

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-479/Lok/2010**

IN RE- LOKAYUKTA ON ITS OWN MOTION

Preeti Behn Original Informant

Versus

Shri Ravinder Chaudhary, Municipal Councillor,

H-58, NDSE-I,

New Delhi-110048 Respondent

AND

IN THE MATTER OF

COMPLAINT NO. C-1291/Lok/2012

Mr. Gautam Anand,

R/o. 62, Sector-37, NOIDA,

Uttar Pradesh-201301Complainant

Versus

Shri Ravinder Chaudhary,

Municipal Councillor,

H-58, NDSE-I,

New Delhi-110048 Respondent

MB

REPORT

1. NDSE-I Residents Welfare Association, in a Complaint dated 21-09-2010, alleged that Shri Ravinder Chaudhary, Municipal Councillor and Respondent herein had carried out unauthorized and illegal construction in premises No. H-58 and H-59 NDSE-I. Further, that he had encroached upon land adjoining House No. 73-75A in South Extension Part-I, which was meant to be kept as an open space / park. MCD was accused of not demolishing the illegal constructions in premises No. H-58 and H-59. The complaint is annexed hereto as **Annexure-A**.

2. This complaint was listed for hearing along with Complaint No. C-282/Lok/2010, wherein allegations of unauthorized construction and encroachment on public land by over 60 public functionaries was being inquired into.

3. During the course of hearing, another Complaint registered as C-1291/Lok/2012, filed by Complainant Shri Gautam Anand against the Respondent was clubbed with Complaint No.C-479/Lok/2010 for, being heard together since they entailed similar allegations against the same public functionary. The complaint is annexed hereto as **Annexure-B**.

4. Respondent being a 'public functionary' within the meaning of Sec. 2(m) of the Delhi Lokayukta & Upalokayukta Act, 1995 (hereinafter referred to as "the Act"), was issued notice for inquiry under Sec. 7 r/w Sec. 2 (b) of the Act, in both the complaints i.e. C-479/Lok/2010 & C-1291/Lok/2012.
5. Simultaneously, status reports were also sought from the MCD in respect of properties belonging to the Respondent and / or in which he had interests and which were allegedly having unauthorized and illegal constructions.
6. The inquiry in the complaints witnessed a number of hearings, during which this Forum kept on following up with the MCD, reminding them of their statutory duty of proceeding against unauthorized constructions and goading them into action, by raising specific queries and seeking reports on action taken.
7. It is not necessary for this Forum to elaborately describe or deal with the various stages of inquiry proceedings. It would suffice if the findings reached regarding the extent of compoundable and non-compoundable portions of unauthorized constructions reported in Respondent's properties are spelt out

together with the inferences regarding the conduct and act of the Respondent.

8. As the record would show, in these proceedings the Respondent had admitted the factum of unauthorized construction in properties H-58, H-59 and H-60, NDSE-I, after his election as Municipal Councillor but he claimed the same to have been removed/demolished.
9. The allegation of Respondent encroaching upon land adjoining Plot No. H-73-H-75A, NDSE-I, meant for a park, was not found to be substantiated. As per the status report filed by MCD, the said land was not part of a park but was simply adjacent to the road across the park. One Ashok Kumar was found to be the owner of Plot No. H-74 and it was developed by DLF.
10. The unauthorized construction in House No.H-58, H-59 NDSE-I was also subject matter of a PIL in the High Court of Delhi. Different residents of NDSE-I and particularly part owners of property No. H-58, H-59, H-60 and E-72, who had either suffered sealing or demolition action of their portions in the properties, complained that the Respondent had interest in third and fourth floor of the buildings, where even a guest house was being run. Their grievance was that no

action was being taken against the Councillor, since he was Chairman of the Central Zone Committee of MCD.

11. Gautam Anand, Complainant in Complaint No. C-1291/Lok/2012, apart from complaining in general against unauthorized construction by the Respondent Councillor, claimed that the Respondent, with a view to bring the height of the building E-72 and H-68 within the 15 Mtr. limit, got constructed a concrete cement patch on the road, in front of the said buildings, raising the road level so that the height of the buildings when computed from the raised road level would come within 15 Mtrs and thereby save some part of the top floors belonging to the Respondent from demolition.
12. Gautam Anand listed seven allegations, the first one having already been noticed, the remaining six are:-
 - i) Encroachment of School and in its support reference was made to a newspaper report.
 - ii) Illegal notification of Jag Ram Mandir Marg to benefit himself and his relatives.
 - iii) Respondent continues to encroach on public land and is running a cement shop next to Mother Dairy, NDSE-I, but MCD refuses to take action.
 - iv) Respondent has broken the MCD seals but the police and MCD refuse to take action for reasons best known to them. The height of all the

buildings, in which Respondent has illegal floors, is more than 15 Mtrs but the MCD has remained silent and has manipulated the regularization to benefit the Ex-Councillor.

- v) Respondent continues to keep building E-72 NDSE Part-I sealed to frustrate the other co-owners into selling their portion to him at throwaway prices.
- vi) Reliance Mobile Tower on the terrace of E-72 NDSE-I was illegal and without any permission from MCD. No licence fee has been paid to MCD and the tower was installed by forging the signatures of co-owners. There was misrepresentation regarding consent of co-owners.

13. No supporting evidence was led by the Complainant in respect of allegations at (i) to (iii), which remained unsubstantiated. However, for the other allegations, inquiry proceedings and applications filed from time to time and documents submitted, status reports of MCD, together with the action taken reports, ownership and interest of the Respondent, his family, brothers and father, was found in the under mentioned properties, in respect of which the nature and extent of unauthorized construction carried out are also indicated:-

- i) H-58, NDSE-I - 400 Sq. ft. on the first floor and complete third floor.
- ii) H-59, NDSE-I - Basement, Ground floor, First floor and third floor.
- iii) H-60, NDSE-I - Basement, Second Floor and Third floor.
- iv) E-72, NDSE-I - Second floor roof rights

Regarding the extent of unauthorized constructions and the action taken, the amalgamation of the two properties, i.e. H-58 & H-59 was shown, which was not permissible. Demolition action was taken in respect of the unauthorized construction in the buildings. One room on the fourth floor was left in unusable and uninhabitable condition. The buildings were sealed.

Unauthorized construction was found in all the floors of H-59 owned by the Respondent, completely or partially.

In premises No. H-60, Respondent is stated to be owning the basement, second floor and third floor. The basement was regularized, however, rest of the building was sealed.

In H-68, the Respondent claims that he did not own any part of the building. The entire building except the second floor was sealed.

In E-72, Respondent had interest in third floor and fourth floor. The unauthorized constructions, deviations, excess coverage on the fourth floor were demolished by MCD. Reliance Mobile Phone Tower, which was also without permission, was sealed along with the property. The MCD found tampering of seals of third floor and terrace of third floor of E-72 belonging to Respondent. The electricity meters were found to be active, which demonstrates tampering of seal for use of electricity and premises. Even the cell phone tower on the roof of third floor was found operational. Respondent cannot disclaim responsibility on the plea of being the same to be tenanted / licensed property, not in his power and control.

14. During the course of proceedings, MCD had reported that properties H-58, H-59, H-60 and H-68 were lying sealed. This also hindered the process of demolition of unauthorized constructions and non-compoundable portions. MCD was advised to seek the permission of the competent authority for de-sealing and also approach the MCD Appellate Tribunal before whom appeal in respect of Mobile Tower on the third floor roof

of property bearing No.E-72 NDSE was pending. During the inspection, as directed by the Appellate Tribunal, the seal of the floor was found to be removed and thread strings cut at the entrance of roof of third floor. MCD, in due course re-sealed the premises.

15. RESPONDENT'S DEFENCE

Respondent stated before this Forum that he was willing to remove the non-regularizable portions as per status reports of the MCD. However, he was handicapped since no regularization application could be entertained unless made by all the co-owners and the application submitted by him alone had been rejected. He claimed to have made several efforts to persuade the co-owners of other portions to join but they were not willing. Respondent claimed that other co-owners were illegally demanding that he demolish the entire third floor of E-72 for getting the building regularized, instead of proportionate reduction of the excess areas.

16. Respondent had also filed an F.I.R against the complainant Shri Gautam Anand for defaming him on the social network site, Face Book, under Sec. 66 of Information Technology Act, 2000. Here, it may be noted that in a complaint for defamation of the Respondent public functionary, the complainant

Gautam Anand was picked up from his residence at NOIDA, U.P, and his computers and other materials seized and removed. The family of Gautam Anand had complained to the Lokayukta regarding the persecution by the influential public functionary and of Gautam Anand being arrested because he had mustered courage to complain against the wrong doing of the public functionary. The representation of the mother of the complainant was forwarded to the Police Commissioner, giving the background of the complaint, for necessary action and to ensure that complainants and whistleblowers, who complain against public functionaries are not made to suffer harassment or persecution.

17. Respondent had also pleaded that the premises bearing No. H-58 and H-59 NDSE-I were ancestral and inherited by his father from his grandfather and the construction was completed in 1993. The third floor itself was claimed to have been built by his elder brother without sanctioned plan. In short, the submission sought to be raised was that though unauthorized constructions existed in H-58, H-59 & H-60 were all constructed before the Respondent was elected as public functionary in 2007. It was pointed out to the Respondent Councillor that assuming for the

sake of argument that the constructions were made prior to 2007, even then he was in beneficial enjoyment of the properties having unauthorized constructions, which was also in violation of the norms of integrity and conduct expected of a Councillor, to enjoy the fruits of illegal acts.

18. It is not necessary for this Forum to narrate the contents and nature of each and every allegation of the complainant made against the Respondent as the record is replete with numerous complaints by Gautam Anand, some of which stem out of their personal disputes also. The bone of contention, according to the Respondent, was that the co-owners instead of agreeing to proportionate distribution of FAR which would require all the floor owners to give some area, wanted only the Respondent to demolish his portion which was on the top floor. The co-owners, on the other hand, contended that the Respondent had been following the strategy, on account of his influence on MCD, of having their portions sealed and demolition action being taken, while the Respondent's portion would be left unscathed, so that the Respondent is able to coerce and pressurize them to sell their premises to him at throwaway prices.

19. It was after the initiation of inquiry by this Forum, that Respondent made effort to get the buildings which he owned and /or had interest, regularized. This is evident from the following:-

- i) Owners deposited compounding fee of Rs. 12,42,230-00 in respect of H-60, NDSE-I, vide G-8 No.008828 dated 09-01-2012. The property stands regularized.
- ii) The structure has been rectified by the owners in property No. H-68, NDSE-I, and the same is within compoundable limit of MPD-2021, for which regularization is under process.
- iii) Owners removed the non-compoundable structure in E-72 NDSE-I, which included the Cell Phone Tower on the roof of third floor. Deposited Rs. 15, 94,250-00 vide G-8 No.017955 dated 12-11-2012 and Rs. 4,200/- vide G-8 Receipt No. 017296 dated 15-02-2013 on account of compounding fee. The property stands regularized.

20. At this stage, it would be appropriate to deal with the allegation regarding illegal concretization of the road in front of the building E-72 and H-68, NDSE-I. Both these buildings happen to be opposite each other. The allegation made by the complainant Gautam Anand was that on account of influence of the Respondent

public functionary, with a view to raise the road level, got constructed a cement patch, by misuse of public funds and government machinery, purely for personal gain of the Respondent. A cement patch of 6-8 inches was raised in front of these two houses only which enabled the Respondent to urge that the height of the building was within 15 Mtrs.

21. The MCD, on a query being raised, denied that the work had been carried out by them. The Deputy Commissioner, Central Zone, MCD was requested to enquire into the matter and submit a report. He carried out a detailed internal investigation and concluded that it was the duty of the Maintenance Division to repair, maintain and protect public roads. The responsibility for development of roads was that of Maintenance & Project Divisions of MCD. He held that it was unthinkable that the concretization could have been carried out without their knowledge. The Executive Engineer (Maintenance), MCD, as also the Executive Engineer (Project), MCD, both denied having carried out any concreting work on Hargyan Singh Arya Marg. Even though a sum of Rs. 3.98 Crores was provided in the Work Order for concretization of all roads, the MCD claimed that it had not executed any work in front of E-72. The concreting done was about 30 Mtrs. in length

and 5-6 Mtrs in width, which was estimated to cost Rs. 1.5 to 2.00 Lacs. It was the duty of the Maintenance and Project Division to ensure that no other private agency could do this work, especially, when it was included in their unexecuted Work Order.

The Deputy Commissioner, while holding the Junior Engineer (Project) and the Maintenance Division responsible, as the work could not have been carried out without their knowledge, concluded that the beneficiary of the entire exercise was the owner of building, i.e. the Respondent, and in all probability the exercise could have been undertaken under his influence / interventions. The Report of the Deputy Commissioner, Central Zone MCD, is annexed hereto as **Annexure-C**.

22. Respondent Councillor denied any hand in the execution of concreting work and submitted that since it was part of the Work Order he could have got the Work Order expedited if he had to use his influence and not get the work done otherwise.
23. Respondent's statement was also recorded on oath on 1.07.2013 and is annexed hereto as **Annexure-D**. Respondent, though initially claimed that all constructions were made in the year 2004 and he did not carry out construction after being elected in 2007,

before concluding admitted that he had carried out unauthorized construction in H-58, H-59 & H-60 after his election in the year 2007. But he claims that the unauthorized construction had since been demolished by MCD and he had sought regularization as per norms. He did not accept the report of the Deputy Commissioner regarding concretization of portion in front of E-72 & H-68.

24. We may also take notice of the compromise reached between the public functionary and Gautam Anand and other owners of E-72. Based on the said MOU, the criminal complaints and other litigation against each other were withdrawn. In terms of the Compromise, Respondent public functionary agreed to demolish the part of third floor from his portion of the property to the extent of bringing the building within the permissible FAR and within the height of 15 Mtrs.

25. Mr. Sanjeev Mahajan, Ld. Amicus Curiae, submitted that the factum of unauthorized construction existing in the properties belonging to and under the control of the Respondent Councillor had been established. During the pendency of the proceedings, Respondent had removed unauthorized construction in E-72 and the illegal Cell Phone Tower had been removed by MCD. H-60 and E-72 are stated to have been de-sealed and

regularized. Disputes have also been settled with the Complainant, Gautam Anand.

26. Ld. Amicus Curiae submitted that the nature and extent of unauthorized constructions and the blatant manner in which they were carried out, especially, the factum of tampering of seals in the premises owned by Respondent, makes out a strong case against the Respondent of having failed to observe the norms of integrity and conduct. This Forum acknowledges the valuable assistance provided by the learned Amicus Curiae, Mr. Sanjeev Mahajan. The Brief Note submitted by the Amicus Curiae is annexed hereto as **Annexure- E**. The Respondent's reply to the Brief Note submitted by the Amicus Curiae dated 1.07.2013 is annexed hereto as **Annexure- F**.

27. Permission for installation of the illegal Cell Phone Tower was given by the Respondent in the first place. The factum of the tower being removed later cannot absolve him totally of his wrongful conduct. Secondly, the concretization of the road in front of E-72 and H-68 was done so as to have the plinth level of the road raised to bring the property height within the permissible limit of 15 Mtrs, which would have enabled the Respondent to save part of the unauthorized constructions on the third floor. The report as submitted

by the Deputy Commissioner, Central Zone-M(I) is well reasoned and plausible. It cannot be lost sight of that the Respondent was the sole beneficiary from that exclusive concreting work. With the concerned departments of MCD denying having executed it, internal departmental action as recommended by the Deputy Commissioner would follow in due course. It is clear that the work could not have been executed without the involvement of the Maintenance and Project Division staff, who are responsible for maintenance and development of the area. With the Respondent being the sole beneficiary, it is idle for the Respondent to claim that he had no role in it. It was the Respondent who benefitted from this work and the preponderance of probabilities lead to the inference that it could have been done only under his influence and at his behest.

28. It also does not stand to reason that the other neighbours might be behind the concretization so as to prejudice the case against the Respondent as the said persons were at the receiving end from the MCD and could not exercise such influence.
29. In view of the foregoing discussion, even though the unauthorized constructions raised or enjoyed by the Respondent have either been demolished and some of

them regularized, the acts of the Respondent show a consistent pattern of behaviour of violation of municipal laws. It is not an isolated instance. Therefore, subsequent demolitions and regularization cannot absolve him of misconduct.

30. The City Fathers are expected and required to abide by municipal laws. In fact their conduct has to be one which serves as a role model for citizens to emulate. Deviant behaviour or aberrations, especially by Municipal Councillors, deserve to be condemned unequivocally. The falling in line subsequently will not wash away the errant behaviour of a Municipal Councillor.

31. The Respondent's acts of - (i) raising as well as indulging in beneficial enjoyment of unauthorized construction, (ii) tampering of seals of properties sealed by the Municipal Corporation, (iii) Permitting setting up of illegal Cell Phone Tower in violation of municipal laws, (iv) Illegal concretization of the road in front of property No. E-72, NDSE-I, so that the height of the building comes within the permissible limit of 15 Mtrs – amount to violation of the norms of integrity and conduct expected of a public functionary.

It is an appropriate case to recommend to His Excellency, the Lt. Governor of Delhi that a "Censure" be issued to the Respondent for his aforesaid acts.

32. Registry shall forward a copy of the Report to the Hon'ble Lt. Governor Delhi, in terms of Sec. 12(1) of the Act.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

DATE: 30th SEPTEMBER, 2013

HEMANI