

**BEFORE THE HON'BLE LOKAYUKTA  
JUSTICE MANMOHAN SARIN  
COMPLAINT NO. C-1757/LOK/2012**

In the matter of:-

SH. AMAN GUPTA  
R/O 440 CHANDNI CHOWK,  
DELHI

...COMPLAINANT/INFORMANT

VERSUS

SMT. SUREKHA GUPTA  
MUNICIPAL COUNCILLOR  
WARD NO. 80

... RESPONDENT

Present

1. Sh. Hari Om Gupta, Advocate for Ms. Surekha Gupta, Municipal Councillor.
2. Sh. K.S. Yadav, Deputy Commissioner, City Zone, North Delhi Municipal Corporation
3. Sh. Ajay Arora, Standing Counsel, NDMC

**ORDER**

1. A complaint dated 10.9.2012, purported to be signed by Sh. Aman Gupta R/o 440, Chandni Chowk, Delhi was received in the office of Lokayukta, Delhi. As per the complaint, Respondent Councillor was misusing the municipal funds in the construction being carried out in House No. 2786, Gali Mata Wali, Chira Khana, Nai Sarak Delhi and House No. 1747, Old Katra, Chira

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Khana, Delhi. It is alleged that no municipal officer had come to stop the unauthorised construction and the Respondent Municipal Councillor was claiming that it was her prerogative to use the municipal funds for the said construction or for a road.

2. Upon receipt of the complaint, notices were issued to Deputy Commissioner, City Zone, North Delhi Municipal Corporation (NDMC) and Commissioner NDMC under section 11 of the Delhi Lokayukta and Uplokayukta Act 1995, calling for a status report to be filed. Notice was also issued to the complainant/informant for furnishing better particulars and for authentication of his complaint. Assistant Director (Investigation) of this office was directed to verify the allegations by a site visit.
3. Assistant Director (Investigation) of this Forum reported that the complainant/informant was not found living at the given address i.e. 440 Chandni Chowk Delhi. There were two shops in the said property which were lying closed. In these circumstances, the complaint was treated as a pseudonymous complaint as the Complainant was not forthcoming and his identity remained undisclosed. However, inspection of the two houses revealed construction of new shops. Eight shops were found constructed in property No. 2786, out of which four shops were occupied by M/S. Suhag Collection, M/S. Parveen Fabrics, M/S. Shazia Fashion and M/s. Suneeta Fashion. The remaining four shops were found having the sign boards of M/S. Nisha Fashion, M/S. Sahil Fabrics, M/S. Sanjana Fashion and M/S. Neelam Textile. Eleven shops were found constructed in House No. 1747 and the finishing work was going on. These shops were lying vacant. Some of them were in the name of

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Malhotra Fabrics, Geeta Fabrics, Vijay Suit and Sarees, Vinod Textile, Deepak Saree Centre, Rahul Textile etc. Local enquiries revealed that these shops were constructed in April/ May 2012.

4. From the foregoing, it would be seen that the complainant/informant had given credible information so far as the carrying out of unauthorized construction was concerned which warranted an enquiry u/s 7 of the Delhi Lokayukta and Uplokayukta Act 1995.

5. Notice was issued to the Respondent Councillor Mrs. Surekha Gupta to obtain her version. Reply was filed on behalf of Mrs. Surekha Gupta. In the reply it was averred that the complaint made by the complainant/informant was a false one as no person by the said name was living at the address given in the complaint or in the vicinity. Further that the complaint has been filed with a motive to malign her image and reputation. Respondent contended that she was carrying out her work diligently and honestly, rather she herself had complained against unauthorised constructions in her constituency. She also denied having spent any money out of her municipal funds on the said unauthorised constructions. She also gave details of the utilization of municipal funds for the purpose of construction of Gymnasium and Sports Club and improvements in the various roads and lanes. She denied having spent any money or having any concern with the said properties or constructions thereon. She pleaded for investigation into this false complaint against her.

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6. Notices were issued to the North Delhi Municipal Corporation and the owners of the properties in question as well as the occupants /tenants. North Delhi Municipal

Corporation filed the status report admitting the factum of unauthorised construction in the said properties. During the enquiry statements of the tenants/occupiers were recorded. During enquiry it was revealed that some of the occupiers had purchased the shops through registered sale deeds executed by M/s. Sarv Shree Developers through its Director Sh. Vishnu Gupta for consideration and the others had taken on rent the shops from said Mr. Vishnu Gupta of M/s. Sarv Shree Developers. Sale deeds placed on record also showed that M/s. Sarv Shree Developers had purchased the said properties from Sh. Rakesh Kumar and Sh. Ram Saran vide sale deeds executed on 23.3.2012. It, therefore, appears that M/s. Sarv Shree Developers after purchasing the properties constructed the shops in question.

7. North Delhi Municipal Corporation in its status report stated that the said properties were booked on the basis of the existing unauthorised construction and from the perusal of the documents as produced by the occupants it was revealed that there was a sea change as it was a case of total reconstruction.
8. This is a case where the informant whistle blower furnished information regarding unauthorized construction which was found to be with substance. The Respondent Municipal Councillor stated that she has neither any interest in the properties, nor they belong to her or any member of her family. She has no objection to any action being taken against the said properties in accordance with law.
9. This Forum has only acted as a facilitator and catalyst in enquiring from the North Delhi Municipal Corporation and goading it into action while performing its statutory

duty to enquire into allegations against public functionary, a councillor in the instant case. As a result thereof part demolition action has been taken in respect of these two properties on the first and second floor, whereas the ground floors have been sealed. The properties have been prevented from being misused after unauthorized reconstructions. It may also be noted that in this case intimation about the unauthorised construction was sent by the police to the Municipal Corporation, yet, the unauthorized construction was carried out.

10. The Deputy Commissioner North Delhi Municipal Corporation stated before this forum today, after filing of the status report, that the first property namely 1747 Chira Khana, Nai Sarak Delhi has been sealed from four points on the ground floor and the second property namely 2786, Gali Mata Wali, Chira Khana, Nai Sarak Delhi has been sealed from 6 points on the ground floor. It is also stated that the consequent demolition action would also be taken within time frame of four months. These properties having been constructed in the year 2012, are not protected under the provisions of The National Capital Territory of Delhi Laws (Special Provisions) Act.
- 11 During the inquiry and in the evidence recorded, nothing has come on record which shows the involvement of the Respondent Municipal Councillor in the unauthorized construction in the properties in question. After hearing Shri Ajay Arora, Counsel for North Delhi Municipal Corporation and the Deputy Commissioner, City Zone, and recording the statement as noted in Para-10, the orders in the matter were reserved on 08-08-2013.

12. Ld. Standing Counsel for NDMC made a submission that in such cases, the Electricity supply company and the Delhi Jal Board, should pass orders for disconnection of the electricity and water supply upon receiving information from Corporation that a demolition or sealing action has been ordered. This would render unauthorised construction commercially unviable. Counsel for NDMC also laid considerable emphasis on the non-availability of water and electricity for discouraging unauthorized constructions, especially, in the walled city where renovations, reconstructions take place without sanctioned plans, unmindful of the safety of the structures in question as also the safety of the adjoining structures.
13. While there is no gainsaying that it is necessary to ensure that in the garb of renovation and repairs, reconstructions are not carried out without sanctioned plan and without safety measures under the supervision of Structural Engineer and Architects. It is also necessary to ensure that we do not have repeat of mishap like of Lalita Park collapse, endangering the safety of the occupants and the neighbouring structures. This is relevant and of importance especially in the case of walled city structures.
14. I have considered and examined the suggestion made. In my view, it may not be desirable to deny the basic amenity of water and electric supply simply on the passing of the demolition order. Demolition orders are required to be passed after issuance of Show Cause Notice by the Assistant Engineer. There is potential and scope for misuse of this provision and if it is coupled with the denial of the basic amenity like water and

electricity, the same would aggravate the woes of citizens, who would be denied these basic amenities simply on the passing of demolition orders. However, as regards denial of water and electricity facility on the passing of a sealing order, it appears to be a rational and reasonable one. The order for sealing is passed by an officer of the rank of Deputy Commissioner after satisfying himself that the premises are not old or occupied. Sealing is done primarily to prevent ongoing unauthorized construction. In such cases where part of the premises are even completed and the balance is undergoing construction, the sealing order coupled with the suspension of water and electric supply would render the same commercially unviable. Non-availability of water and electricity in sealed premises would discourage tampering of seals and render user of premises difficult. Certain aspects to ensure prompt action on reports of unauthorized constructions have been considered and recommendations made.

Accordingly, in terms of Sec. 16 of the Delhi Lokayukta and Upalokayukta Act, 1995, it is recommended to the Competent Authority that adoption of the procedure mentioned below would be useful in preventing the rampant unauthorised construction in the metropolis of Delhi and resultant corruption and malpractices:-

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- (i) Whenever a Beat Constable or other police personnel notices unauthorized construction activity either by stacking of building material or otherwise, he shall be responsible for giving information of the same to the local office of Municipal Corporation after making an entry in Daily Diary.

report / information to be supplied by the Beat Constable / police personnel showing complete particulars and address of the premises and it shall be sent within a day of the entry in the Daily Diary.

- (ii) The concerned SHO shall also send, on a fortnightly basis, consolidated list of the unauthorized constructions noticed with the address of the premises to the EE (Building) for necessary follow up action. Copy be also sent to concerned Municipal Councillor.
- (iii) Concerned EE (B) of the Zone shall be responsible for ensuring inspection of the sites and initiating action to ensure that no unauthorised construction is being carried out and if the same was being carried out, the same is booked.
- (iv) Once, after due process of issuing notices etc, an order for sealing is passed, copy of the same be sent to the concerned Electricity Supply company and the Delhi Jal Board requesting them for suspending electricity and water supply, unless there is a stay granted against the sealing order by a Competent Court or Tribunal.
- (v) Concerned SHO and the EE (B) be made personally accountable for ensuring compliance with the above procedure. Further, for assessing performance of the Constables / police personnel and the Executive Engineers / Assistant Engineers / Junior Engineers of the Corporation, successful implementation of the above procedure should be

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included in the criteria for evaluating their performance and Annual Confidential Reports.

The above are some of the suggestions for consideration and adoption, these are not exhaustive.

15. Notice, at this stage, may be taken of a communication dated 17-08-2013 addressed by the Respondent Councillor to the Lt Governor Delhi and copied among others to the Commissioner (NDMC) and to this Forum. The Registry has put up the said letter with this inquiry for information of the Forum. In this communication, the Councillor has narrated the rampant illegal construction in her Ward No. 80 in the walled city of Chandni Chowk. The Councillor has referred to the fire incidents of Bhagirath Place and a building collapse near Moti Cinema. She has stated that having the responsibility of the safety of lives and property in her constituency, she is compelled to raise the issue and on account of lack of concern and understanding of the gravity of the matter by the Zonal Deputy Commissioner of the North Delhi Municipal Corporation, who has not acted on her complaints, she has raised this issue with the Lt. Governor. The Councillor has noted the unabated illegal constructions going on and given instances of glaring examples of the same. She mentions, among others, construction of large third floor of 600 Sq Yds during the extended holiday weekend of Eid at 63-Bagh Diwar, Standard Hotel Building, Chandni Chowk, Delhi. She has mentioned also the case where a basement was sought to be constructed. It is not necessary to reproduce details of ten cases of blatant unauthorized constructions without sanctioned plan mentioned by her. She has

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pointed out cases where the builders are carrying out commercial constructions risking the safety of adjoining buildings. The aforesaid communication does not affect the inquiry in question. However, it brings to the fore, the nexus between the builders and the Corporation staff in carrying out of unauthorized constructions.

It is hoped and expected that the official of the Corporation would perform their statutory duties. The effort of the Councillor in raising this issue with His Excellency, the Lt. Governor, deserves to be commended. The public functionary, in the instant case, even at the risk of incurring the displeasure and becoming unpopular among some of her constituents, has discharged her primary responsibility of abiding by the rule of law in the larger public interest to prevent unauthorized construction ensuring safety of the residents and the well being of the constituents. This is the conduct expected of a 'public functionary'. It is recommended to His Excellency to issue necessary instructions in respect of cases reported.

16. As far as the present inquiry is concerned, the same is closed as nothing has been found in the evidence recorded, against the Respondent Municipal Councillor Mrs. Surekha Gupta. The inquiry has served a collateral public purpose in bringing to light the unauthorized construction and corrective action being taken thereon and recommendations and suggestions being made to His Excellency, the Lt. Governor, under Sec. 16 of the Delhi Lokayukta & Upalokayukta Act, 1995.

  
(JUSTICE MANMOHAN SARIN)  
LOKAYUKTA

Date: 29th AUGUST, 2013

HEMANT/PARVESH