

**BEFORE HON'BLE LOKAYUKTA
JUSTICE REVA KHETRAPAL
COMPLAINT NO. C-1708/LOK/2012**

IN THE MATTER OF:

SHRI VIKAS SAINI

..... COMPLAINANT

VERSUS

SHRI RAM KISHAN BANSIWAL, MUNICIPAL
COUNCILLOR, WARD NO.5

..... RESPONDENT

PRESENT:

1. Shri Vikas Saini, complainant in person.
2. Shri Hari Datt Sharma, Advocate, for counsel for the respondent with the respondent Shri R.K. Bansiwal in person.
3. Ms. Mansi Gupta, Advocate, counsel for North DMC.
4. Shri A.P. Sharma, Deputy Secretary, UC Cell, Department of Urban Development, GNCTD.
5. Shri Z.A. Khan, Assistant Engineer (M-1), Civil Lines Zone, North Delhi Municipal Corporation.

ORDER

1. The present complaint has been filed by the complainant Shri Vikas Saini, resident of House No. 86, Gaon Kushak No.1, Post Office Alipur, P.S. Saroop Nagar, Delhi, claiming to be a social worker, against the respondent Shri Ram Kishan Bansiwal, Municipal Councillor of Ward No.5, Bhalswa Jahangirpuri, Delhi, inter alia, alleging mis-utilization of funds and that the

respondent has expended the funds meant for the development of '*Kadipur Village*', in an adjacent unauthorized colony namely '*Kadi Vihar*', which does not find mention even in the list of Unauthorized Colonies slated for issuance of Provisional Regularization Certificates (for short 'PRCs'). As per the complainant this was done by the respondent Councillor with a view to reap benefit in the elections. It is further alleged that as per the rules, the Municipal Corporation of Delhi on its own, cannot spend any fund in unauthorized colonies without permission from the Urban Development Department, GNCTD. Thus, the respondent Councillor by using unfair means used the funds meant for '*Kadipur Village*' for executing works in an unauthorized colony for personal benefit and in particular, to gain benefit in elections.

2. Another allegation levelled by the complainant in the complaint is that the name of the Councillor Shri Ram Kishan Bansiwal is written on all the street lights installed on poles in Ward No.5, though there is no provision for writing of names of the Councillors on street lights. Further that the Councillor is also threatening to demolish a school run by one Shri Khem Chand Saini, a relative of the complainant in Ward No.5. The concerned Junior Engineer of the area, Mr. Meena had informed him that the Councillor was exerting pressure on

senior officers to demolish the school. The respondent Councillor is also pressurizing him to withdraw the application filed by him under the Right to Information Act.

3. On the above allegations, my learned predecessor issued notice to the complainant for a preliminary hearing and for furnishing certain clarifications by the complainant, inter alia, regarding 'Kadipur Village' and 'Kadi Vihar' being not the same colony. Simultaneously, notice was also issued to the Deputy Commissioner, Civil Lines Zone, MCD for 06-11-2012.
4. Reply by way of an affidavit was filed on behalf of the Deputy Commissioner (Civil Lines Zone) on 21-12-2012 stating that:

"1. as per the record of MCD no fund of Kadipur Village was utilized for the development of Kadi Vihar. No fund, specifically, for the development of Kadipur Village was allocated. The report of the Executive Engineer (M-I) is annexure A. Whatever development expenses were made in Kadi Vihar, were made from the discretionary fund of the Municipal Counselor on his written request; annexure-B collectively. This discretionary fund is meant for the purposes of entire ward, not for any particular area.

The discretionary fund of the Municipal Counselor is covered under the head "89/1157".

2. whenever the Electrical Department provides any new fittings/poles etc, the same - on completion, are immediately handed over to TPDDL (NDPL) for their further maintenance etc. It is further submitted that neither the Electrical Department permits affixing of stickers/name plates etc of any kind on the poles/fittings etc nor any such stickers etc is provided. The report of the Electrical Department is annexure C.

3. it is submitted that the Building Department of MCD is under no pressure to demolish the KEMS Public School as falsely alleged and there is no connivance of MCD with Sh. R.K. Bansiwal. No action, so far, has been contemplated against the school but MCD shall act as per law as and when the need arises. Report of the building department is annexure-D.

5. On 09-01-2013, the complainant filed a rejoinder to the reply-affidavit of the Deputy Commissioner (Civil Lines Zone), MCD, and a communication giving supplementary facts along with

some additional documents in the form of replies received by him from various authorities to the queries raised by him under the Right to Information Act, 2005. Copies of the same were furnished to the counsel for the MCD.

6. Based on the aforesaid, a show cause notice under section-7 read with section 2(1)(b) of the Delhi Lokayukta & Uplokayukta Act, 1995 (hereinafter referred to as "the Act") was ordered to be issued to the respondent by my learned predecessor vide order dated 09-01-2013 while observing as under:-

"In view of the averments made in the complaint as also additional facts placed on record and the response of the NDMC, a prima facie case for inquiry into the putting up of the posters or stickers on the lamp posts by the Councillor or at his behest as also utilization of funds meant for constituency/ward for unauthorized colony, which is not even slated for regularization are issues which are required to be inquired into. Issue notice to the Respondent to show cause as to why an inquiry under Section 7 read with 2(1)(b) of the Delhi Lokayukta & Uplokayukta Act, 1995, be not initiated. Copies of the complaint, additional facts and other relevant documents as filed be made available to the respondent

along with the show cause notice, returnable on 19-02-2013".

7. On 18-02-2013 another short reply by way of affidavit was filed by the Deputy Commissioner (Civil Lines Zone), MCD, to the additional complaint and rejoinder filed by the complainant, inter alia, stating therein :

"3. It is submitted that Kadi Vihar and Kadipur village is shown as a single entity within Ward No.05 having one elected representative i.e. Councillor. Kadi Vihar Village Kadipur consists of A,B,C and D Blocks. Photocopies of the Voter ID Cards are annexure R-1 collectively. It is clarified that Kadi Vihar is an unauthorized colony.

As per the letter No.SE/CLZ/2008/358 dated 29-01-2008; annexure-R2 the engineering staff was directed to process the estimate and carry out the survey etc to take development works in unauthorized colonies as mentioned in the letter in accordance with the decision taken in the chamber of the Hon'ble Minister of Urban Development, Government of NCT of Delhi. Kadivihar has been shown enlisted at S. No.02. The letter also shows that development works could be executed in the said colony.

It is denied that in the letters annexed with the affidavit in reply of MCD dated 21.12.12 there is any mention of Kadipur Village, the letters merely state "Kadipur".

*Further it is stated that as per letter No.F.103 (55)/UC/UD/MLA/2000/8959-62 dated 16-05-2008; **annexure R-3** the administrative approval was conveyed by the Joint Secretary (UC), Department of Urban Development, Government of NCT of Delhi, by which permission was granted for construction of road and drains in unauthorized colonies. Kadi Vihar near Nathupura has been enlisted at S.No.6 in the letter. In this letter, it is clearly mentioned that the works shall be executed by MCD however the letter was silent about the head of accounts for the funds to be utilized for the specified purpose. Thereafter the request letters dated 18-12-2008 and 22-12-2008 were received from the Councillor.*

*4. That (erstwhile NDPL) is responsible for the maintenance of lamp posts. Accordingly TPDDL has been requested in writing to check any defacement. The copy of the letter is **Annexure-R4.**"*

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8. Subsequent to the filing of the above reply-affidavit and since there was no mention in any of the letters annexed with the short reply/affidavit of the Deputy Commissioner, Civil Lines Zone, MCD, of budget allocation or of the funds from which the expenditure was to be met for the above development works, a direction was issued by my learned predecessor to the Deputy Commissioner, North DMC to file a supplementary affidavit in this regard.
9. On 25-03-2013, a Supplementary Affidavit was filed on behalf of the Deputy Commissioner, Civil Lines Zone, North Delhi Municipal Corporation, inter alia, stating that official intimation of allocation of budget for carrying out these works was awaited from the Unauthorized Colony Board, GNCTD ; but the letter dated 16.5.2008 vide which the administrative approval for the work was conveyed by Secretary (UC), Department of Urban Development (Annexure-R3 supra) did not stipulate the agency which was to provide the fund. It was further clarified that in the absence of clear order regarding provision of budget, the work could have been carried out from any fund (provided by the Corporation) in the zonal area after taking administrative approval from the competent authority. Copies of such administrative approvals granted

from time to time were collectively enclosed as Annexure 'A' (Colly).

10. Thus, supplementary affidavit of the Deputy Commissioner clearly indicated that the Corporations funds had been utilized with the approval of the competent authority, i.e. the Deputy Commissioner (Civil Lines Zone).
11. On 03-07-2013, reply was filed by the respondent Councillor to the show cause notice issued to him by my learned predecessor under Sec. 7 read with Sec. 2(1)(b) of the Act. In his reply the respondent Councillor, inter alia, contended that the complaint filed by the complainant was politically motivated to malign his image and reputation. He (the respondent) had been doing his work with utmost sincerity and honesty and using his funds diligently, only for the purpose for which they had been granted. However, the so-called political/social workers/mafia of the area were annoyed with his style of working and had grudge against him since he had developed the whole area honestly. He (the respondent) had not spent even a single penny with the motive to take political advantage.
12. The respondent further stated that Kadi Vihar and Kadipur were shown as a single entity within Ward No.05 having one

elected representative, i.e. the Councillor. Kadi Vihar Village consisted of A, B, C and D Blocks. Kadi Vihar was an unauthorized colony. As per letter No.SE/CLZ/2008/358 dated 29-01-2008 the concerned engineering staff was directed to process the estimate and carry out survey, etc. to take up development work in unauthorized colonies (*Annexure R-2 to the Affidavit of the Deputy Commissioner North DMC dated 19.2.2013*). Further, as per letter No.F.103 (55) /UC /UD /MLA /2000/8959-62 dated 16-05-2008, (*Annexure R-3 to the Affidavit of the Deputy Commissioner, North DMC dated 19.02.2013*) administrative approval was conveyed by the Joint Secretary (UC), Department of Urban Development, GNCTD, by which permission was granted for construction of roads and drains in unauthorized colonies and Kadi Vihar near Nathupura has been listed at S.No.6 of the said letter. It was also clearly mentioned therein that the work shall be executed by the MCD. Proposals for renovation / development of the said area were received from the local residents as well as the members of RWAs and accordingly the respondent had forwarded the said proposal which was allowed by MCD in regular course of social welfare and the requisite funds were made available for the said purpose. The complainant had malafide and mischievous

motives which he wanted to achieve through the present complaint, hence, the present complaint was not maintainable.

13. Further, it is stated in the reply that installing of street lights was the work of the Electrical Department, which installed street lights on the recommendations of the local area Councillor and funds for the same were also utilized from the allocated funds of the local area Councillor. The job of the area Councillor was confined only to recommendations as to the place and locality where the street lights were to be installed while actual installation work of the street lights was carried out by the Electrical Department in which the respondent had no role. So the question of his (the respondent) putting his name on the said lights did not arise. The respondent was not responsible in any manner for display of his name on the street lights. Neither he had given any such directions nor was he responsible for the same.

14. As regards the school, the respondent stated that it was an open fact that the complainant and his relative, i.e. Shri Khem Chand Saini, were active workers of Congress (I), the main political opponent of Bhartiya Janta Party to which the answering respondent belongs. The respondent is a law

abiding citizen and had never indulged in any illegal activity as was being alleged by the complainant.

15. On 03-09-2013 this Forum was informed by the counsel for the Corporation that even though a cabinet decision had been taken for execution of the work by DSIIDC, in fact, these works were never taken over by DSIIDC from MCD and MCD continued to execute the works. It was therefore directed by my learned predecessor that affidavits be filed in this regard by a responsible officer of the Corporation as well as the respondent.
16. Accordingly, on 27-09-2013 affidavits were filed by both the respondent Councillor and the Corporation. The affidavit of the Respondent/Councillor was more or less a reiteration of his earlier affidavit. In the affidavit of the Executive Engineer (Maintenance-I), Civil Lines Zone, North DMC, dated 19th September 2013, however, it was stated that though vide letter No.10(55)/UD/UC/MLA/2000/11983-11987 dated 07-07-2008 issued by the Urban Development Department (UC Cell) the development works of roads and drains was transferred to DSIIDC from MCD, since the DSIIDC could not take over the works in the colony, the said works were withdrawn from DSIIDC vide letter dated 19-06-2009. Further, during the period from 16-05-2008 to 19-06-2009 the development works of the

said colony remained uninterruptedly with the MCD as was clear from the contents of letter dated 19-06-2009. Thus, the North DMC in discharge of its obligatory functions had carried out the development works in the colony with bonafide intention and as a part of assigned duties.

17. Yet again, on 03-10-2013, the Municipal Corporation of Delhi was directed by my learned predecessor to file reply, specifically and separately stating the amounts spent in Village Kadipur and in Kadi Vihar Colony, out of the Councillor's fund of the respondent.
18. On 28-11-2013, the Corporation filed a reply, as directed, by way of an affidavit regarding the amounts spent in both the colonies, i.e. Kadi Vihar and Kadipur. As per the said affidavit, a sum of Rs. 200.00 Lacs was allocated as discretionary funds for Ward No.05, i.e. the Ward of Councillor, Shri Ram Kishan Bansiwal. The said funds were allocated to carry out the necessary development works in the entire Ward No.05 consisting of Village Kadipur, Kadi Vihar, Village Nangli Poona, D-Block Jahangirpuri, E-Block Jahangirpuri and EE-Block Jahangirpuri, etc. Further, it was elaborated in the reply that a sum of Rs. 5.93 Lacs was spent for the development works in Village Kadipur and a sum of Rs. 26.95 Lacs were spent for carrying out development work in Kadi Vihar. The remaining

amount was spent in carrying out the works in remaining parts of Ward No 05 on the written request of the respondent.

19. Thereafter on 22-01-2016 the Urban Development Department was directed by this Forum to produce records through an officer not below the rank of Deputy Secretary pertaining to the development works carried out in Village Kadipur and Kadi Vihar during the period intervening 2007 and 2012 as also the list of unauthorized colonies in which development works were carried out as permitted by the UD Department, if any.
20. On 12-05-2016, an Affidavit was filed by the Urban Development Department, through its concerned Deputy Secretary, inter alia, stating therein that as per available records names of 05 unauthorized colonies having the name of Kadipur existed in the list of 1432 unauthorized colonies. Layout Plans of the unauthorized colonies mentioned in the order dated 16-05-2008 at S.No.2 (Reg.No.612) Kadipur Extension Nangli Road Delhi and at S.No.6 (Reg. No. 821) Kadi Vihar near Nathupura were available and the same could be produced as and when directed.
21. After hearing the parties and carefully going through the material on record, including the complaint and documents

filed by the complainant from time to time (most of which are in the form of replies to queries under RTI Act, 2005), affidavits filed by the North DMC and the replies filed by the respondent Councillor, in my considered opinion, the allegations levelled by the complainant against the respondent Councillor regarding mis-utilization of funds for the development of Kadi Vihar in furtherance of his political ambitions and/or putting of stickers of his name on electrical poles, do not hold water. The complainant has not been able to adduce any cogent evidence to prove any of the aforesaid allegations. On the other hand, the affidavits and documents filed and furnished by the North DMC and the Urban Development Department clearly show that the development works executed in Kadi Vihar and Kadipur Village were executed from out of the Councillor's fund in pursuance of orders issued by government agencies, i.e. the North DMC and the Urban Development Department in the normal course of business and as a matter of routine.

22. It also stands established from the affidavits filed by the Deputy Commissioner, Civil Lines Zone, North Delhi Municipal Corporation from time to time and the report of the Executive Engineer (M-I) Civil Lines Zone that no fund meant for Kadi Pur Village was utilized for the development of Kadi Vihar as alleged by the complainant, and in fact no fund for the

development of Kadi Pur Village was at all allocated. As already stated, whatever development expenses were incurred in Kadi Vihar were made from the discretionary fund of the Municipal Councillor and the discretionary fund was meant for the purpose of the entire Ward and not for any particular area.

23. Further, it stands established from the record that Kadi Vihar and Kadipur village were shown as a single entity within Ward No.05 having one elected representative, i.e. the Respondent Councillor. As per letter No.SE /CLZ/2008/358 dated 29-01-2008, placed on record by the MCD, the engineering staff was directed to process estimates and carry out survey, etc. in order to take up development works in certain unauthorized colonies in accordance with the decision taken in the Chamber of the Minister for Urban Development, GNCTD. Kadi Vihar was specifically mentioned at S. No.02 of the said letter. The letter thus enjoined upon the Respondent/Municipal Councillor to execute development works in the said colony. Subsequently, letter No.F.103 (55) / UC/UD/MLA/2000/8959-62 dated 16-05-2008 purported to convey administrative approval of the Joint Secretary (UC), Department of Urban Development, GNCTD and the grant of permission for construction of roads and drains in unauthorized colonies. Kadi

Vihar near Nathupura finds specific mention at S.No.6 of the said letter.

24. It is also clear from the record and in particular from the affidavit filed by the Corporation on 27-09-2013 that vide letter No.10(55)/UD/UC/MLA/2000/11983-11987 dated 07-07-2008, issued by the Urban Development Department (UC Cell), the development works of roads and drains in the colony was transferred to the DSIIDC from the MCD. However, since the DSIIDC could not take over the works in the colony, the said works were withdrawn from DSIIDC vide letter dated 19-06-2009 issued by Urban Development Department and again made over to the MCD.
25. In so far as the onus of proving the allegations of affixing stickers of the name of the respondent Councillor on the lamp posts is concerned, the same was upon the complainant. The complainant however could not bring on record an iota of evidence to substantiate his said allegation. As per the reply of the respondent/Councillor, the job of the Councillor is confined only to making recommendations as to the place and locality where the street lights ought to be installed, while the actual installation work of street lights is carried out by the Electrical Department, in which the respondent has no role to play. Thus, there was no question of his putting his name on

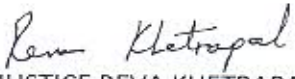
the electric poles of the area concerned and he cannot be held responsible in any manner for display of his name on the street lights nor had he given any such directions. Nothing has been placed on record by the complainant to rebut this contention of the respondent Councillor.

26. The third allegation levelled by the complainant is regarding the respondent Councillor wielding his pressure on the concerned Corporation officials to demolish a school being run by one of the near relatives of the complainant. Here again, the allegation is the *ipse dixit* of the complainant, with not an iota of evidence to substantiate the same. As per the replies/affidavits filed by the Corporation, there has never been any pressure from the respondent Councillor on any of its officials to demolish the school in question. In this context, the contention of the respondent in his reply that the complainant and his said relative, who owns and runs the school in question, are active workers of Congress (I), the main political opponent of the Bhartiya Janta Party to which the answering respondent belongs, and the present complaint filed by the complainant is a politically motivated one to malign the respondent's image and reputation, assumes significance.

27. In view of the foregoing discussion, the inevitable conclusion is that there is nothing on record to enable this Forum to hold the respondent Councillor guilty of any abuse of his position as Councillor or of the alleged misuse of funds to gain political mileage. Consequently, the show cause notice under section-7 read with section 2(1)(b) of the Delhi Lokayukta & Uplokayukta Act, 1995, issued to the respondent Councillor vide order dated 09-01-2013 is discharged.
28. Resultantly the complaint is dismissed. File be consigned to the Record Room.

Dated: 02-09-2016

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(JUSTICE REVA KHETRAPAL)
LOKAYUKTA, DELHI