

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE REVA KHETRAPAL
COMPLAINT NO.C-1754/LOK/2012**

IN THE MATTER OF:

SHRI RAJESH GARG

... COMPLAINANT

VERSUS

SH. RAJ KUMAR CHAUHAN, MINISTER, GNCTD

&

SH. VIJENDER GUPTA, EX-MUNICIPAL COUNCILLOR &
ANR

.... RESPONDENTS

PRESENT:

1. None for the complainant.
2. Shri Vivek Tandon, Advocate, Counsel for Respondent No.1 and PWD, Government of NCT of Delhi.
3. Shri Praduman Kumar Aggarwal, Advocate, Counsel for DDA.
4. Shri Sushil Kumar Pandey, Advocate, Counsel for Shri Vijender Gupta, Respondent No.2.
5. Ms. Mansi Gupta, Advocate, Counsel for North Delhi Municipal Corporation.

ORDER

1. The present complaint is filed by the complainant Shri Rajesh Garg against Shri Raj Kumar Chauhan, the then Minister, Public Works Department (PWD) and Department of Welfare of SC/ST, Government of NCT of Delhi, and Shri Vijender Gupta,

the then Chairman, Standing Committee, Municipal Corporation of Delhi, respondents herein. The gravamen of the complaint is that both the respondents had abused their position and failed to act in accordance with the norms of integrity and conduct, in as much as they were instrumental in delaying action by the statutory authorities, i.e. Delhi Development Authority, the Public Works Department and the Municipal Corporation of Delhi, against the Media House 'Punjab Kesari', which had encroached upon public land and road, raising unauthorized constructions and even constructed a boundary wall, two iron gates and a room encompassing the PWD road and DDA land. According to the complainant only 2025 Sq. Mtrs. Plot was allotted to M/s. Hind Samahcar Ltd. by DDA for publishing the daily newspaper 'Punjab Kesari', being Plot No.2 in the layout plan of Printing Press Complex, Ring Road, Wazirpur DTC Deport, Delhi 110035. The Media House 'Punjab Kesari' had, however, made encroachment and raised unauthorized construction on public land.

2. The complainant alleges that he learnt of the encroachment on public land and unauthorized construction on the said land by the owners of 'Punjab Kesari' when he moved RTI applications seeking information. It is further the complainant's case that when appeals were preferred by him against the non-



supply/delay in supply of information, the concerned officials of the appellate authorities verbally disclosed and took names of the respondent public functionaries, being the persons desiring that no action be taken against the Media House for encroachment on public land and unauthorized construction, and that is why the unauthorized construction had been continuously going on for four years.

3. The complainant further alleges that he was contacted personally by the colleagues of the above mentioned public functionaries and asked not to press the complaints/RTI queries against 'Punjab Kesari'. According to the complainant, the inaction on the part of PWD, DDA, MCD and other Enforcement Agencies against the encroachment and illegal construction by the owners of 'Punjab Kesari' was on account of the influence wielded by the above mentioned public functionaries, who were acting against and contrary to the oath taken by them on their assuming charge of their respective offices.
 4. The statement of the complainant was recorded on 16-10-2012 in which he reiterated his allegations against the respondents and asserted that both the respondents had been regularly attending and actively participating in the functions
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organized by the owners of 'Punjab Kesari', including a function organized at the place where there is encroachment on the public road and unauthorized construction.

5. On consideration of the averments made in the complaint and documents including photographs produced by the complainant, vide order dated 18-10-2012 a show cause notice was issued to both the respondents as to why an inquiry under Section-7 read with Section 2(b) of the Delhi Lokayukta & Upalokayukta Act, 1995 (hereinafter referred to as "the Act") be not held against them.
6. Respondent No.1, Shri Raj Kumar Chauhan filed reply stating therein that he, at no stage, had given instructions to any official or person permitting any unauthorized activity, including illegal construction and/or encroachment of public land. He further stated that the authorities were at liberty to undertake action against any unauthorized construction or illegal activity carried out by any person and more particularly 'Punjab Kesari'. As regards attending functions organized by the owners of 'Punjab Kesari' and various persons, he averred that the same were not related to the duties to be performed by him in his capacity as a public functionary.

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7. Respondent No.2, Shri Vijender Gupta, also filed reply, stating therein that he had never used his power or influence to help anybody as alleged. He further stated that the attending of public functions organized by a Media House or owner of a Media House does not suggest his involvement in the alleged act of unauthorized construction or encroachment. The complaint, he stated, was a motivated one.
8. By an Order dated 10-01-2013 this Forum directed the Delhi Development Authority as well to file a response in the case on the aspect of encroachment of public land as also the steps being taken for its removal, and on 06-02-2013 the Delhi Development Authority filed a status report. The upshot of the status report filed by Delhi Development Authority was that the encroachment done in respect of Plot Nos. 3 and 4 had been partly removed and the admitted position as on January 2013 was set out in the status report as under:-

"That as per letter dated 02-01-2013 of Ex. Engineer Northern Division-10, DDA, addressed to the Superintending Engineer, Civil Circle-12, DDA, copies of which are endorsed to Dy. Director (Institutional Land), Deputy Director (Land Management) and concerned Assistant Engineer, it has been informed that the lessee of Plot No.2 has encroached the DDA land approx. 2200 Sq. Mtrs by constructing the pucca structure in the form of canteen and printing press machine etc. As per the

layout plan, this DDA land is proposed for allotment to Institute of Printing Technology. Accordingly, a reference has also been made by Director (CL) to Director (Lands) DDA, who is the concerned officer to take action for retrieval of the said land. Copy of the said Plan is annexed as Annexure R-21"

9. A response was also called from the Public Works Department (PWD). On 21-02-2013, an affidavit on behalf of the Executive Engineer, PWD, together with photographs showing the action taken to remove the encroachment on the service road was filed.
10. On 21-03-2013, the complainant for the first time pointed out that the encroachment by the Media House existed in Plot No.1 which was meant for allotment to the Institute of Printing Technology and was never allotted to the Media House in question.
11. By a detailed order dated 03-05-2013, my learned predecessor categorically recommended to the authorities concerned that they should perform their statutory obligations, after noting that in Para-5 of the Minutes of the Meeting held by the Commissioner (Land Management) and Commissioner (Land Development) dated 08-04-2013, it was recorded that:

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"After discussions, it was concluded that demolition is major/sensitive and as per instructions dated 15-02-2013 of the Hon'ble Lt. Governor, all such demolitions are to be approved by the Lt. Governor before being carried out, hence, the proposal for demolition be forwarded to the Lt. Governor for his approval immediately"

12. The complainant Shri Rajesh Garg, in the meanwhile had moved an application, whereupon the following apposite orders were passed by my learned predecessor on 21-05-2013:-

*"Mr. Rajesh Garg, complainant has moved an application. It has been brought to the attention of Mr. Garg that in these proceedings notice was initially issued when he had claimed that RTI queries were not being answered. Further, he had made specific allegations that action on those queries had not been taken on account of interference by the public functionaries. **This cannot be extended to cover all and sundry unlawful acts of a private party for which there are civil and criminal Forums unless the involvement of the public functionary and their role therein is specifically brought out. The present application filed does not reveal any such involvement of the public functionaries and if Mr. Garg wishes to pursue this application, he will have to provide better and complete particulars regarding the involvement of public functionaries.***

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At this stage, Mr. Garg wishes to withdraw the application and he is permitted to withdraw the same.

Re-notify the matter on 17-07-2013 at 2.30 pm"

13. On 17-07-2013 this Forum with regard to the approval of the Hon'ble Lt. Governor made the following observations:-

"Action by DDA got deferred and delayed on the plea that the instructions of Hon'ble Lt/Governor dated 15-01-2013 issued regarding unauthorized colonies slated for regularization were also applicable in the instant case. The action was delayed further on account of taking approval of the Hon'ble Lt. Governor despite the order of this Forum dated 03-05-2013, clarifying the position.

Be that as it may, said difficulty is stated to be not existing now as the Hon'ble Lt. Governor has cleared the file for action"

14. On the same date, i.e. 17-07-2013, it was noted by this Forum that as far back as on 12-02-2013 the PWD claimed that the encroachment made over the land/road and gate installed by the Media House had been removed and the land admeasuring about 1500 Sq Mtr had been re-claimed, leaving the DDA to do the rest.

15. It was also noted in the aforesaid order that this Forum was in receipt of copy of the interim status quo order passed by the

Civil Court tendered to the Forum along with photo copies of the notings from the DDA File running from page-107-N to page-116/N. The attention of the Forum was also drawn to the note of Shri T. Srinidhi, Pr. Commissioner (LD, H&CWG), DDA, at page 116/N, which reads as under:-


"Lokayukta, if approved, can be informed that the civil court has granted interim stay and in all probability he is estoppabled (sic. estopped) from continuing with his hearings"

16. A perusal of the plaint filed before the Civil Court by 'Punjab Kesari' (plaintiff in the said suit) which is on record shows that on or about 21-05-2013, the Media House, i.e. Punjab Kesari had filed a Suit for Permanent Injunction before the Civil Court, wherein it claimed that Plot No.1 situated at Printing Press Complex, Ring Road, Near Wazirpur Bus Depot, Delhi 110035 was allotted to it by defendant No.1 in the said suit (the Delhi Development Authority) and subsequently a Perpetual Lease Deed was executed in its favour on 02-04-2007. It was further claimed that two adjoining Plots bearing Plot No. 3 and 4 in the same Complex were also allotted subsequently to it by the defendant No.1, Delhi Development Authority, and a Perpetual Lease Deed in respect thereof was executed on 15-04-2008. It was prayed in the said suit that a decree be passed against the defendants, Delhi Development Authority, their servants,



agents, employees, officers, etc. restraining them from demolishing and/or sealing the properties in dispute bearing Plot Nos. 1, 3 and 4 situated at Printing Press Complex, Ring Road, Near Wazirpur Bus Depot, Delhi, except by following due process of law.

17. As noticed above, an interim status quo order was passed by the Civil Court in the aforesaid suit filed by the Media House. The said status quo order, it is not in dispute, remains in force till date.

 18. On 14-08-2013, it was brought to the notice of this Forum that the Delhi Development Authority had lodged a complaint with the SHO concerned regarding forging of the possession letter and Perpetual Lease Deed in respect of Plot Nos. 3 and 4 against the Media House 'Punjab Kesari'. Still later, it came to light, as set out in the order dated 06-09-2013, that the Media House had filed certain documents regarding re-allotment of Plot Nos. 3 and 4 with the Station House Officer concerned, which documents were sent to the Delhi Development Authority on 31-07-2013 for verification and reply. On 24-10-2013 this Forum was informed by the Delhi Development Authority that the said letters and documents too had been forged and were not issued by them.
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19. The above being the position, notice was issued by this Forum to the complainant for 28-01-2016. The learned Counsel for DDA was also directed by this Forum by the same order to file status report as on date, and was granted six weeks time for the aforesaid purpose. The learned Counsel now states that he is unable to file status report as he has not been able to procure certified copies of the documents in the civil proceedings so far. He, however, states at the bar that in the suit filed by 'Punjab Kesari' against the respondents, an ad-interim injunction was sought by the Media House 'Punjab Kesari' by moving an application under Order-XXXIX, Rule 1 & 2 read with Sec. 151 CPC to restrain the defendants Delhi Development Authority and North Delhi Municipal Corporation from initiating any coercive action, including demolition and sealing of Plot Nos. 1, 3 and 4, Printing Press Complex, Near DTC Bus Depot, Wazirpur, Delhi, without following due process of law. The said interim injunction granted against the defendants, the learned counsel concedes, is still in force and the Delhi Development Authority is thereby restrained by the civil court from proceeding against the alleged illegal encroachments and unauthorized construction.
20. This Forum had issued notice to the complainant for 28-01-2016 and again for 25-04-2016, but the complainant did not



care to appear despite the fact that it was specifically mentioned in the notice issued to him for 25-04-2016 that in case he does not appear, the matter will be heard and decided on merits in his absence. In these circumstances, since it appeared that the complainant after the filing of the Civil Suit was no longer interested in prosecuting the complaint, this Forum heard the learned counsel for the DDA, the PWD, the North Delhi Municipal Corporation and the learned counsel for respondents No. 1 & 2.

21. It deserves to be mentioned at this juncture that there are on record several orders passed by my learned predecessor from time to time whereunder notices were issued to the PWD, DDA and NDMC (North DMC) to ascertain from the said authorities their stand regarding encroachment on public land and road by the concerned Media House. It is deemed unnecessary to go into the various orders passed from time to time and status reports and affidavits filed by the DDA, PWD and North Delhi Municipal Corporation in too great a detail. Suffice it to state that consequent thereto, the PWD as noticed above, took certain measures, thereby clearing major encroachments on the road on 12-02-2013 and further undertook to remove whatever remaining encroachments had not been removed. The DDA, however, failed to take any concrete action in the

matter, resulting in a detailed order dated 16-05-2013 passed by my learned predecessor expressing his anguish therein, and a subsequent order dated 21-05-2013 wherein it was observed as under:-

“On the judicial side, the Lokayukta has done his duty by bringing to the notice of the Vice Chairman, DDA, the inherent irrationality in applying the observations of the Hon’ble Lt. Governor made with reference to the demolition drives in respect of unauthorized colonies enjoying the protection under the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, to the case of a rank encroachment by a private Media House.

It is considered appropriate accordingly that the Registry on the administrative side would send copies of order dated 03-05-2013, 16-05-2013 and this order, to the Hon’ble Lt. Governor who also happens to be the Chairman of DDA, for information.....”

22. Thus, in so far as the illegal encroachment and unauthorized constructions on the part of ‘Punjab Kesari’ was concerned, the then Lokayukta concluded that he had discharged his duties and on this aspect nothing further remained to be done.
23. After hearing the concerned authorities, there is, in my opinion, no manner of doubt that the present complaint cannot be entertained unless and until the complainant

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provides better and complete particulars regarding the involvement of the public functionaries in the alleged encroachments/unauthorized constructions made by the Media House 'Punjab Kesari'. The mere averment of the complainant made in the complaint that the respondents, who were public functionaries, attended some functions of the National Newspaper 'Punjab Kesari', by itself, cannot be construed as going against the norms of integrity of the concerned public functionaries. Likewise, the bald allegation of the complainant that in the course of proceedings regarding RTI applications before the appellate authority, certain officials had verbally alleged that it was the respondents who were instrumental in delaying the demolition of the encroachments made by the Media House 'Punjab Kesari', on land allegedly belonging to the DDA, the North Delhi Municipal Corporation and the PWD, is also unsubstantiated on record. As a matter of fact, as on date, the Media House 'Punjab Kesari' claims to be the actual owner of Plot No.1, 3 and 4, i.e. Printing Press Complex, Near Wazirpur DTC Depot, Delhi. If the claim is upheld by the Civil Court, the alleged unauthorized construction made by it on the said Plots cannot be said to be unauthorized. The dispute in this regard is still pending in the Civil Court.

24. In view of the afore-mentioned facts and circumstances of the case, no useful purpose will be served by protracting the present proceedings. The complainant has failed to adduce any oral or documentary evidence to show any complicity of the respondents in the unauthorized constructions or illegal encroachments alleged to be carried out by the Media House 'Punjab Kesari', and nothing has come on record to show involvement of any nature of the respondents, including any misuse or abuse of power to favour the Media House 'Punjab Kesari' in the alleged act of unauthorized construction and/or encroachment on public land.
25. Consequently, the show cause notices issued to the respondents vide order dated 18-10-2012 under Section-7 read with Section-2(1) (b) of the Delhi Lokayukta & Upalokayukta Act, 1995, stand discharged. The file be consigned to the record room.

Date: 11th July, 2016

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(JUSTICE REVA KHETRAPAL)
LOKAYUKTA, DELHI