

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE REVA KHETRAPAL
COMPLAINT NO. C-887/LOK/2011**

IN THE MATTER OF:

SHRI RAJINDER SETHI ... ORIGINAL INFORMANT

VERSUS

SHRI SUBHASH ARYA, COUNCILLOR ... RESPONDENT/NOTICEE

Present:-

1. Ms. Tamali Wad, Advocate, Amicus Curiae.
2. Shri Ashok Kashyap, Advocate, Counsel for the Respondent /Noticee.
3. Ms. Mini Pushkarna, Advocate, Counsel for North Delhi Municipal Corporation.

ORDER

1. By this order, it is proposed to decide the complaint purportedly filed by one Shri Rajinder Sethi, resident of 12/24, WEA, Karol Bagh, New Delhi, dated 10-03-2010, received by this Forum on 15-03-2010, reporting unauthorized construction of buildings in the Karol Bagh area in total violation of sanctioned building plans.
2. It is alleged in the complaint that hotels were being constructed in eleven properties situated at Ramjas Road and WEA, Karol Bagh, against residential plans and despite complaints sent to the Karol Bagh Zonal MCD Office in this regard, no action was taken with regard to these illegal constructions. It is further alleged that when the Junior Engineer (Building) started taking action against these illegal constructions, he was called and thrashed by the Leader of the MCD House, Shri Subhash Arya, and was immediately transferred from that area, thereby giving the unauthorized constructions being made in the area a go ahead. The aforesaid complaint was accompanied by six sheets displaying twelve photographs of the said unauthorized constructions.
3. On receipt of the aforesaid complaint, a communication was sent by this Forum to the complainant Shri Rajinder Sethi, to appear in person and verify the allegations made in the complaint on oath/by way of affidavit. Both the postal authorities and the Special

Messenger, however, reported that the address as given by the said Shri Rajinder Sethi in the complaint did not exist. Notwithstanding, in the interest of justice, a report was called from the MCD with regard to the status of the sanctioned building plans in respect of these properties and the extent of the construction that had been carried out. It was also sought to be ascertained whether any Junior Engineer (Building) had started taking action against these illegal constructions and had recently been transferred and, if so, the particulars thereof.

4. On 29-04-2010, in response to the notice issued under Section-11 of the Delhi Lokayukta and Upalokayukta Act, 1995 (hereinafter referred to as the "the Act") to the Commissioner, Municipal Corporation of Delhi, Shri S.K. Chauhan, the Executive Engineer (Building) of the Karol Bagh Zone of MCD, appeared and was directed to file an affidavit with regard to the status of each of the 09 properties mentioned in the communication dated 10-03-2010, giving the following specific details:-
- i) *Whether there is a sanctioned plan for the property. If so, whether for residential or commercial? The floor-wise sanctioned area as per the plan be given.*
 - ii) *The extent of actual construction at site. Covered area per floor shall be indicated. In case there is excess over the sanctioned area, the extent thereof. Whether it is within the compoundable limits or not? Further, whether any application for compounding of the same had been submitted and status thereof.*
 - iii) *In case the plan sanctioned is for residential use, the affidavit shall disclose whether necessary floor-wise attributes of dwelling unit such as kitchen, toilets etc have been constructed in the building or not.*
 - iv) *In case the Building Plan is for reconstruction or renovation the same shall be so stated and copies of the sanctioned plan in either case shall be produced.*

- v) *The position of each of the properties in terms of user, i.e. residential, missed use or commercial use as applicable shall be indicated. Further, the number of stories that are permissible under the municipal by-laws. MPD-2021 shall also be indicated.*
- vi) *In short, the affidavit should clearly spell out the extent of covered area and whether the same is as per sanctioned plan and if it is in excess the extent to which it is compoundable as also non-compoundable area.*
- vii) *The width of the road which abuts the building be also indicated so as to know the extent of coverage permissible.*
- viii) *The name of the owner and/or occupant be also given".*

5. On 07-07-2010, this Forum, after noting that during the course of proceedings, it had been stated, that Shri B.N. Sharma, Junior Engineer, posted in Karol Bagh Zone, who had initiated action after inspection of properties was transferred in routine, directed the MCD to disclose the names of the other field staff, i.e. Junior Engineers and Assistant Engineers who had inspected the properties under scrutiny and were transferred from the concerned Zone whether routinely or otherwise in the year 2010.
6. On 30-08-2010, a list of officials who had been transferred from the Building Department, Karol Bagh Zone, namely, Shri S.H. Mujataba, Assistant Engineer (Building), Shri BN Sharma, Junior Engineer (Building) and Shri DS Verma, Assistant Engineer (Building) was furnished by the MCD. Apart from these three officials, as a result of further questions put during the enquiry by this Forum, it was revealed that one Shri S. Alija H. Khan, Assistant Engineer, was demoted as Junior Engineer in the year 2009 and was transferred out of the Karol Bagh Zone. Thereupon, he was relieved in the year 2009 and he joined the Headquarters as Junior Engineer and was

transferred to another Zone. It was stated on behalf of the MCD that he had since been re-transferred to the Karol Bagh Zone as AE (Building), pursuant to the directions of the Central Administrative Tribunal, and had re-joined the Karol Bagh Zone.

7. In the course of further inquiry, on or about 15-09-2010, Shri S.K. Chauhan, Executive Engineer (Building) filed an affidavit before this Forum with regard to the Assistant Engineers/Junior Engineers of the Building Department, who had been transferred from the Karol Bagh Zone, along with certain Annexures and Office Orders.
8. On 20-10-2010, the first statement of Shri S. Alija H. Khan was recorded by this Forum and on his prayer that the same be treated as confidential, the statement was directed to be kept in a sealed cover. It is proposed to advert to the said statement at the relevant juncture.
9. Thereafter, from time to time, affidavits of the officials of the MCD were called by this Forum to review the status of the various properties on a regular basis. The assistance of Ms. Tamali Wad, Advocate, appointed by this Forum as Amicus Curiae, was also sought for the purpose of monitoring the proceedings. On 06-07-2011, Ms. Tamali Wad, Amicus Curiae, was heard at length on the aspect of issuance of show cause notice to the concerned public functionary and eventually by a detailed order passed on 18-07-2011, show cause notice was issued to the respondent Shri Subhash Arya to show cause as to why an inquiry in terms of Section-7, read with Section 2(b) of the Act, be not initiated against him. The following order was passed:-

- "1. By this order the question of initiating inquiry against Shri Subhash Arya, Municipal Councillor is being decided.
2. A pseudonymous letter dated 10-03-10, purportedly written by one Shri Rajender Sethi of 12/24, WEA, Karol Bagh, Delhi was received in this office. It was alleged that there were unauthorized construction in

11 properties at Ramjas Road and WEA Karol Bagh. It was claimed that hotels in violation of sanctioned residential plan were being constructed. It was also alleged that when a Junior Engineer commenced action against the illegal construction he was thrashed by the Leader of the MCD House and transferred. Communications sent to Shri Rajender Sethi both by post and special messenger revealed that the above given address of Shri Rajender Sethi did not exist.

Considering that the common man may not have the courage to come out openly by disclosing his identity while complaining against an important and highly placed public functionary and since specific details and particulars of unauthorized constructions in the properties were given in letter dated 10-03-10, a status report was called from MCD. MCD reported large scale unauthorized construction in the properties/area thus confirming substantially the allegations contained in the pseudonymous letter. Action against the unauthorized properties was initiated by the MCD resulting in the owners/occupiers applying for regularization of properties entailing deposit of huge amount of regularization/compounding charges and the progress made by the MCD is being reported to this Forum.

3. During the course of proceedings, it transpired that on 26-11-09, one Assistant Engineer posted in Karol Bagh Zone was asked by Junior Engineer to accompany him for two demolitions in respect of property No.15-A/24 WEA Karol Bagh and property No. 4/18, WEA Karol Bagh. When they reached building No. 15A/24 for demolition of rooms constructed on the fourth floor, with the demolition force, they met Sh. Sunny Ghai and Shri Yashpal Ratiwal. Shri Sunny Ghai is stated to be the son in law of Shri Subhash Arya. The AE

received a telephone call on his mobile from Shri Subhash Arya, who mentioned that Shri Sunny Ghai was known to him and that instead of proceeding for demolition by the Corporation, he should give them an opportunity to do the demolition work themselves. The AE told Shri Subhash Arya that the force was already with him and he can only defer the demolition so that they could start the demolition work themselves and if he does so, the force could return. The Assistant Engineer waited for 1½ to 2 hours but Shri Sunny Ghai and Shri Yashpal Ratiwal did not start demolition. Thereupon the MCD officials carried out demolition on the 4th floor. The Assistant Engineer has expressed his belief that the above demolition annoyed Shri Subhash Arya.

4. As per various reports filed by the MCD, Smt. Suman Sharma, Smt. Meenakshi Channa, Smt. Veena Kalra and Smt. Ekta Kalra are the co-owners of the property No.15-A/24, WEA Karol Bagh, New Delhi. A letter dated 17-02-2011 was written to them by the MCD to clarify the connection/interest of Shri Yashpal and Shri Sanjay Ghai with them or as to whether they have executed any collaboration agreement with Shri Yashpal and Shri Sanjay Ghai. In response MCD has received reply dated 17-02-11 from Shri Ashok Kumar, Authorized Signatory intimating that there is no connection whatsoever of Shri Yashpal and Shri Sanjay Ghai with property No.15A/24 WEA Karol Bagh and that they have not executed any collaboration agreement with Shri Yashpal or Shri Sanjay Ghai nor they were builders of the said property. However, the JE (Building) who had issued a notice in the name of Shri Yashpal has reported that Shri Yashpal was builder of the property.

5. Note submitted by the Amicus Curiae in this connection has been perused. Statement of the concerned AE was recorded on oath. He alleged that on 03-12-09, he was called by Shri SK Chauhan, Ex. Engineer (Building) who told him that he received instructions from Engineer in Chief Office for relieving him from the said zone. Shri Chauhan discussed the matter with Dy. Commissioner who said that they would not relieve him till the transfer or relieving order was received. Thereupon on 7th December 2009, the case for his reversion and transfer was initiated by RPA-II and after 4-5 levels of administrative approvals, it was cleared by the Commissioner on a single day. He was sought to be transferred on the basis of charges of 2005 issued in October, 2009. He challenged the reversion order in CAT and obtained stay order. He has now been posted as Assistant Engineer in the same Zone.
6. From the above circumstances, it prima facie, appears that action for reversion of AE and his transfer, taken in undue haste, was a result of the AE proceeding to take demolition action in respect of the above property. There is clear and cogent allegation of Shri Subhash Arya having intervened and asked the AE not to proceed for demolition and to give Shri Sunny Ghai, an opportunity to do the demolition work himself. Direct evidence of the interest Shri Subhash Arya had in respect of property in question or its occupier/builder may not be available and forthcoming at this stage. In cases of unauthorized construction carried out under the patronage of politicians, it is difficult to find direct evidence of the interest of such politicians or their immediate relations in the property. The factum of telephone call made by Shri Subhash Arya to the

concerned Assistant Engineer and the Assistant Engineer proceeding for demolition of the property after Shri Sunny Ghai failed to do the same; Shri Chauhan, Executive Engineer informing him about receiving instruction for relieving him from the said Zone and the processing of the case for his reversion and transfer on 7th December itself in one day, form a chain of circumstances showing prima facie that Shri Subhash Arya has interfered in the official functioning of a public servant and that the AE was victimized for having acted against the wishes of Shri Subahsh Arya. There is, thus, prima facie, case for enquiry into the conduct of Shri Subhash Arya and the allegations of abuse and misuse of his position in order to obtain gain or favour to himself or others and cause undue harm to the AE and failing to act in accordance with norms of integrity and conduct which ought to be followed by public functionary of his class. Shri Subhash Arya being a Councillor and Leader of the MCD is a 'public functionary' within the meaning of Sec. 2 (m) of Delhi Lokayukta & Upalokayukta Act, 1995.

Let a notice be issued to Shri Subhash Arya to show cause as to why an enquiry in terms of Sec. 7 read with Sec. 2 (b) of Delhi Lokayukta & Upalokayukta Act, 1995, be not initiated against him returnable on 03-08-2011 at 2.00 PM".

10. On 03-08-2011, the respondent Shri Subahsh Arya, appeared and sought time to file reply to the show cause notice, which was granted as requested. A query was put by this Forum to Mr. Subhash Arya as to how many mobile phones he was holding, in response to which he stated that he had two mobile phone numbers 9810667581 & 9958693112 in his use. He further stated that apart from the above two mobile phones, he had another mobile phone in his name bearing No. 9810154444 for the last 20

years, but it had not been used for the last four years. Thereupon, a direction was issued to M/s. Airtel Limited (Service Provider) having its registered office at Arawali Crescent, 1-Nelson Mandela Road, to preserve usage records of mobile phone Nos. 9810667581 & 9958693112, from 25-11-2009 to 27-11-2009 and, specially, the calls, if any, between these phone numbers to be produced before this Forum on 15-09-2011.

11. By order dated 15-09-2011 passed in Complaint No. C-887/Lok/2011 (the number should be Complaint No.C-330/Lok/2010), the reply filed on behalf of the respondent was taken on record as also the call details filed by the Nodal Officer, Bharti Airtel, in respect of the two mobile phone Nos. 9717787372 and 9810667581 from 25-11-2009 to 27-11-2009. Significantly, also Shri S.K. Chauhan, Executive Engineer (Building), present before the Forum on the said date confirmed that Mobile No. 9717787372 had been issued by MCD to Shri Aliza Khan, AE, while Mobile No. 9810667581 was stated by him to be in the use of Shri Subhash Arya, the respondent herein.
12. On the same date, i.e. 15-09-2011, the Forum noted that in the reply filed by the respondent, the respondent had asserted that he had raised the issue in the House on 09-11-2009 regarding wrongful promotion being given to officers who had questionable conduct and against whom complaints and charge sheets were pending. It further noted that the alleged telephone call had been made by the respondent at the instance of one Mr. Gupta in respect of property No. 4/18, WEA, Karol Bagh (which was not the subject matter of the complaint), on 26-11-2009, i.e. later than the issue was raised in the House by the respondent. This Forum accordingly directed the production of records regarding the process and approval for the suspension and reversion of Mr. Alija Khan, Assistant Engineer (Building), along with the record concerning any other officer against whom enquiry was expedited based on the question being raised by the respondent in the House on 09-11-2009 and the disposal of the said proceedings. The Secretary, MCD, was also directed to send record of the proceedings of 09-11-2009 in respect

of questions raised by the respondent Shri Subhash Arya on the said date.

13. On 16-09-2011, by a detailed order, the file in respect of the nine unauthorized properties, i.e. the file of Complaint Case No. 330/Lok/2010 was separated from the file of the inquiry against the respondent, which was numbered as complaint No.C-887/Lok/10. A copy of the order was directed to be placed in the separated file No. C-887/Lok/10, to deal specifically with the inquiry in respect of Shri Subahsh Arya, Councillor and Leader of MCD House. The following pertinent observations were made in the aforesaid order:-

"During the course of submissions, the Amicus Curiae has pointed out that out of the properties being considered so far in the proceedings, direct bearing has been revealed in respect of 15A/24, WEA, Karol Bagh, in realtion to the pending proceedings against Mr. Subhash Arya, Public Functionary. Moreover, she states, as it would be recalled in the said proceedings, the respondent public functionary has taken a position that the telephone call was made by him in respect of a property at 4/18, WEA Karol Bagh, which has not been subject matter of these proceedings. In these circumstances, it is felt that while enquiry may proceed in respect of the public functionary covering two properties, i.e. 4/18, WEA, Karol Bagh, Delhi and 15A/24, WEA, Karol Bagh, so far as other properties are concerned, in view of the detailed status reports and the proceedings, which have raised several issues on various aspects of unauthorized constructions and their regularizations, misuse of properties sanctioned as residential and using them for commercial Guest Houses etc, it would be appropriate if this Forum, in the exercise of the jurisdiction under Sec. 16 of the Delhi Lokayukta & Upalokayukta Act, 1995, which enables the Lokayukta to make suggestions for improvements in practice and procedure to contain corruption or maladministration as noticed. In the light of foregoing, Amicus Curiae will study the

status report and the observations made so far and make her recommendations for suggestions to be made by this Forum under Sec. 16 of the Act. Id. Counsel for MCD, Ms. Pooja Kalra should also study the matter and make her recommendation for improvements or systemic changes that may be required. Mr. S.K. Chauhan, EE(B), KBZ, who has also extensive experience in dealing with these cases, since he informs that he is currently dealing with 150 Court case, may also contribute his bit to the said effort. These suggestions be filed on or before 10th October 2011.

A copy of the order was forwarded to the concerned officer to deal specifically with the inquiry in respect of Shri Subhash Arya, Councillor and Leader of MCD House".

14. On 02-11-2011, the concerned official from the Office of Municipal Secretary, MCD, appeared and tendered the Minutes of the House Proceedings of 9th November, 2009. The said official, Mr. Bhagwan Singh, further clarified that if the issue raised by a Councillor is commented upon by another Councillor or Municipal Commissioner, only then it is recorded in the proceedings, and otherwise it is for the Municipal Administration in the normal course of business to take action thereon.
15. On the said date, i.e. on 20-11-2011, Mr. V.K. Goel, Deputy Law Officer (Vigilance), also tendered copies of documents concerning reversion of Mr. S. Alija H. Khan, Assistant Engineer, as also Office Order by which hundred and eight officials of the Corporation were promoted and the ad-hoc promotion as Assistant Engineer (Civil) in respect of fourteen officials were not extended. Further, on his request that he wanted to clarify the position, the statement of Mr. Alija Khan for the second time was permitted to be recorded. The relevant portion of his second statement along with his first

statements were subsequently recorded.

16. On 27-04-2012, after inviting suggestions from the respondent's counsel Mr. H.S. Phoolka, Senior Advocate, the procedure for conducting the enquiry was formulated by my learned predecessor, as under:-

"Considering the nature of the controversy and the material on record and the fundamental requirement of adhering to principles of natural justice and at the same time conducting the inquiry with dispatch, the following procedure, would meet the interest of justice:

- i) The statement of Mr. S. Alija H. Khan has already been recorded on 20-10-2010 and 02-11-2011. Opportunity, therefore, is given to the Respondent to cross-examine him on the said statements.*
 - ii) Records regarding transfer of Shri S. Alija H. Khan and posting including of others at the relevant time have also been called for. The Amicus Curiae and the respondent may examine the same and summon any additional record, which is relevant for the purposes of this inquiry.*
 - iii) On the next date Shri S. Alija H. Khan to be cross-examined and the Amicus Curiae may summon any other witnesses considered relevant for the purpose of this inquiry. Respondent given liberty to summon such records as are relevant for the purpose of cross-examination of Shri S. Alija H Khan.*
 - iv) Respondent to lead his evidence thereafter"*
17. On the request of the learned amicus curiae, Ms. Tamali Wad, Shri Mahipal Singh, Junior Engineer, who had reportedly accompanied Mr. Alija H. Khan on the alleged date of incident, was allowed to be examined. However, her request for examining another witness, namely, Shri SK Sharma, Assistant Commissioner, who had filed an affidavit before the Central Administrative Tribunal in which there was reference to a Fax message received from the Vigilance

Department, was declined by my learned predecessor by observing that as long as the credibility of documents on record is not in question, formal proof can be dispensed with. Notice was ordered to be issued to Mr. Mahipal Singh, Junior Engineer, who had accompanied Mr. Alija H. Khan, for his examination by the amicus curiae on the next date of hearing.

18. On 27th September, 2012, Mr. Alija H. Khan, Assistant Engineer, North Delhi Municipal Corporation, was cross examined by the senior counsel for the respondent, Mr. H.S. Phoolka, as also the amicus curiae.
19. Similarly, on 17-12-2012, the statement of Shri Mahipal, Junior Engineer, was recorded and his cross examination conducted by the senior counsel for the respondent Shri H.S. Phoolka.
20. On the request of the amicus curiae, Ms. Suman Sharma, Ms. Ekta Kalra, Ms. Meenakshi Chanana, Ms. Veena Kalra who, as per the amicus curiae, were the joint owners of the property in question, were allowed to be examined as witnesses. Out of these witnesses, statements of Ms. Veena Kalra and Ms. Ekta Kalra were recorded on 14-03-2013. The statements of the other two witnesses were dispensed with by my learned predecessor in view of the statements of the aforesaid two witnesses. On 18-04-2013, the statements of Shri Parveen Kalra and Shri Ashok Kumar, the respective husbands of two co-owners of the property bearing No. 15A/24 were recorded, however, they were not cross examined by the counsel for the respondent though opportunity was given.
21. The statements of Mr. Deepak Hastir, the then Director (Personnel), North DMC, who was incharge at the time when the reversion proceedings in respect of Mr. Alija H. Khan were initiated, and those of Mr. S.K. Mishra, Executive Engineer (Building), Karol Bagh Zone, Delhi, and the respondent Shri Subahsh Arya, were also recorded on subsequent dates. These statements shall be referred to whenever deemed necessary in the course of subsequent discussion.

22. Arguments were addressed by Ms. Tamali Wad, learned amicus curiae, Shri Ashok Kashyap on behalf of the respondent and Ms. Mini Pushkarna, Advocate, on behalf of the MCD.
23. The record is replete with records and documents pertaining to the promotion and reversion of Shri Alija H. Khan, Assistant Engineer (Building), Karol Bagh Zone, various status reports submitted by the MCD from time to time, reports of the learned amicus curiae, etc. However, it deserves to be noted at this juncture that this Forum is not required to go into the legitimacy or legality of the reversion proceedings initiated against the concerned Assistant Engineer (Building) as the same is not relevant to the present inquiry, unless it is shown through evidence that the said departmental enquiry proceedings, transfer and reversion proceedings have any connection, direct or indirect, with the norms of conduct required to be adhered to by the respondent by virtue of his being a 'public functionary' or that all or any of these actions against the concerned Assistant Engineer (Building) followed as a repercussion of the said official declining to act in accordance with the whims and fancies of the respondent/Councillor. Thus viewed, the inquiry in these proceedings is limited to the following:

"Whether the respondent Councillor at any point of time interfered in the official functioning of a public servant and in consequence the same public servant was victimized for having acted against the wishes of the respondent Councillor".

24. From this perspective, the Forum has carefully scrutinized the complaint, the reply filed on behalf of the respondent Councillor, the various status reports filed by the MCD from time to time, the Reports of the learned amicus curiae as also the records produced by the Corporation with regard to the departmental enquiries and reversion proceedings pertaining to the Assistant Engineer (Building) in question Mr. Alija H. Khan and others.
25. A bare perusal of the original complaint dated 10th March 2010, makes it abundantly clear that the same is in the nature of a

general complaint in respect of unauthorized constructions being carried out in the area of WEA Karol Bagh, Delhi, but for some photographs of the alleged illegal constructions and a vague allegation to the effect that the when concerned Junior Engineer (Building) started taking action against these illegal constructions, he was called and thrashed by the Leader of the MCD, i.e. the respondent Councillor, Shri Subhash Arya, thereby, giving the aforesaid unauthorized constructions a green signal. There is neither any documentary nor any other evidence placed on record by the complainant to prove the said allegations. The complainant, in fact, never appeared before this Forum to substantiate the allegations made by him in the complaint against the respondent Councillor, and the complaint turned out to be a pseudonymous one as the address given in the complaint, i.e. 12/24 WEA Karol Bagh, did not exist as per the postal authorities as also as per the process server/special messenger of the Department.

26. Adverting now to the reply filed by the respondent, the respondent Councillor in his reply contended that as per information received by him under The Right to Information Act, there were three regular departmental enquiries pending against the Assistant Engineer in question, namely, Mr. Alija H. Khan, vide RDA No.1/36/2008, RDA No. 2/138/2008 and RDA No.1/39/2009 for serious misconduct, and in RDA No.1/36/2008 and RDA No.1/39/2009, charges had been framed against him on 10-08-2010 and 14-09-2009 respectively, and he was liable for the imposition of major penalty in the said proceedings. Further, while the said Alija Khan in 2004 was working as Junior Engineer, the CBI had registered a case against him and had recommended inquiry. However, Mr. Khan had managed during the pendency of the charge sheet to suppress from the DPC the factum of the pending CBI case and in a deceitful manner obtained promotion to the post of Assistant Engineer (Building), Karol Bagh Zone, from the post of Junior Engineer.

The respondent further contended that he, being the leader of the House, had raised before the MCD House on 09-11-2009, the

issue of some officials of the MCD being promoted to higher posts despite pending charge sheets, police cases, disciplinary proceedings etc. and had questioned the authority of the concerned higher officers to promote such delinquent officials, and that now to say that the reversion of the said Assistant Engineer had been done hurriedly at his behest was too far-fetched. When the facts about the pendency of inquiry and issuance of charge-sheet came to the notice of the Commissioner of the MCD, he realized his mistake and initiated action against him and reverted him. Further, as per the Rules, no official against whom disciplinary proceedings or police case is pending can be promoted. Even according to the Circular dated 27-03-1997 no person against whom an enquiry is pending or who is punished in a vigilance case, can be posed in the Building Department.

27. The respondent in his reply clarified that on 26-11-2009 one Mr. Gupta informed him that the Assistant Engineer of Karol Bagh Zone had come to his property bearing No.4/18, WEA, and was threatening to demolish some unauthorized portions of the said building. The said Mr. Gupta requested him (the respondent) that he was willing to demolish some unauthorized portions himself but the said Engineer was demanding money on the pretext that he would not initiate action of demolition. The respondent being a public functionary owing a duty to the citizens to save them from unnecessary harassment, immediately telephoned the said Assistant Engineer, between 12.00 noon and 12.30 pm, stating that since the owner was willing to demolish the unauthorized construction himself, he should be given time to demolish the same.
28. The respondent further submitted in his reply that his son-in-law Mr. Sunny Ghai had nothing to do with the properties bearing No. 4/18 and 15A/24, WEA and that he (the respondent) never had anything to do with the alleged Mr. Yashpal Ratiwal either. The Assistant Engineer concerned was only asked to proceed as per law and to grant some time if the owner of property bearing No. 4/18 was willing to demolish it himself.

The respondent Councillor emphatically denied having made any call to any official regarding property No.15A/24 WEA Karol Bagh. To buttress his contention, the respondent relied upon a police report obtained by him under the Right to Information Act from the concerned police station, i.e. P.S. Karol Bagh, as per which, at the time of alleged call, the demolition team along with the Assistant Engineer in question had not reached property No. 15A/24, and they were still present at property No. 4/18 WEA Karol Bagh. The respondent further relied upon a reply from the MCD dated 29-07-2011 received by him under The Right to Information Act, pertaining to unauthorized construction in property No. 4/18 WEA Karol Bagh, as per which, demolition action had been taken on the fourth floor of the said building and the slab had been punctured and complete demolition action could not be take due to paucity of time. Further, as per the said reply of the MCD, property No.15A/24 WEA Karol Bagh was booked for deviation in the shape of excess coverage from basement to third floor and unauthorized construction on the fourth floor vide U/C File No. B/UC/KBZ/09/913 dated 21-08-2009, and the demolition action continued for three hours. As per police records, the demolition action could not be completed on 26-11-2009, when the police party had returned back to police station Karol Bagh at 3.20 pm, and again on 14-12-2009 the demolition action could not be completed. Thus, it was submitted by the respondent that apparently the concerned Assistant Engineer had made false statement and he had himself been deferring the demolition for ulterior motives, and every time he had postponed the demolition on the pretext of shortage of time, which was nothing but a well thought out plan to extort money from the owner of the property.

29. Adverting next to the stand taken by the prime witness, Alijah H. Khan, Assistant Engineer(Building), Karol Bagh Zone, in his statement dated 20-10-2010 stated on oath that on 26th November, 2009, he along with Junior Engineer Mahipal and the demolition team proceeded to property No. 15A/24, WEA Karol Bagh for demolition and the demolition action was to be in respect of rooms

constructed on the fourth floor of the said building. The other property marked for demolition was 4/18 WEA Karol Bagh, Delhi. At property No.15A/24, he met one Sunny Ghai and one Yashpal Ratiwal. Sunny Ghai is the son-in-law of Shri Subhash Arya, Leader of the House in MCD. He received a call from Shri Subhash Arya on his mobile that Sunny Ghai was known to him and that instead of his proceeding with the demolition, the said Mr. Ghai be given an opportunity to carry out the demolition work himself. In turn, he informed the respondent Councillor that the force was already with him and that he could only defer the demolition if the party does so (sic. Does not do so) he would return with the force. He waited for one and a half hours but said Mr. Ghai and Mr. Ratiwal did not start the demolition, hence, he carried out the demolition on the fourth floor of the said building. He "believed" that this incident might have annoyed the respondent Councillor. Immediately on 3rd December 2009, he was called by Shri SK Chauhan, EE (Building), Karol Bagh Zone who informed him that he had received instructions from the Engineer-in-Chief for relieving him from the said Zone. Further, as per his "understanding", on 7th November, 2009 itself, the case for his reversion and transfer was processed and the file moved without any dispatch number and was initiated from RPA (II) level and cleared up to the Commissioner level on the same day. He was sought to be transferred on the basis of charge sheet of 2009, which was issued in October, 2009, even though the rules provide that in case of promotion, reversion can only be done if there is a charge sheet relating to the promoted post. Thereafter he challenged the reversion order in the CAT, and as per orders of the CAT, he had again been posted as Assistant Engineer in the same Zone with the order of reversion being stayed. According to him, he suffered on account of the demolition action taken by him.

30. As already stated above, there is another statement of said Mr. Alijah Khan recorded on 02-11-2011, in which his version is totally different where he says that he received a call from the respondent Councillor Mr. Subhash Arya when he was at property No. 4/18 WEA Karol Bagh, Delhi, who said that the property belonged to one

of his acquaintances and the owner/occupier should be given some time to carry out demolition himself. Regarding his reversion, he stated that five of them were promoted on 4th November 2009 and apart from him there were two other officials namely Mr. Sheesh Pal Garg and Mr. Kamal Singh Meena, who also had pending charge sheets against them but they were not reverted in the same fashion.

31. There is yet another statement of said Mr. Alijah Khan recorded on 27-08-2012, as per which, in both the cases, i.e. in respect of property No. 4/18 and property No. 15A/24 WEA Karol Bagh, Delhi, the Councillor had requested him to afford some time to the concerned owners to demolish the illegal portions themselves. His version in this statement is totally different in as much as here he mentions that while he was at property No.4/18 WEA, he received call from the respondent Councillor Mr. Subhash Arya asking him to give some time to the owner of the property who was known to him. Again, when he was at property No. 15A/24 WEA Karol Bagh, he met one Sunny Ghai at site who informed that he was the son-in-law of the respondent Councillor Mr. Subhash Arya and asked him to talk to the respondent. Accordingly, he called the respondent Mr. Arya from his mobile phone. The same instructions were given to him by the respondent Councillor in case of property No. 15A/24 WEA Karol Bagh, Delhi. To a Court question put to the witness, he replied that he had no proof of the involvement of Shri Subhash Arya in his transfer, however his transfer was unusual.
32. In his cross examination by respondent's counsel, Mr. H.S. Phoolka, the witness clearly stated that the respondent councillor Mr. Subhash Arya had not held out any threat to him either before, during or after the incident. In response to another question, he categorically stated that he had no proof regarding any role of the respondent Councillor in his transfer, but he was transferred all of a sudden. He further clarified that the respondent councillor did not ring him up for property No.15A/24 and it was he who had called him up at the instance of Mr. Sunny Ghai.

33. In his cross examination by the learned amicus curiae, Ms. Tamali Wad, the witness stated that he had spoken to Mr. Arya on 26-11-2009 only on two occasions and both the times when he spoke to Mr. Arya he asked for time being given to the owners/builders and when he talked to the respondent Councillor for the first time, the Councillor had mentioned about property No. 4/18 whereas at the second instance it was regarding property No.15A/24.
34. On a careful perusal of the statements of Alijah Khan recorded on different dates, and his cross examinations, it is seen that there are clear-cut discrepancies in his statements recorded on various dates, in as much as, in one statement he says the he received the call from respondent Councillor when he was at property No. 15A/24. In his second statement, he says he received the call from the respondent councillor when he was at property No. 4/18 asking him to give time to the owner of the said property for demolition and he made call to the respondent councillor when he was at property No. 15A/24 at the behest of Sunny Ghai. In his third version, the witness states that he received a call from the respondent councillor when he was at property No. 4/18 and he in turn called the respondent Councillor when he was at property No. 15A/24 on being asked by Mr. Sunny Ghai, and the respondent councillor asked him to give time to the owner of this particular property for carrying out demolition by the owner. In nutshell, his statement, as to the property regarding which the call was made or as who made the call, whether it is the respondent councillor or the witness himself, who called the respondent councillor at the instance of Sunny Ghai, is not reliable.
35. CW-3, Mr. Mahipal, Junior Engineer (Civil), Rohini Zone, in his statement recorded on 17-12-2012 stated that at the relevant time he was working as Junior Engineer in Karol Bagh Zone and on 26-11-2009 he had accompanied Mr. Alijah Khan, Assistant Engineer to property No. 4/18 and property No. 15A/24 WEA Karol Bagh, Delhi. Further, he stated that though he had no knowledge about the owner/occupier/builder of the property bearing No. 15A/24, the labourers working at site had informed him that Mr. Yashpal was

the person on whose behalf the construction was being carried out, and that is how the notice of demolition was sent by him in the name of Mr. Yashpal as owner/builder. In his cross examination by the counsel for the respondent, the witness stated that while they were at property No. 4/18, Alijah Khan had received certain telephone calls and based on these calls, Alijah Khan had asked him to wait as the owner/builder would himself demolish the structure. This was with regard to property No. 4/18. He further stated that he did not remember whether Alijah Khan had told him as to whose phone he had received. To a court question, the witness stated that as per practice, based on local enquiry made at the site, they issued notice to the owner/occupier without checking the recorded owner or occupier.

36. In their respective statements recorded on 14-03-2012, CW-4 Mrs. Ekta Kalra and CW-5 Mrs. Veena Kalra, witnesses stated that they were two of the four joint owners of property bearing No. 15A/24, in respect of which they had executed a Special Power of Attorney as well as a General Power of Attorney, vide Ex. CW4/1 & CW4/2, in favour of and Shri Praveen Kalra and Shri Ashok Kumar (Praveen Kalra being the husband of CW-4 and Ashok Kumar being the husband of Meenakshi Chanana, the third co-owner) to look after the construction part as they had purchased the said property for investment purpose and were re-building the same after demolition. The witnesses in one voice denied any knowledge about any person named Sunny Ghai or Yashpal, stating that it was their husbands who were looking after the entire work and they did not even know as to who were the witnesses to the said SPA or GPA.
37. In his statement recorded on 18-04-2013, CW-6, Mr. Parveen Kalra, deposed to the effect that the property No.15A/24 was purchased by his wife, Ekta Kalra, his sister-in-law Veena Kalra and two others namely, Suman Sharma and Meenakshi Chanana. He himself dealt in export/import of chocolates and biscuits. He stated that they had not received any demolition notice, etc and they came to know only when the team came for demolition of the fourth floor construction

in the form of a single room and kitchenette. He denied any knowledge about any person named Yashapl, but said that he might have been a representative of the contractor Mr. Rashid Ali or a caretaker deputed by the contractor. He further stated that he knew that Sunny Ghai was the son-in-law of Shri Subhash Arya and also that Sunny Ghai's name is Rajneesh Ghai, but does not remember whether the said Mr. Ghai had witnessed the Power of Attorney in respect of the property. This witness was not cross examined either by the counsel for the respondent or the amicus curiae, though opportunity was granted for the purpose.

38. CW-7, Mr. Ashok Kumar, in his statement dated 18-04-2013, stated that he knew Mr. Ghai as Sunny Gahi, who owns a hotel. Neither he nor Pravin Kalra ever talked to Sunny Ghai in terms of any difficulty. He further stated that he did not know whether Sunny Ghai's father-in-law was Mr. Subhash Arya, but he knew Mr. Subhash Arya, however, he never contacted Mr. Arya during the construction. They had received a notice for demolition of the fourth floor but the demolition was done only to the extent of puncturing the roof and later on they had got the room on the fourth floor removed and the building regularized after paying Rs. 1-2 lacs as regularization charges. This witness too was not cross examined by the counsel for respondent though opportunity was given for the purpose.
39. In his statement dated 22-08-2013, CW-8, Mr. Deepak Hastir, Additional Commissioner, North Delhi Municipal Corporation stated that during October to December, 2009, he was working as Director (Personnel). He further stated that Alijah Khan was promoted as Assistant Engineer from Junior Engineer in the year 2009 on ad-hoc basis after due recommendation from the Screening Committee and on the basis of Vigilance Clearance. At the time, though a routine enquiry was shown to be pending, he was promoted since no charge sheet had been issued. In response to a court question as to whether he had any role or whether he was involved in any manner in the reversion of Alijah Khan, he replied that he was involved. It was a mistake. However, since it (the promotion) was a

mistake, it was rectified. He has stated that as per his recollection, subject to verification of record, Alijah Khan was promoted on ad-hoc basis during the pendency of RDA and there was a DoPT instruction which says that if a charge sheet is issued within one year of the promotion then the employee is liable to be reverted.

The witness on a query put to him by this Forum clarified that the file for reversion is initiated by the dealing assistant which moves from LDC/UDC to Head Clerk, then to Superintendent, AO, Assistant Commissioner, then Director (Personnel) to Addl. Commissioner and lastly to the Commissioner and that normally, the whole procedure takes about 5-6 days. In case there has been a mistake, however, he stated it can be rectified by taking it personally through all the stages. On a further query put to him, he conceded that the use of the expression "mistake" was not appropriate since it was regarding charge sheet that action is required to be initiated and that in the case of RDA without charge sheet ad-hoc promotion was customary. The witness further went on to depose that there was no external pressure on him or the Commissioner to pursue this case. To another court question, the witness replied that it was due to the apprehension that the Assistant Engineer concerned may move the court and obtain a stay that the processing of his reversion was done in a hurried manner. In the course of cross examination by amicus curiae, the witness stated that as per information gathered, Mr. Khan was not the only officer promoted but there were five other officers so affected.

40. A look now at the evidence of the respondent. In his statement recorded on 24-09-02013, the respondent Councillor, Mr. Subhash Arya, while reiterating the contents of his reply to the show cause notice clarified that since the matter was fairly old when the reply was filed by him, he had stated that it was Mr. Gupta who had contacted him, whereas it was in fact Mr. Ajay Garg, the owner of property bearing No. 4/18 WEA Karol Bagh. He, in his cross examination by the learned amicus curiae, stated that he had been the Member of the erstwhile Metropolitan Council from 1983 to 1990 and again from 1997 he was Municipal Councillor. He was in

fact municipal councillor consecutively for the fourth time and he had been the Leader of the House since 2002. He stated that he did not know Alijah Khan when he had raised the issue of promotion of some officers of MCD against whom charge sheets/ RDAs or police cases were pending, and he was not even aware that Alijah Khan had been charge sheeted. Further, he was not aware if any officers were reverted after he raised the issue. He did not have the mobile number of Alijah Khan in his mobile phone. The list containing the numbers of officers posted in various zones is provided by the MCD authorities. He or any other member of his family had no interest in property bearing No. 4/18 WEA.

41. In response to a further query put to him by the learned amicus curiae, the witness stated that it is correct that he had called up Alijah Khan on receiving a request from one Mr. Garg and mentioned to him that the person be given some time as he himself was willing to undertake the demolition, however, when he received a call back from Alijah Khan after about 12 minutes that the person concerned had not started the demolition himself, he asked Mr. Khan to go ahead and carry out his duty.

In further cross-examination, he stated that he did not know whether demolition action was to be carried out at property No. 15A/24 also. When Alijah Khan called him up for the second time, there was no discussion about property No.15A/24 and he only informed about the status of property No. 4/18 WEA. The witness denied the suggestion given to him by the learned amicus curiae that Sunny Ghai, his son-in-law, had any interest in property bearing No. 15A/24, WEA, Karol Bagh, and further denied that Alijah Khan had told him that he was calling from 15A/24 at the instance of Mr. Sunny Ghai. He stated that he had no knowledge about any action being taken against Alijah Khan and he obtained the information about the cases against him under RTI only after institution of the present compliant. He stated that he never gave instructions or orders to the MCD officers, and he only made requests or suggestions. He did not know whether Sunny Ghai was involved in construction business, however, it was possible that he

might have interest in the construction business of his friends or associates, but he had no knowledge about the same.

42. In his cross examination by the Standing Counsel for the Municipal Corporation, Ms. Mini Pushkarna, the witness (respondent councillor) stated that he had received the call on his landline from one person who claimed himself to be Ajay Garg. Though he did not know Ajay Garg personally, he had no hesitation in making a call even on the request of a stranger and the only consideration was that the Corporation should not suffer loss. He did not verify whether the person claiming to be Mr. Ajay Garg, was a fictitious person though, subsequently, he had gone to the property in question and contacted Mr. Garg so as to defend himself in the present proceedings.
43. I have carefully considered the material on record including the documentary and oral evidence adduced by the parties and the departmental records produced by the Municipal Corporation pertaining to the ad-hoc promotion, disciplinary action and reversion proceedings in respect of Mr. Alijah Khan and other officers. I have also heard the arguments advanced at the bar by the learned amicus curiae, Ms. Tamali Wad, Advocate, counsel for the respondent councillor, Mr. Ashok Kashyap, Advocate, and counsel for the North Delhi Municipal Corporation, Ms. Mini Pushkarna, Advocate.
44. At the outset, it deserves to be noted that the complaint filed pseudonymously in the name of Rajinder Sethi is patently false in so far as the complainant stated that when the Junior Engineer (Building) initiated action against unauthorized constructions mentioned in the eleven properties as set out in the complaint, he was thrashed by the Leader of the House Shri Subhash Arya. It stands established on record that the concerned Junior Engineer on the relevant date was CW-1 Alijah Khan. The statement of Alijah Khan was recorded by this Forum on three different occasions, i.e. on 20-10-2010, 02-11-2011 and 27-08-2012. Nowhere has Alijah Khan stated that he was thrashed by the Leader of the MCD House

Shri Subhash Arya. In fact, Alijah Khan in none of his three statements states that he ever met the Leader of the House. All he states is that he had gone on a demolition drive in respect of properties bearing No. 4/18 and 15A/24, WEA, Karol Bagh, Delhi. Significantly, property bearing No. 4/18 finds no mention in the complaint dated 10-03-2010. Significantly also, all the three statements made by the Assistant Engineer, Alijah Khan in respect of the role played by Shri Subhash Arya, in relation to the demolition of these properties are wholly contradictory to each other.

45. As noted above, in his first statement, Alijah Khan states that at property No.15A/24, he met one Sunny Ghai and one Yashpal Ratiwal. Sunny Ghai, he stated was the son-in-law of Shri Subhash Arya, Leader of the House in MCD, and he received a call from Shri Subhash Arya on his mobile that Sunny Ghai was known to him and that instead of his proceeding with the demolition, the said Sunny Ghai be given an opportunity to carry out the demolition work himself. He informed Shri Subhash Arya that he could not defer the demolition indefinitely and could only grant some time before he returned with the force for demolition.
46. In his second statement recorded on a subsequent date, the version of Alijah Khan, is totally different wherein he states that he received a call from Shri Subhash Arya when he was at property No. 4/18, WEA, Karol Bagh, Delhi, who said that the property belonged to one of his acquaintances and the owner/occupier should be given some time to carry out the demolition himself. This statement thus runs completely counter to his earlier statement that he had received a call from Shri Subhash Arya while he was at property No. 15A/24 WEA, Karol Bagh, which belonged to the son-in-law of Shri Subhash Arya.
47. In his third statement, Alijah Khan, altogether falsifies his earlier statements by stating that in respect of both the properties, i.e. 14/8, WEA, Karol Bagh and 15A/24, WEA, Karol Bagh, the Councillor had requested him to afford some time to the concerned owners to

demolish the illegal portions thereof. He states that while he was at property No. 4/18 WEA, Karol Bagh, he received a call from Shri Subhash Arya and thereafter when he was at property No.15A/24, WEA, Karol Bagh, he met one Sunny Ghai at the site, who informed him that he was the son-in-law of Shri Subhash Arya and asked him to talk to the latter.

48. It may be mentioned that the last statement made by Alijah Khan was made quite apparently in a bid to reconcile his earlier statements and the call detail records obtained by this Forum, which showed that a call was received by Alijah Khan from Shri Subhash Arya between 12:48:52:27 and 12:49:42:08, and thereafter a call was made by Alijah Khan to Shri Subhash Arya at 13:00:31:29. Not only are the statements of Alijah Khan, the only witness who could have thrown some light on the role of the alleged misconduct on the part of the respondent councillor, wholly contradictory to each other, but the said statements belie the complainant's version that Alijah Khan was manhandled by Shri Subhash Arya in the course of discharge of his duty.
49. In the course of his cross-examination, Alijah Khan unequivocally admitted that the respondent Shri Subhash Arya had not held out any threat to him before, during or after the incident. He also categorically stated that he had no proof regarding any role of the respondent in his transfer. He also clarified in his cross-examination that the respondent councillor did not ring him up for property No.15A/24, WEA Karol Bagh and it was he who had called him up albeit at the request of Sunny Ghai, the son-in-law of the respondent. The aforesaid statement made by Alijah Khan that Sunny Ghai was the owner of the property bearing No.15A/24, WEA Karol Bagh, is also found to be completely false and is altogether belied by the statements of CW-4, Mrs. Ekta Kalra and CW-5, Mrs. Veena Kalra. The evidence of both these witnesses establishes beyond any iota of doubt that there were four co-owners of property bearing No.15A/24, WEA, Karol Bagh, namely CW-4, CW-5 and two others namely, Mrs. Suman Sharma and Mrs. Meenakshi Chanana. The said witnesses have also placed on record

documentary evidence to prove their ownership of the property in question and nothing has emerged on record to contradict their aforesaid statements. Thus, there is no material on record to suggest that Sunny Ghai was the owner of property bearing No. 15A/24, WEA, Karol Bagh, Delhi. All four witnesses aforesaid have denied that any person named Sunny Ghai in any manner had anything to do with property bearing No.15A/24, WEA, Karol Bagh, Delhi.

50. A look now at the records pertaining to the a-hoc promotion and reversion proceedings in respect of Mr. Alijah Khan, in juxtaposition to other officers, by misuse of his power and position. On scrutiny of the same, it clearly emerges that the respondent in no manner was instrumental in the reversion proceedings against CW-1 Alijah Khan as has been sought to be portrayed in the present proceedings.

51. At this juncture, it is deemed expedient to reproduce the DoPT guidelines on the subject which reads as under:

"4(i) Where an appointment has been made purely on ad-hoc basis against a short term vacancy or a leave vacancy or if the Government servant appointed to official until further orders in any other circumstances has held the appointment for a period less than one year, the government servant shall be reverted to the post held by him substantially or on a regular basis, when a disciplinary proceeding is initiated against him".

52. It is on record that Alijah Khan, amongst five other Junior Engineers (C), was promoted to the post of Assistant Engineer (C) on the recommendations of the Screening Committee meeting held on 13-10-2009 and subsequent approval of the competent authority vide Office Order dated 04-11-2009. It is also on record that the Screening Committee meeting held on 13-10-2009 had made its recommendations regarding promotion of Syed Alijah H. Khan on the basis of no RDA/Police Case Report dated 25-08-2009 received from the Vigilance Department and COP Report dated 26-08-2009.

As per prevalent practice, the Vigilance Clearance Report was treated as valid for 03 months from the date of issue and COP Report for a period of 06 months from the date of issue. On 07-12-2009, a report was received by the concerned Department from the Vigilance Department through fax in respect of Syed Alijah H. Khan, Assistant Engineer (C), as per which charge sheets had been issued against Shri Alijah Khan in Case No. 1/39/09 and 2/138/08 dated 14-09-2009 and 27-10-2009 respectively. After taking note of the report from the Vigilance Department and the DOPT guidelines on the subject, a note was prepared in the Department regarding the erroneous ad-hoc promotion to the post of Assistant Engineer (C) in respect of Syed Alijah H. Khan. A reading of the said note demonstrates that though the promotion of Shri Alijah Khan was made on the basis of Vigilance Report dated 25-08-2009, it was the only report before the Screening Committee at the time of meeting held on 13-10-2009. It subsequently transpired that in the interregnum, i.e. 25-08-2009, when the Vigilance Report was submitted and 13-10-2009, when the Screening Committee cleared the name of Shri Alijah Khan for ad-hoc promotion, charge sheet was filed against him on 14-09-2009. Subsequently on 27-10-2009 another charge sheet was filed against him in the second case. These charge sheets were reported by the Vigilance Department through fax on 07-12-2009 and were immediately acted upon. The relevant portion of the departmental note dated 07-12-2009 reads as under:-

"Subject: Erroneous ad-hoc promotion to the post of AE (C) in r/o Shri Sayeed Ali Jah H. Khan.

In regard to above mentioned subject, it is submitted that Shri Sayeed Ali Jah H. Khan was among 05 other JEs(C), promoted to the post of AE (C) on ad hoc basis on the recommendations of the Screening Committee held on 13-10-2009 (Flag 'B') and subsequent approval of the Competent Authority (Flag 'C') vide office order dated 04-11-2009 (Flag 'D').

In this regard, it is further submitted that the Screening Committee held on 13-10-2009 had made its recommendations regarding promotion of Shri Sayeed Ali Jah H. Khan on the basis of No RDA/Police Case Report dated 25-08-2009 received from the Vigilance Department (Flag 'E') and COP Report dated 26-08-2009 (further clarified on 09-10-2009 regarding name of the incumbent) received from the EE(M)-II/KBZ (Flag 'F'). As per the prevalent practice, the Vigilance Clearance Report is treated as valid for 03 months from the date of issue and Cop report for a period of 06 months from the date of issue.

Further, a report from Vigilance Department has been received through the fax in r/o Shri Sayeed Ali Jah H. Khan S/o. Shri SLH Khan, AE (C), on 07-12-2009 (Flag 'A') reproduced as under:

1. 1/39/09 Charge sheet issued on 14-09-2009
2. 1/36/08 Charge sheet not issued
3. 2/138/08 Charge sheet issued on 27-10-2009
4. 1/253/03 Kept in abeyance as fake O.O issued by Shri R.K. Chauhan, ALO

Further, the DoPT's guidelines on the subject (Flag 'G') are reproduced as under:-

"4(i) Where an appointment has been made purely on ad-hoc basis against a short term vacancy or a leave vacancy or if the Government servant appointed to official until further orders in any other circumstances has held the appointment for a period less than one year, the government servant shall be reverted to the post held by him substantially or on a regular basis, when a disciplinary proceeding is initiated against him".

In view of the above facts, as Shri Sayeed Ali Jah H. Khan is facing 04 RDA/Police Case, out of which, it has now come to notice of Department that Charge sheets have been

issued in two cases, as intimated by the Vigilance Department by their report dated 07-12-2009 (Flag 'A'), if approved, the ad hoc promotion to the post of AE (C) in respect of Shri Sayeed Ali Jah H. Khan may be withdrawn and he may be reverted to the post of JE (C) with immediate effect.

Submitted please.

RPA-II (Sd/-) 07-12-09

53. A subsequent note made on the same date, i.e. 07-12-2009, by the concerned officers is extracted below:-

"Admn. Officer (Estt.)-III

We may also solicit a fresh Vig. Report in r/o all ad hoc appointees during the date of one year, so that corrective action may be taken, if needed.

Sd/- 07-12-09

Asstt. Cm (Estt.)

Sd/- 07-12-09

Director (Personnel)

In addition to 'X', it may also be kindly approved to seek fresh no RDA report in respect of all Screening Committee meeting held in this year and if in other cases any charge sheet has been issued, then all such employees be reverted.

Sd/- 07-12-09

Addl. Cm. (Engg & Estt)

Sd/- 07/12

Commissioner

Sd/- 07/12

54. On the following date, i.e. 08-12-2009, through an Office Order bearing No. F.5 (27)/CED(III)/84/Pt.X/1726, the ad-hoc promotion to the post of Assistant Engineer (C) in respect of Shri Sayeed Alijah H. Khan, granted vide order dated 04-11-2009 was withdrawn and

he was reverted to the post of Junior Engineer (C) with immediate effect.

55. From the aforesaid it is clear that it was on account of pendency of charge sheets in two of the four RDA/Police cases pending against Shri Alijah Khan that his ad-hoc promotion was set aside. This was done strictly in accordance with the DoPT guidelines which provide for reversion of the government servant promoted ad-hoc against whom a disciplinary proceeding was initiated.
56. From the records of the concerned department, there is no manner of doubt that this is not a case where it can be said that Shri Alijah H. Khan was victimized at the behest of the respondent councillor or that the respondent councillor was in any manner instrumental in initiating reversion proceedings against him. I am buttressed in coming to the aforesaid conclusion from the fact that Alijah Khan himself has said in his testimony that at no point of time "either before, after or during demolition proceedings, did the councillor hold out any threat to him". He also clarified that he had no proof regarding the role of the respondent councillor in his transfer, though he was transferred all of a sudden. The entire story of Alijah Khan having been assaulted and manhandled by the respondent councillor also stands exposed as blatant falsehood.
57. Although it is not for this Forum to go into the legality or otherwise of the reversion proceedings of the concerned Assistant Engineer, this Forum is duty bound to examine whether there was any misuse of power by the respondent councillor through employees and authorities in the Corporation to allegedly harangue, harass and victimize the concerned Assistant Engineer for having refused to succumb to the uncalled for political pressure exerted upon him by the respondent councillor. Having said so, it may be noted that even after an extensive inquiry and recording of elaborate evidence, there is no material on record to suggest that the respondent councillor was in any manner, directly or indirectly, instrumental in initiating the reversion proceedings against the concerned Assistant Engineer, or that he misused his position to the

detriment of the concerned Assistant Engineer. The charge sheets in question were already pending against him and the rules provided that pendency of charge sheets was in itself sufficient to revert him to the post from which he had been promoted ad-hoc on the basis of a clear vigilance report. The mere act of calling up the concerned Assistant Engineer by the respondent councillor on the request of a citizen of his constituency and that too a citizen unknown to him hithertobefore, for asking him to give some time to the citizen to enable him to undertake the demolition action himself, by no stretch of imagination can be construed to mean that the respondent councillor had attempted to wield his clout over the Corporation official so as to interfere in his discharging his official duties. Nor does the said act per-se constitute any misconduct, abuse or misuse of power unbecoming of a public functionary, unless proved to the contrary by evidence. No such evidence has come on record in the present proceedings so as to bring home the charge of misconduct, abuse or misuse of power by the respondent councillor. On the contrary, it is clearly stated by the concerned official of the Corporation in his statement that he had granted only one hour or so to the owner/occupier to demolish the unauthorized construction and thereafter immediately proceeded to carry out the demolition work "*without any interference from any quarter*".

58. A query was also put by this Forum to Ms. Mini Pushkarna, learned counsel for the Municipal Corporation of Delhi, as to whether, in the ordinary course of things, a Municipal Councillor can ask the officials concerned to give an opportunity to the owner to demolish that portion of his property which has been detailed in the order of demolition as "unauthorized". Ms. Pushkarna in response relied upon the provisions of Section-343(1) and 343(6) of the Delhi Municipal Corporation Act, 1957, to submit that the statute itself contemplated this. Learned counsel further stated that it was the precedent and very often in such situations, on the owner's request, he was granted time to demolish the unauthorized erection as otherwise the Municipal Corporation would be put to

the task of demolition and later recovery of demolition charges from the owner as arrears of tax.

59. Ms. Mini Pushkarna, learned counsel for North Delhi Municipal Corporation, also filed an additional affidavit dated 26-05-2016 of the Executive Engineer (Building), Karol Bagh Zone, North Delhi Municipal Corporation in support of her aforesaid contentions. The relevant portions of the said affidavit read as under:-

- "3. *That Section 343 of the DMC Act, 1957 provides that where construction of any building or execution of any work has been commenced or has been completed without or contrary to sanctioned building plan, then the Commissioner has the power to direct that such erection or work shall be demolished by the person at whose instance the work has been commenced or is being carried out or has been completed. Show cause notice issued to the concerned person guilty of unauthorized construction clearly stipulates that such person is required to immediately stop such unauthorized construction. Order of demolition issued under Section 343 of DMC Act, 1957 itself incorporates request to the concerned person who has carried out or is carrying out unauthorized construction, to demolish the unauthorized construction himself after receipt of the show cause notice. Copy of a sample show cause notice along with translated copy is annexed for kind perusal.*
4. *That further Section 344 of the DMC Act also stipulates that where any erection of any building or execution of any work has been commenced or is being carried on, either without or contrary to sanctioned building plan, the Commissioner may*

require the concerned person to stop such construction forthwith.

5. That further Section 345A of the DMC Act also stipulates that directions for alterations may be given to a person who is carrying out or has completed construction which is unauthorized. Such directions are given so that the concerned person makes the necessary alterations with the object of bringing the building or work in conformity with the sanctioned building plan.
6. That in terms of the order of demolition under Section 343 of DMC Act, 1957, when the person concerned does not carry out the necessary demolition himself, demolition action is taken by the Building Department of the concerned zone itself. However, many times when the officials of Building Department visit the property in question for purpose of demolition, the persons concerned request that they may be allowed to carry out demolition themselves. In such circumstances, the Building Department allows such persons to carry out the necessary demolition themselves. Such practice is followed in general as the main purpose of the Municipal Corporation is to bring the building in question within the norms of sanctioned building plan. Even if demolition is carried out by the department, cost of such demolition is recovered from such concerned persons guilty of unauthorized constructions. Thus, if such persons show inclination for carrying out demolition themselves, they are allowed to do so."
7. That the present affidavit is submitted accordingly".

60. Thus, it is clear that sub-section (1) of Section 343 of the Delhi Municipal Corporation Act, 1957, itself envisages that in the case of

unauthorized construction, the Commissioner may make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, and for the aforesaid purpose may afford such period of time as may be specified in the order of demolition. The rationale for affording time to the person indulging in construction in contravention of sanctioned plans is to be found in Sub-section-6 of Section-343, which is to the effect that if no demolition is effected by the concerned person within the time specified in the notice of demolition or as extended by the Appellate Tribunal or the Administrator on an appeal being preferred, the Commissioner may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as arrears of tax under the Act. Quite clearly, therefore, if a person does not himself demolish the erection made by him unauthorizedly, he shall be liable to pay demolition charges and also run the risk of his entire property being damaged in the course of demolition of the unauthorized portion thereof, including any goods lying in the unauthorized portion of the said property.

61. In the instant case, the Respondent-Councillor's act of calling up the demolition squad at the behest of an unknown citizen to allow the said citizen to demolish the unauthorized portion himself, therefore, cannot be said to amount to failure to act in accordance with the norms of integrity and conduct which ought to be followed by public functionaries of the class to which he belongs; nor it can be said that he abused or misused his position to obtain any gain or favour to himself or to any other person or to cause loss or undue harm or hardship to any other person; or was actuated in the discharge of his functions as such public functionary by improper or corrupt motives or personal interest. It would have been a different matter if the Respondent Councillor had directed the demolition squad not to demolish the unauthorized construction or for that matter directed the Commissioner not to pass the demolition order.

Such acts on the part of the respondent would have most certainly constituted improper acts, not in accordance with the norms of integrity and conduct required to be followed by public functionaries.

61. The very fact that the demolition squad did not wait for more than an hour and thereafter proceeded to demolish the unauthorized erection is further suggestive of the fact that they were not told by the councillor not to demolish the unauthorized construction. In fact, it is not even the case against the municipal councillor that he had at any point of time, directly or indirectly, suggested that the demolition squad should not demolish the unauthorized construction on the very same day, if the owner failed to do so himself.
62. Therefore, in my considered opinion, there is no merit in the present complaint, which appears to have been filed pseudonymously by the complainant who appears to be motivated by political rivalry, malice or the like without the courage to appear before this Forum to substantiate his allegations.
63. Before parting with the case, the arguments advanced at the bar by Ms. Tamali Wad, Advocate, appointed as amicus curiae by my learned predecessor deserve to be appreciated as also the interest shown in the matter by Ms. Mini Pushkarna, learned counsel for the North Delhi Municipal Corporation.
64. In view of the foregoing discussion, the show cause notice dated 18-07-2011 issued to the respondent councillor under Section-7 read with Sec. 2 (b) of Delhi Lokayukta & Upalokayukta Act, 1995, stands discharged. File be consigned to the record room.


(JUSTICE REVA KHETRAPAL)
LOKAYUKTA

Dated: 30th May, 2016

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