

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-1755/LOK/2012**

In the matter of : Inquiry under Section 2 (b) (1) read with Section 7 of the Delhi Lokayukta and Upalokayukta Act, 1995 and others.

Complaint received from one Sh. S.C. Bansal & Ors.

.....**Complainants/Informants.**

And

In the matter of : Unauthorized construction being carried out in Sectors-11,16 and 17, Rohini, Delhi, alleging involvement and protection of Sh. Pravesh Wahi, Councillor, former Chairman of Rohini Zone and the Municipal Staff.

And

In the matter of : Inquiry under Section 2(b) (1) r/w Section 7 of the Delhi Lokayukta and Upalokayukta Act, 1995.

REPORT

1. Number of complaints purporting to be from Sh. S. C. Bansal, Sh. Jitender Kumar and others were received in this Forum, alleging massive unauthorized constructions in Rohini area. Numerous DDA Flats and plots were being amalgamated for unauthorized constructions from upper ground floor to 3rd floor. Encroachment on public land, projections on municipal land, etc., were rampant. Details and numbers of prime properties were also mentioned, in the various sectors of Rohini, in the complaints.

2. It was alleged that Municipal staff namely, Sh. Ramesh Meena, Jr. Engineer from MCD etc. were charging illegal gratification of Rs. 5 lakhs per plot for unauthorized constructions. Nexus of the builders/owners with the Municipal



staff and collusion and support of the Chairman of Rohini Zone of the Municipal Corporation, Mr. Pravesh Wahani was claimed in unauthorized constructions.

3. Assistant Director, (Investigation) of this Forum was directed to enquire into the matter regarding allegations of unauthorized constructions and encroachments. He confirmed the factum of unauthorized constructions in Sector-11, 16 and 17 of Rohini. A report was therefore called from Deputy Commissioner, North Delhi Municipal Corporation. Report was received which confirmed the unauthorized constructions of the properties, except few. It was stated in the report that action had been initiated under Section 343 and 341 of the Delhi Municipal Corporation Act, 1957. Demolition action had also been taken in respect of some properties. Report was found to be lacking in material particulars as it did not indicate the extent of unauthorized construction and whether the same was compoundable or not and did not give the state of structures after demolition.

4. These were pseudonymous complaints. None of the Complainants came forward or appeared before the Lokayukta. A letter was received from Sh. S. C. Bansal, Complainant/Informant, purporting to claim that he had not made any complaint. Cognizance was taken u/s 7 r/w Section 2(b) of the Act, as "other information".

5. Prima facie, view was taken that constructions at such a massive scale are not done over night and could not be carried out without the knowledge and complicity of Municipal staff and without the Municipal Councillor being aware of or having knowledge of the same.

6. In the meantime, more pseudonymous complaints were received from others, mentioning particulars of more properties having unauthorized

constructions in the above sectors. Status report was also called from the Corporation in respect of additional properties.

7. It is not necessary to record various proceedings taken from time to time and the status reports received, except to observe that report was also called from the SHO, Police Station, K. N. Katju Marg, Delhi to ascertain whether intimation had been sent by the police to the Corporation, regarding the unauthorized constructions activity noticed by the beat constable. The action being taken by the Corporation and further action that was required to be taken was brought to the attention of the Municipal Engineer while monitoring status reports. It was also pointed out that once opportunity to owners/builders to remove the unauthorized constructions themselves, was given, upon their failure, Corporation could do so at their cost. Further, the desirability of carrying cosmetic demolitions like puncturing the roof, which is rectified/ reconstructed by the owners/builders, at the first opportunity, should be avoided.

8. On 15th July, 2013, this Forum noted that it was not possible for the Forum to continuously monitor the progress in these unauthorized constructions numbering over 50. This Forum had already done its duty by bringing it to the attention of the Municipal Corporation and its functionaries and goading them into action. It was the statutory responsibility and duty of the Officers of the Municipal Corporation, to take the matter to its logical conclusion.

Mr. S. K. Chauhan, EE (B)-II, Rohini Zone, North MCD, stated before the Forum that he would take the unauthorized constructions to their logical conclusion and the matter was left at this by the Forum.

9. In the meanwhile, no direct evidence regarding involvement of Sh. Parvesh

Wahi and Sh. Kulwant Rana, MLA, in these unauthorized constructions was

forthcoming. However, a significant question arose for consideration regarding the role and obligation of the Municipal Councillor, when large scale unauthorized constructions takes place in his constituency. The Municipal Councillor is normally expected to be aware of happenings in his constituency. Is he to turn a blind eye to the ongoing unauthorized constructions to oblige the constituents ? Does the Municipal Councillor not have a moral and legal obligation to prevent and stop such constructions? In the instant case, there have been ongoing unauthorized constructions in more than 50 properties.

10. Notice was directed to be issued to Sh. Pravesh Wahi, former Chairman of Rohini Zone, returnable on 2nd August, 2013.

Response was filed by Sh. Pravesh Wahi, Councillor, on 22nd August, 2013. Apart from claiming that he was honestly discharging his duties and functions, he stated that while he was the Chairman of the Ward Committee, whatever complaint of unauthorized construction he received, he forwarded them to the officials concerned. According to him the Municipal Councillors have several responsibilities of local development works which include street development, side berms of roads, clearing of drains, maintenance of gardens, removal of garbage etc. Issues regarding sewer and water also keep on coming up, though they are strictly outside the jurisdiction. However, he maintained that the responsibility for detecting and proceeding against unauthorized constructions was that of Engineers of the Building Department of the Corporation. Regarding his family house belonging to his mother at D-277, Prashant Vihar, Delhi, he stated that only alterations and additions/renovations after sanction of plans were being carried out. He would ensure that there was no unauthorized construction.

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11. Mr. Sanjeev Sharma, Adv. was appointed as Amicus Curiae to assist this Forum. Mr. Wahi was also requested to assist this Forum on the rights, duties and obligations of the Councillors qua unauthorized construction, keeping in mind the provision of Delhi Lokayukta and Upalokayukta Act, 1995 and the Delhi Municipal Corporation Act, 1957.

12. Mr. Sanjeev Sharma, Amicus Curiae, filed his suggestions on 25th September, 2013. These related to a fortnightly inspection by the Councillor of his Ward, and notifying unauthorized construction noticed by Councillor. The essence of the suggestions being:-

- (i) Intimation with complete building details to the Commissioner of the concerned corporation of unauthorized and illegal constructions.
- (ii) Additionally, raise the issue, as necessary, with the Lt. Governor and the Corporation.
- (iii) MCD Councillor to submit a report card of his ward regarding the unauthorized and illegal constructions in his ward and the action taken.
- (iv) Councillor to assist and help the E E (B) of the Zone in ensuring that no unauthorized construction is carried out and if carried out, the same be booked.
- (v) Councillor to ensure that the matter is followed up till action is taken for regularization/demolition under the Delhi Municipal Corporation Act, 1957.

13. Mr. Pravesh Wahi orally reiterated that the primary responsibility for taking action against the unauthorized construction was that of the Municipal staff, namely, Building Engineering Department and the Councillor has no role in such obligations of detection and reporting. In one of his letter dated 18-10-2012 to Deputy Commissioner, Rohini Zone, while responding to the Deputy Commissioner's letter claiming that there were no unauthorized constructions, he wrote, "Further being Public representative it is my duty to inform you about

ground realities and feedback received from the public. The point of particular unauthorized construction will be kept in mind when complaints are received from the public, be it in writing or verbal, which will be sent to the Vigilance Department for verification and necessary action as it is not supposed that a public representative should go inspecting the unauthorized construction in the zone and report the matter to the Dy. Commissioner.”

The above is the view conveyed by Mr. Wahi in the reply he filed before the Forum. He indicated that however he was amenable to the suggestions given by the Amicus Curiae.

I find the suggestions given by the Amicus Curiae are not practical and not in consonance with ground realities and the hierarchical system that prevails. These need to be suitably modified, while making further suggestions/recommendations under Section 16 of the Delhi Lokayukta and Upalokayukta Act, 1995, in the matter of improvement in procedure to control unauthorized construction.

14. Unauthorized construction in Delhi is now a perennial problem. It is almost being accepted as usual and normal. Drives against unauthorized constructions have been launched periodically. Some at the directions of the judiciary by setting up monitoring committees of High Court of Delhi as well as Supreme Court of India, viz. Bhurelal Committee. These were timely measures and suited to address the infractions then noticed. They had a limited purpose, which has been served. However, such measures are temporary in nature and outlive their utility, with passage of time. What is required are systemic changes, which are permanent in nature and make the carrying out of unauthorized constructions prohibitive and commercially unviable. The systemic changes or improvement in procedures

need to be reinforced by a determined political and executive will to eliminate unauthorized constructions.

15. The Municipal 'Bye-laws' in Delhi have been amended and FAR, liberally increased. There is no ground or justification now for resorting to unauthorized constructions. The proposed procedure if implemented objectively and with sincerity, can substantially reduce the extent of unauthorized constructions in our metropolis.

16. It may be worth mentioning that this Forum had initiated suo moto proceedings on receiving details of unauthorized constructions against 66 properties of MLA and Councillors. It is heartening to report that in most of the cases, unauthorized portions of the premises were either regularized on payment of compounding charges or the non-compounding portions demolished. It did take perseverance to achieve this.

17. There are four players, who have a role in unauthorized constructions.

- (i) Builder/owner who is the perpetrator of unauthorized constructions.
- (ii) Helpful and collusive municipal staff.
- (iii) Local Police.
- (iv) Municipal Councillor

Last two, though not directly involved, are either passive supporters or turn a blind eye to it, many times for extraneous considerations. If the above four functionaries are vigilant and perform their duties sincerely and honestly, there would be no problem in detection and taking proceedings against the unauthorized constructions.

18. In *Complaint no. C-1757/Lok/2012, titled Aman Gupta Vs. Surekha Gupta*, this Forum had recommended to the Lt. Governor, the following procedure

for preventing the rampant unauthorized construction in the metropolis of Delhi and resultant corruption and malpractices.

- (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. A 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 unauthorized 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 included in the criteria for evaluating their performance and Annual Confidential Reports.

19. The above suggestions did not include any part to be played by the Municipal Councillor. In my view, the Municipal Councillor has bounden duty to abide by the Municipal bye-laws and regulations personally and also to ensure that there is no violation of the same in his constituency.

In my view, in addition to the suggestions and procedures as outlined and recommended in *Complaint no. C-1757/Lok/2012, titled Aman Gupta Vs. Surekha Gupta*, the following may be added:

- (i) A committee be set up comprising the Municipal Councillor, with Deputy Commissioner of the zone as the other member, to monitor and review actions being taken by the Executive Engineer (B) of the Zone in respect of unauthorized constructions reported by the SHO and /or those cognizance of which is taken by the staff of EE (B). The Municipal Councillor would also forward any complaint received from a citizen by him directly or otherwise relating to unauthorized constructions in his ward or as may be noticed by him. The Committee would, on a quarterly basis, submit report to the Commissioner to be placed before the Corporation.
- (ii) The Report would note the total number of unauthorized constructions found and proceeded against and their current

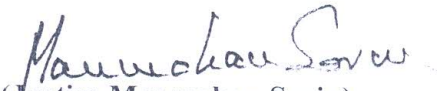
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status. The quarterly report should be put up on the website of the corporation also, so that the electorate and the constituents are made aware of the functioning of their elected representative, ushering in an element of accountability.

20. In case, the above procedure is enforced objectively then the menace of unauthorized constructions can be curbed to a large extent. It should also be understood that the Municipal Councillor, even though he may not have primary or direct responsibility of reporting unauthorized construction, has a bounden corresponding duty to abide by the norms of integrity and conduct expected of a public functionary and initiate action against unauthorized constructions in his Constituency.

21. Coming to the facts of the instant case and noting that currently the primary responsibility for unauthorized constructions vests with the EE (B) and subordinate staff and considering the massive unauthorized constructions which occurred during this period in the three sectors of Rohini, it is recommended to the Hon'ble Lt. Governor to consider directing the NDMC Commissioner to institute a departmental inquiry against concerned officers for not preventing this unauthorized construction or proceeding against them at the initial stages itself for dereliction of duty.

Oct. 7th, 2013
Bhatti


(Justice Manmohan Sarin)
Lokayukta