sushil Kumar. The property was being used for residence by the family of Smt. Ram Wati and her sons namely, Sh. Vijender Kumar, Sh. Subhash Kumar, Sh. Tilak Raj etc. In the event, regularization application was filed by Sh. Sushil Kumar. The deficiencies in the regularization application were pointed out by the Corporation. Directions were given for removal of impediments.
7. Respondent claimed to have removed the deficiencies. The Town Planning Department did not accept the location of premises in the part lay out plan. Respondent /Architect there upon submitted the lay out plan with location indicated. It was then reported that the

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property fell outside the boundary scheme of the regularization plan of Sunlight Colony. It would not be regarded as falling in unauthorized regularized colony. Thereupon the feasibility of its being included in the lay out plans for regularization of Jiwan Nagar, Bhagwan Nagar, Sidharth Nagar and East of Mathura Road, were to be considered. The location was found to be falling outside the regularization plan of Bhagwan Nagar. The Corporation also stated that being a single entity plot, it could not be incorporated in the lay out plan of the colony. The position which emerged was that it was reported as falling outside the regularization plan of Jiwan Nagar, Bhagwan Nagar, Sidharth Nagar and East of Mathura Road.

8. Respondent had then clarified that apart from the house of Respondent's family there were houses and the House in question no. D-88, Bhagwan Nagar fell between 88, A, B, C and E, F & G. In other words, it was a cluster of houses which were outside the boundary of the colonies. The feasibility of inclusion of these cluster of houses in the lay out plan for regularization was also directed to be evaluated. The Town Planning Department of Corporation however, did not consider the same as in its view the location fell on the land belonging to DUSIB. Curiously, DUSIB filed an affidavit that it was not located on their land. Notices were also issued to DDA and the Deputy Secretary (LA), L & B Department of GNCTD, to ascertain whether the said land belonged to DDA and whether it had been acquired? The DDA also filed a report stating that land in Khasra no. 430-431/432 min. were duly acquired and were enclosed with a boundary wall. It was also

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clarified that D-88. Bhagwan Nagar falls outside the boundary. DDA was also directed to inform whether it was in possession of the entire land that had been acquired or whether some land falling outside was acquired land. The position which finally emerged was that the premises no. D-88 Bhagwan Nagar fell outside the layout of the said colonies. The DUSIB has also filed an affidavit that it was not part of their land so as to come within the Sunlight Colony. The DDA also says that it was outside the acquired land. In another words the status is analogous to "No Man's land".

9. The Corporation had earlier stated that the protection of The National Capital Territory of Delhi Laws (Special Provisions) Act also applies. The question to be considered in these proceedings is the conduct of the Respondent. In the instant case, I find that though the property was owned by Respondent's mother in law, who had sought to transfer the same by execution of Power of Attorney and Will to Mr. Sushil Kumar, the respondent had even prevailed upon the family members to submit a regularization application. Further she had initially indicated that the family would also give the proposals regarding the demolition of the non-compoundable areas. Despite family's efforts made for processing the regularization application, it has not been possible to do so since the house in question and few others are found to be falling outside the lay out plan for regularization of Sunlight Colony, Bhagwan Nagar, Jiwan Nagar, Sidharth Nagar etc. DUSIB has stated that it is not located on their land, while DDA also claims it is in possession of its acquired land. This being the situation, regularization is not feasible. The Respondent

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on her part has done all that she could do to process the regularization application, persuaded her family members for following the same. She therefore cannot be faulted on this account. Moreover the Respondent has also filed affidavit and Undertaking dated 2nd July, 2013 of herself and her husband, wherein they had confirmed that they are now residents of 22 Sunlight Colony No. 1, New Delhi. Further neither she nor her husband or immediate family members have any right or ownership in Property No. D-88 Bhagwan Nagar. Further they will not claim any benefit or right in the property or derive any benefit there from and they will abide by the undertaking given.

10. With the above undertaking, the respondent has done whatever she could do to abide by the norms of conduct and integrity expected of a Public Functionary.
11. The notice in this case is accordingly discharged and the inquiry is directed to be closed. Nothing stated in this order shall be deemed to affect the rights of the Municipal Corporation to proceed in accordance with the law with regard to premises No. D-88, Bhagwan Nagar or adjoining premises. Consequently, the notice stands discharged and inquiry is closed.

A copy of this order be sent to Commissioner,
(Central Zone) SDMC.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

Date: 29th August 2013
Bhatti