

BEFORE THE HON'BLE LOKAYUKTA DELHI
JUSTICE REVA KHETRAPAL
COMPLAINT NO. C-2240/LOK/2013

IN THE MATTER OF:

SUO MOTO COGNIZANCE ON INFORMATION PROVIDED BY SHRI
DHARAM PAL.

PRESENT: Mr. Chetan Lokur, Advocate, Amicus Curiae.

Ms. Poonam Bhardwaj, Municipal Councillor, Ward
No.142.

ORDER

1. The present proceedings are an off-shoot of a complaint filed by one Shri Dharam Pal, alleging that since the time of taking over by Ms. Poonam Bhardwaj as Municipal Councillor, unauthorized flats were being constructed and sold by her with the involvement of her husband Shri Surender Bhardwaj, who is engaged in property business. It is further stated in the said communication/complaint that Shri Surender Bhardwaj and his wife Ms. Poonam Bhardwaj were earning crores of rupees out of these unauthorized constructions. Particulars of nineteen such unauthorized flats being built are given along with their addresses and photographs.

V

2. On receipt of the aforesaid communication, my learned predecessor (Hon'ble Mr. Justice Manmohan Sarin) by his order dated 03-07-2013, issued notice to the Deputy Commissioner, Najafgarh Zone, Municipal Corporation of Delhi, and directed him to file a report within two weeks as to the status of the aforementioned nineteen properties and the steps taken in accordance with law to stop these unauthorized constructions. It was further observed by my learned predecessor in his order of the same date that since the information given was specific with particulars as required and supported by photographs of the constructions, it was expedient and appropriate to hold a preliminary enquiry in the matter, specially, when the allegation was that this was being done by the Municipal Councillor in connivance with her husband, who was engaged in property business.
3. Mr. Chetan Lokur, Advocate, was appointed as Amicus Curiae to assist the Forum in the resolution of the matter.
4. On 31-07-2013, a status report was filed by the Deputy Commissioner, Najafgarh Zone, MCD, wherein it was stated that show cause notices had been issued and unauthorized construction had been booked where such construction was

N

found in progress. It was further set out that against the properties mentioned at S. No. 2, 10, 13, 14 and 16 it had been written "old and occupied". My learned predecessor, however, considered it necessary to verify the factum of old constructions and accordingly directed Mr. Chetan Lokur, Advocate, Amicus Curiae, to visit and inspect the said properties. The Assistant Director (Investigation) of this Forum was directed to accompany Mr. Chetan Lokur. It was further directed that they would give report with regard to the properties where ongoing construction was reported. Assistant Director (Investigation) was also directed to make enquiries about the allegations made against the Municipal Councillor for unauthorized construction and submit a report.

5. On the adjourned date, i.e. on 30-08-2013, a report from Mr. Chetan Lokur, Advocate, Amicus Curiae, in terms of the order dated 31-07-2013 was received by this Forum. Additionally, a report of the Assistant Director (Investigation) of the Office of the Lokayukta was also received. Both the said reports clarified the position that there was no ongoing construction and further reported on whether the properties were newly constructed or not.

✓

6. The result of the aforesaid two reports along with the status report filed by the Deputy Commissioner, Najafgarh Zone, MCD, was that the information provided by the aforesaid Dharam Pal to this Forum was proved to be complete falsehood and thus, upon investigation, the substratum of the complaint collapsed.
7. A glance at the proceeding-sheet of this Forum dated 30-08-2013, however, shows that the Municipal Corporation of Delhi submitted to this Forum an action taken report with regard to the show cause notices issued by it under Section 345-A of the DMC Act in respect of three of the nineteen properties mentioned in the original complaint. In respect of one of the said three properties, i.e. Property No. RZ-F-2, Raj Nagar-II, Palam Colony, it was, however, reported that on account of resistance led by Ms. Poonam Bhardwaj, Municipal Councillor and her husband Shri Surender Bhardwaj with about 25 persons, sealing action could not be taken due to inadequate police force.
8. On receipt of the aforesaid action taken report, notice to show cause was issued to Ms. Poonam Bhardwaj by my learned predecessor as to why an enquiry under Section-7, read with Section-2 (b) of the Delhi Lokayukta & Upalokayukta Act, 1995,

K

be not initiated against her for her conduct in obstructing the sealing of the premises. The said show cause notice returnable on 13-09-2013 was issued after recording the statement of Shri Ajay Choudhary, Jr. Engineer (Building) (SDMC), Najafgarh Zone, on oath, which shall be presently adverted to.

9. On 13-09-2013, Ms. Poonam Bhardwaj, Councillor/respondent appeared before this Forum to state that she did not cause obstruction nor stopped the sealing process. She had received a call from the owner who claimed that he had been living for the last four years in the premises in question. She had thereupon told the Jr. Engineer that he should show the order of sealing to the party concerned and then she and her husband left the premises.
10. A perusal of the record shows that subsequently a response in writing dated 27-09-2013 was also filed by the respondent to the show cause notice issued to her. The said response, being apposite, is being reproduced hereunder in its entirety:-

"Most respectfully this is in response to your notice in case No. C-2240/LOK/2013/2763/. I Poonam Bhardwaj Municipal Councillor, Raj Nagar Ward, would like to state that the statement of Shri Ajay Choudhary, J.E (B) is not completely true. I am a law abiding citizen and

elected representative of Raj Nagar Ward. On that day I was informed about the demolition by the people of my area and they requested me to visit the site i.e. RZH 182 Gali No.10. I along with my husband Mr. Surender Bhardwaj went there on scooter and no other person was with us. After reaching at demolition site, I requested JE Ajay Choudhary to brief me about the demolition being carried out and to show me the demolition order. He told me that this demolition is being carried out on court orders. I listened to him patiently and did not obstruct any MCD officials in doing lawful duties and did not call higher officials of MCD.

I am a law abiding citizen and did not violate any rule. I assure Hon'ble Lokayukta that in future also I will not do anything which is against the law or violate any rule".

11. On 27-09-2013, the statements of Ms. Poonam Bhardwaj, Municipal Councillor and Mr. Surender Bhardwaj, husband of Ms. Poonam Bhardwaj, and Shri Virender Singh were recorded on oath and, subsequently on 01-10-2013 Ajay Choudhary, Jr. Engineer (Building) (SDMC), was cross-examined by the learned Amicus Curiae as well as by Shri Surender Bhardwaj.

12. Ms. Poonam Bhardwaj thereafter sought time to engage a counsel to defend her, but on 27-04-2016 stated that she did not want to defend the matter and sought time for submitting an unconditional apology.
13. On 27-05-2016, a detailed apology was submitted by her by way of affidavit stating therein that she and her husband Surender Bhardwaj were remorseful about the inadvertent obstruction, if any, caused by them and that the same was not intentional or willful in nature. In Para-8 of her affidavit, it was submitted:-

"That as such, the deponent requests and beseeches the Hon'ble Lokayukta that one last and final opportunity be give to the deponent and that no such similar incident shall be repeated in future by the deponent. That as such the deponent sincerely tenders the present unconditional apology before the Hon'ble Lokayukta and prays that accordingly the aforesaid proceeding be disposed of"

14. Mr. Chetan Lokur, learned Amicus Curiae has strongly urged before me that no obstruction in the sealing of the property in question was caused by the respondent and her husband as
- K

alleged, and if at all any obstruction was inadvertently caused, it was neither willful nor intentional. In any event, an unconditional apology by way of affidavit has been submitted by the respondent before this Forum, beseeching this Forum to accept the remorse and regret of the Respondent-Municipal Councillor. In fairness, Mr. Lokur, however, pointed out that in an earlier matter bearing Complaint Case No. 1782/12, titled: "Complaint by Zonal Officers and Employees of Najafgarh Zone, SDMC against Smt. Poonam Bhardwaj, Municipal Councillor, Ward No. 142" also an unconditional apology had been tendered by the Respondent-Municipal Councillor for violating the norms of conduct required to be observed by "public functionaries" like Municipal Councillors, which had been accepted by this Forum and the records forwarded to the Lt. Governor.

15. In the instant case, after hearing the learned Amicus Curiae and carefully scrutinizing the records and the various statements made in the course of enquiry, it appears to me that though the Respondent-Municipal Councillor and her husband did visit the property in question on receipt of a telephonic call from the owner of the property and asked the Jr. Engineer to show them a copy of the sealing order, there was no intent to obstruct the sealing process or cause any

K

obstruction in the conduct of the proceedings of the Delhi Municipal Corporation. It has been so stated in the reply filed by the Respondent Councillor before this Forum and there is nothing on record to falsify the defence taken by her.

16. A perusal of the statement of the concerned Jr. Engineer, based upon which notice to show cause was issued to the Respondent Councillor, and his cross examination buttresses me in coming to the aforesaid conclusion. In his initial statement recorded on 30-08-2013, the concerned Jr. Engineer stated that:

"Ms. Poonam Bhardwaj along with her husband Shri Surender Bhardwaj reached the spot on the telephonic call of the owner of the property along with 20-25 persons. Ms. Poonam Bhardwaj warned me against coming to her constituency and carrying out sealing action. She said, she would not permit any sealing action and I should not be there and she would talk to the Dy. Commissioner herself. I was therefore, forced to leave the premises along with the demolition team. In view of the situation that had developed I could not carry out the sealing and left the premises"

K

17. In the cross examination conducted on 01-10-2013, however, he stated that when he reached the property:

"There was a crowd gathered on 27-08-2013. Councillor and her husband appeared at the site after some time".

18. The aforesaid statement made in the cross-examination by the concerned Jr. Engineer clearly belies his earlier statement made on 30-08-2013 and shows that the crowd was already present before the Municipal Councillor and her husband arrived on the scene and the whole story of their being accompanied by 20-25 persons is, therefore, a concocted one.

19. Then again, in his original statement, the Jr. Engineer states that:


"Ms. Poonam Bhardwaj warned me against coming to her constituency and carrying out sealing action stating that she would not permit any sealing action".

In his cross examination, however, he states:

"They did not hold out any threat".

He also states that:

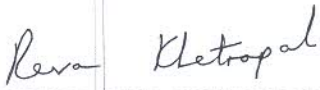
"I have not found any evidence of having interest in the property or in the unauthorized construction either of Poonam Bhardwaj or her husband."



20. From the foregoing, I am of the view that the case against the Municipal Councillor of having violated the norms of conduct is at best a tenuous one. Taking the worst scenario, she went to the site with her husband on receipt of a telephonic call from one of the members of her constituency to verify whether sealing action was being taken on his property in a legal manner and through a lawful order passed by the Deputy Commissioner, and thereafter she and her husband left the premises. In any event, the Respondent Municipal Councillor appears to have expressed genuine remorse if her aforesaid action has unintentionally and unwillfully resulted in obstructing the official duties of the concerned Jr. Engineer. She has also extended an assurance to this Forum that one last and final opportunity be given to her and that no such similar incident shall be repeated in the future by her. The apology and assurance extended by her as a public representative appear to me to be *bonafide*.
21. Accordingly, I am inclined to accept the apology over the option of censure or other action, which appears to me to be uncalled for in the circumstances of the case.
22. Resultantly, the apology and the assurance extended by the Respondent Municipal Councillor are accepted and quietus is applied to the matter. It is hoped and expected that the
- V

Municipal Councillor will abide by her assurance by abstaining from exhibiting uncalled for behaviour in future and keep in mind the norms of conduct expected of 'public functionaries'.

23. Copy of this report along with the relevant documents, material and other evidence be sent to His Excellency, the Hon'ble Lieutenant Governor of Delhi, with the recommendation of applying quietus in the matter for the facts and reasons noted above and thereafter the file be consigned to the record room.


(JUSTICE REVA KHETRAPAL)
LOKAYUKTA DELHI

DELHI

DATE: 27th JANUARY 2017

nk