

BEFORE THE HON'BLE LOKAYUKTA
JUSTICE REVA KHETRAPAL
COMPLAINT NO.C-2332/LOK/2013

In the matter of:

Sh. Shyam Bhati Complainant
Versus
Smt. Kusum Lata, Municipal Councillor Respondent

Present:

1. None for the Complainant.
2. Shri Suresh, Advocate for the Respondent
3. Shri S.K. Jain, Assistant Engineer (Building), Central Zone, South Delhi Municipal Corporation.

ORDER

1. The facts relating to the present complaint are that a communication was received from one Shri Shyam Bhati on 30.08.2013, wherein he alleged that Smt. Kusum Lata, Municipal Councillor, Ward No.158, had encroached upon Government land by raising construction in premises bearing No.2028/33, Pijanji Village, Kotla Mubarkpur, New Delhi. It was alleged that she had already constructed the fourth floor and work for construction of the fifth floor was going on, and that the construction of the fourth and the fifth floors in the premises was totally unauthorized.
2. Since Smt. Kusum Lata was a Municipal Councillor in Ward No.158, Central Zone, Lajpat Nagar and therefore a "public functionary" within the meaning of Section 2(m) of the Delhi

Lokayukta & Upalokayukta Act, 1995 (hereinafter referred to as "the Act"), and was alleged to be raising unauthorized construction in her house, an inquiry was initiated against her by this Forum under the provisions of Section-7 read with Section 2(b) of the Act, by treating the communication of the aforesaid Shyam Bhati as "other information" under Section-7 of the Act.

3. In order to establish the credibility of the information received from the complainant, however, it was deemed necessary to seek a report from the Deputy Commissioner (Central Zone), South Delhi Municipal Corporation, Lajpat Nagar, New Delhi, regarding the status of the construction in premises bearing No.2028/33, Pijanji Village, Kotla Mubarkpur, New Delhi, as to whether the said construction is authorized or under sanctioned plan. At the same time, notice was also issued to the Complainant Shri Shyam Bhati, on his communication as the averments made by him in the said communication were not supported with an affidavit.
4. On 30.10.13, on receiving confirmation from the South Delhi Municipal Corporation that show cause notice under Section 343 and 344(1) of the Delhi Municipal Corporation Act, 1957, had been issued to the owner with regard to the construction going on at premises bearing No.2028/33, Pijanji Village, Kotla Mubarakpur, New Delhi, a notice to show cause was issued to the Respondent. At the same time, the concerned Assistant Engineer (Building) was directed to give details on the construction existing

at the site, the nature of the construction, i.e. compoundable or non-compoundable, etc.

5. On 01.11.2013, in response to the show cause notice issued to the Respondent Smt. Kusum Lata, Shri Kishan Lal, her father-in-law, appeared to state that Smt. Kusum Lata was married to his elder son Shri Ramesh and was residing on the first floor of the premises owned by him, while his younger son was residing on the second and third floors of the house. He further clarified that the number of the premises in question was House No.2028/23 and not House No.2028/33 as mentioned in the complaint. On the same day i.e. on 01.11.2013, my learned predecessor directed the South Delhi Municipal Corporation to file status report pursuant to the booking of the premises and the regularization application in respect thereof, if any, submitted.
6. In compliance with the aforesaid order, on 15.12.2016, status report was filed by the South Delhi Municipal Corporation. The relevant portion whereof reads as under:-

"5. That during conclusion of demolition proceedings, the Noticee presented authentic documents substantiating existence of fourth floor prior to the cutoff date, i.e. 08.02.2007. The competent authority, vide Speaking Order bearing NO.D/136/AE(Bldg)-VI/Cent. Zone/SDMC/2014 dated 09.05.2014, held that alleged unauthorized construction in the shape of part fourth floor is unauthorized and is liable to be demolished. However, in view of The National Capital Territory of Delhi Laws (Special

Provisions) Act, 2011, the demolition order shall remain suspended during the moratorium period, i.e. upto 31.12.2014.

6. That Government of India, vide Notification dated 29th December, 2014, had brought out "The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2014". In respect of unauthorized developments in villages, it lays down that status quo existing as on 01.06.2014 shall be maintained till 31.12.2017 and all notices issued by any local authority for initiating action against protected encroachment or unauthorized development shall be deemed to have been suspended and no punitive action shall be taken till 31st day of December, 2017.

7. That in view of given provision of aforesaid Act (sic), the execution of demolition order passed against the alleged unauthorized construction needs to be kept suspended during moratorium period"

7. Since it was not very clear from the aforesaid status report as to whether the ownership of the house in question vested with the Respondent - Municipal Councillor, fresh status report was called for with regard to the ownership from the South Delhi Municipal Corporation for 08.04.2016 i.e. for today. Fresh notice was also issued to the Complainant at the address mentioned in the complaint by Registered A.D. Post as well as through the SHO of the Police Station concerned, i.e. Police Station Kotla Mubarakpur. The notice sent through Registered A.D. Post has been received back unserved, while on the copy of the notice issued through the

SHO concerned, the report received is "No such person could be found at the given address".

8. It deserves to be mentioned at this juncture that notice was issued to the complainant in view of the fact that the complaint had been received by post, without any affidavit to substantiate the same and without payment of the court fees required by law to be paid by the complainant.
9. Fresh status report has been filed by the South Delhi Municipal Corporation today in compliance with the order of this Forum dated 15.02.2016, wherein it is specifically stated that show cause notice dated 21.10.2013 for violation of the Delhi Municipal Corporation Act, had been issued in the name of Shri Kishan Lal Chaudhary (the father-in-law of the respondent). It is further stated that the South Delhi Municipal Corporation had vide letter dated 28.03.2016 asked the noticee, Shri Kishan Lal Chaudhary, to furnish ownership documents in respect of the premises in question. In response to the said letter, Shri Suresh, younger son of Shri Kishan Lal Chaudhary, furnished photocopy of the Girdawari in support of the claim of ownership of Shri Kishan Lal Chaudhary. The said Girdawari is in the name of Shri Badlay Ram, son of Shri Dharam Singh, and Shri Kishan Lal is stated to be the son of Shri Badlay Ram. A copy of the Girdawari is also annexed alongwith the status report.

10. Shri Sushil Kumar Jain, Assistant Engineer (Building), Central Zone, South Delhi Municipal Corporation, has also placed on record today, a copy of the order dated 09.05.2014 passed by Shri V.D. Vashisht, Assistant Engineer (Building), Central Zone, South Delhi Municipal Corporation. The said order also clearly discloses that the premises in question belong to Shri Kishan Lal, father-in-law of the Respondent, Smt. Kusum Lata, Municipal Councillor. It further shows that the construction on the said premises was unauthorisedly made by him and thus actionable as per the provisions of the Delhi Municipal Corporation Act, 1957. The relevant portion of the said order reads as follows:

"I, therefore, after taking into consideration all the facts of the case and the record placed before me, deduce that there remains no dispute that the construction booked by the Department existing at site is unauthorized and thus, actionable as per provisions of DMC Act. There is no force in the contentions of the applicant as he has failed to prove the legality or authorized status of the unauthorized construction carried out and existing at site, as booked by the Department. During the proceedings, he has not been able to give any cogent reason/argument, which could call for withdrawal of the proceedings initiated under Section 343/344 of the DMC Act, 1957. However, the benefit of the said Act can be extended to the applicant to the extent defined in the said Act.

I, V.D. Vashisht, Assistant Engineer (Building Department), Central Zone, South Delhi Municipal Corporation, vested with the powers of the Commissioner, South Delhi Municipal Corporation, under Section 343 read

with Section 491 of the DMC Act, 1957, hereby order that the unauthorized construction booked by the Department is liable to be demolished and it is ordered accordingly to the applicant. However, since the construction booked by the Department and covered under the Show Cause Notice qualifies the stipulation defined in the National Capital Territory of the Delhi Laws (Special Provisions) Act, therefore, these demolition orders shall be kept in abeyance upto 31.12.2014 or till any orders are passed or directions are issued by the Government of India / competent authority, whichever is earlier. The applicant shall accordingly ensure compliance of these stipulations contained in the said Act. The applicant shall also remain bound by the orders of Hon'ble Lokayukta."

11. From the aforesaid, it is clear that ownership of the premises vests in Shri Kishan Lal, and not in the respondent, Smt. Kusum Lata, Municipal Councillor. The respondent is not stated to be residing in the unauthorized portion of the premises. There is also nothing on record to suggest that it was the Respondent who has carried out any unauthorized construction on the property in question at any point of time. Show cause notice issued to the Respondent by this Forum under Section 7 read with Section 2 (b) of the Act is accordingly discharged. No further orders are called for in the matter. File be consigned to the record room.


(JUSTICE REVA KHETRAPAL)
LOKAYUKTA

Date: 08.04.2016