

2. Based on the information provided by Ms. Preeti Behn, status reports were called for, from the Municipal Authorities in respect of properties, details of which were furnished by Ms. Preeti Behn. Pursuant to the status reports received, inquiries against several "public functionaries" were initiated, including the one in the instant case.

3. (i) Notice dated 01.02.2011 bearing No. C-589/Lok/2011/8877, 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 in respect of property No. B-133/1, Hari Nagar, Clock Tower, Delhi, informing her that as per the reports received from the Municipal authorities, the construction is on a plot of 60 sq. yards in an unauthorised regularized colony with full coverage on the ground floor and first floor and projections on municipal land. Besides there was no sanctioned building plan, hence it is to be treated as unauthorised construction subject to regularization. As it involved a public functionary carrying out or living in a construction, without a sanctioned plan, and not getting it regularized, the question of her conduct amounting to breach of norms of integrity and conduct expected of a public functionary arises.

(ii) Notice was duly served upon the respondent. She was represented through her Advocate on 11.2.2011. It was represented on behalf of the Respondent on the first date itself that she would move an application for regularization.

4. (i) Regularization application was submitted by the Respondent and the Municipal authorities were directed to process the same as per law. Municipal authorities represented that the original area of the property No. B-133, Hari Nagar, Clock Tower was 220 sq. yards and the permission sought and documents submitted by

the Respondent for regularization of the structures pertained to part of the plot i.e. 58.89 sq. yards only, which indicated sub division of the plot. The colony in question is an unauthorised regularized colony, where the regularization plans were passed in the year 1977 and sub division was not permissible. Hence, all the co-owners of the respective portions of the said plot have to submit a consolidated plan for regularization of the plot as existing on the entire plot of 220 sq. yards. It is only then that the regularization application can be processed.

Further, where it is not possible after the sub-division of the plot, for all the owners to come together for submission of the composite application for regularization of all the structures, the Town Planning Department may consider giving benefit of the norms of FAR as applicable to sub-divided plots of 58.89 sq.yards and the FAR applied would be for the entire plot of 220 sq. yards.

(ii) During the course of further proceedings it was explained to the Respondent that if she cannot bring the other co-owners of the plot together then she would not get 100% coverage on the ground floor as the 100% coverage was permissible only in respect of the plots originally measuring 50-60 sq. yards and upto 100 sq. yards only and only 75% ground coverage with 300 FAR would be available to her portion. For plots more than 100 sq. yards only 75% ground coverage is permissible. This would entail demolition of some of the constructed portion. It was also explained to the Respondent that presently she has protection under the National Capital Territory (Special Provisions) Act 2011 which is extended upto December, 2014.

(iii) Respondent had also sought recognition of sub division of the plot and its incorporation in the lay out plan so that she

can have the benefit of relaxation in ground coverage as was being granted in respect of the lay out plans approved till 1977. Thereafter the representation was forwarded to the Town Planning Department of Municipal Corporation for recognition of the sub division of the plot and then its incorporation in the layout plan.

(iv) After persistent follow up and notices to the Town Planning Department, Mr. R.S. Nagar, Architect, SDMC, appeared before the forum and explained that for 220 sq. yards of plots, built up permissible FAR is 300 as per MPD 2021. He further explained that in the instant case, for the undivided plot FAR would be 300 and it could have been 350 FAR in case of plots smaller in size i.e. upto 100 sq. yards. He also explained that in terms of office order bearing No. TP/G/4095/11 dated 9.12.2011, the ground coverage is to be distributed on prorata basis in respect of sub-divided plots provided they have been sub-divided prior to 8.2.2007. Respondent's sale deed is of 2006 which would be prior to the cut off date of 8.2.2007.

(v) In this view of the matter, the Building Department of MCD was directed to consider the case of the Respondent in terms of the Notification dated 17.1.2011 and office order dated 9.12.2011. It is not necessary to give details of the further proceedings. Finally, the Chief Town Planner, SDMC vide his letter dated 22.8.2013, informed this forum that matter had been considered by the Lay Out Plan Screening Committee (LOSC) vide item No. 62/13 dated 06.06.2013 and the proposed sub-division was approved. The decision of LOSC was conveyed to the concerned EE (Bldg.), whereupon the Respondent sought time to file the affidavit giving undertaking to demolish the excess coverage within a period of two months and getting regularization done,

failing which the Corporation would be entitled to proceed in accordance with law.

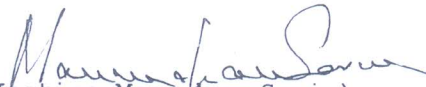
5. Time was granted to the Respondent several times to make up her mind. Finally on 8.10.2013, statement of the Respondent was recorded on oath. In her statement on oath she stated that she has fully understood the conditions of regularization as also the consequences of non regularization and protection available to her under the National Capital Territory (Special Provisions) Act 2011, upto December 2014. She stated that after deliberations and consultation with her husband she has decided to abide by the terms and conditions of regularization and pay regularization charges. She also undertook to demolish the portions which are not regularizable and are required to be demolished. She further undertook to complete all the formalities including payment and demolition of non-compoundable portions in a maximum period of 6 months. Standing counsel for MCD heard her statement and accepted the same.

6. This is a case where the construction was carried out much before the Respondent became Municipal Councillor. Further, the Respondent has taken all necessary steps for getting the subdivision approved for her plot. She has also applied for regularization and undertaken to comply with all the terms and conditions of regularization as also demolition of non-compoundable portions. It is hoped and expected that the Respondent will stand by her undertaking and abide by the terms and conditions of regularization.

In these circumstances, on parity of orders passed in cases of other public functionaries, who gave undertakings to get their structures regularized and comply with municipal Bye-laws and terms and conditions of regularization and also undertook to

demolish the non-compoundable portions, the notice of inquiry in this case also deserves to be discharged.

Accordingly, in this case notice issued to the Respondent public functionary is discharged. In case the Respondent does not get the structure regularized within a period of six months as undertaken by her or comply with the terms and conditions of regularization or does not demolish the non-compoundable portions or in any manner violates the undertaking given before this forum, the Respondent Corporation shall be at liberty to proceed against her and get the proceedings before this forum revived.


(Justice Manmohan Sarin)
Lokayukta, Delhi

Dated 17/10 October 2013
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