

**BEFORE THE HON'BLE LOKAYUKTA OF DELHI
JUSTICE HARISH CHANDRA MISHRA
COMPLAINT NO. C-1286/LOK/2012
&
COMPLAINT NO. C-1571/LOK/2012**

IN THE MATTER OF:

SHRI KAMRAN SIDDIQUI ... COMPLAINANT

VERSUS

SHRI ASIF MOHD. KHAN ... RESPONDENT

For the complainant : Sh. Kamran Malik, Advocate.

For the respondent : Sh. Mohd. Sajed and
Sh. Tanveer Ahmad Khan,
Advocates.

CAV on 13.01.2023

Pronounced on 10.02.2023

ORDER

Heard learned counsels for complainant and Ld. Counsel for the respondent and perused the record.

2. In both these matters the allegations are common. Complaint No. 1286/Lok/2012 was initiated on the basis of the complaint filed by the complainant himself, whereas Complaint No. 1571/ Lok/2012 was initiated on the basis of an order passed by the Division Bench of Hon'ble Delhi High Court in W.P.(C) No. 1038 of 2012. The details of the said writ petition shall be discussed later.

3. The respondent Sh. Asif Md. Khan was a 'Public Functionary' within the meaning of the section 2(m) of the Delhi Lokayukta and Upalokayukta Act, 1995, (hereinafter referred to as the 'Lokayukta Act'), being an MLA from Okhla Legislative Assembly Constituency, from the year 2009 to 2015. Prior to that he was also a Municipal Councilor from the year 1997 to 2007. In both these matters the main allegation against him is that he encroached upon 4500 Sq Yards of land in Khasra No. 409, situated in Village Jasola, which is a DDA land. It is alleged that earlier on the pretext of running a school in the name of River Valley School, the respondent pitched certain tents which after passage of time was developed into unauthorized construction of building. The complainant has alleged that this encroachment had been made by the respondent misusing his position as Member of the Legislative Assembly from Okhla Constituency, and earlier as a Municipal Councilor, in collusion with the builders and due to his close proximity with the politicians in power. There are also allegations of threatening the Police Officials who had visited the site to remove the encroachment.

4. A detailed reply has been filed by the respondent in which all the allegations are denied. The respondent claims the land to be his purchased land and has stated that he had purchased 2000 Sq. Yards of land in Khasra No. 409 for consideration of Rs. 3,50,000/- in the year 1991, and subsequently also he purchased 1000 Sq. Yards of land in the same Khasra No. 409 for consideration of Rs. 2,00,000/- in the year 1993, and both these purchases were made when the

respondent was neither the MLA nor a Municipal Councilor. Accordingly, the first defense of the respondent is about the maintainability of the complaint itself, stating that when he had taken possession of lands in question he was not a 'public functionary' within the meaning of the Lokayukta Act. The further case of the respondent is that 14 Bighas and 15 Biswas of land in Khasra No. 409 situated in Village Jasola was acquired and possession was handed over to DDA by LAC and Land and Building Department on 16.07.2007, and the said land is still intact and no encroachment thereon has been made by the respondent.

5. The record shows that in course of pendency of both these complaints, various reports were called for from the concerned authorities by the previous Lokayuktas and those reports are on the record.

6. In support of his case, the complainant has entered into evidence and has stated that 14 Bighas and 15 Biswas of land in Khasra No. 409 had been acquired and handed over to the DDA and the respondent had encroached the big portion of the land where he is also running an illegal zoo. The complainant has stated that the respondent had started encroachment in the year 2000 and for that one DD entry No. 16B was made by the Constable Satish Kumar, P.S. Sarita Vihar, on 21.02.2000, complaining that the respondent was continuing with the illegal construction in Khasra No. 409 and when he was prevented by the said Constable, the respondent threatened the Constable. The said DD No. 16B is exhibited as Ex. CW1/1. The complainant

has further stated that the encroachment was initially made giving an impression that a school was being run by the name of River Valley Public School, but now there is no such school over the encroached land. In 2008-2009, pucca construction and well-furnished structure was erected on the land. Subsequently, the respondent made an attempt of encroachment upon the land of DDA by filling earth on the lower area and by raising wall in about 2400 Sq. Yards of DA Land. On 23.03.2011 a complaint was lodged by Sh. Jasbir Singh, Patwari DDA, against the respondent in P.S. Jamia Nagar, for which FIR was also lodged being FIR No. 131 dated 25.03.2011 in P.S. Jamia Nagar. The said FIR has been filed and proved by the complainant and marked as Ex. CW1/3. The complainant has further stated that a demarcation was conducted by the Revenue Department of Govt. of NCT of Delhi and the demarcation report dated 01.05.2012 shows that the boundary wall which had been constructed by the DDA was demolished by the respondent and encroachment was made by him which is described as raised platform. The demarcation report has also been proved from the court file and marked as Ex. CW1/5. The complainant has stated on oath that the instruments which have been created by the respondent showing the purchase of land by him are forged documents and are without any authenticity. These documents are without any number allotted by the Notary from his register nor is there any number of Notary allotted by the Government. There is no number and description of vendor of non-judicial papers. It is also stated that the sellers in these instruments have never been

the owners of land which are illegally occupied by the respondent.

7. The complainant in his evidence has also stated about the Order dated 02.05.2012 passed by the Hon'ble Delhi High Court in W.P.(C) No.1038 of 2012 filed by the complainant, stating that there is no subsequent order passed by any Court challenging the same. The said Order dated 02.05.2012, has been marked as Ex. CW1/8. In his evidence the complainant has finally stated that as per the latest demarcation report dated 01.05.2012 and in accordance with the various status reports filed by the DDA, the respondent has made encroachment over the DDA land. This witness was cross-examined by the respondent but there is nothing of much importance therein.

8. The respondent has also entered into evidence in which he has denied any encroachment made by him. He has stated that he has never misused his power and position as MLA and he is not running any zoo in the alleged encroached land. Rather, he is the lawful owner and in possession of the land situated in Khasra No. 409, Village Jasola, having proof of ownership documents which he has proved as Ext-RW/1 (Colly). The respondent has also stated that he has not committed any illegality nor is he involved in any encroachment. In his evidence the respondent also relied upon the demarcation report dated 01.05.2012 of the DDA, and has stated that this report clearly shows that 14 Bighas and 15 Biswas of land was handed over to DDA, but DDA has built the boundary wall over 18 Bighas 12 Biswas of land, i.e., 3 Bighas 17 Biswas more over the actual

acquired land. Respondent has also stated that the demarcation report dated 01.05.2012 is correct. He has denied that he ever erected platform and also reiterated that he has not made any encroachment over the land.

9. The respondent was cross-examined by the complainant and in his cross examination he has stated that he had purchased two plots of land in Khasra No. 409 in Village Jasola. One plot of 2000 Sq. Yards and second plot of 1000 Sq. Yards. These were purchased through Power of Attorney and Agreement of Sale executed in his favor. He had purchased the plot of 2000 Sq. Yards from the previous owner Sh. Shamsul Noor Khan and the plot of 1000 Sq. Yards from Saida Begum. Except the boundary wall and construction of one room in each plot, there was nothing on these plots and these were adjacent and continuous plots. The purchase of plot measuring 2000 Sq. Yards was made in the year 1991 and of the other plot measuring 1000 Sq. Yards was made in 1993. He has stated that the vacant possession of the property was delivered to him by the sellers and later on he executed Power of Attorney in favour of his wife to enable her to occupy 1000 Sq Yds plot. He had also made a school in the plot given to his wife, who was running a school thereon, but later on it was discontinued. In his cross examination the respondent has admitted that he did not receive papers from whom Shamsul Noor Khan had purchased the property. He has also admitted that neither name of Shamshul Noor Khan nor the name of respondent was entered into the revenue records. He has denied the suggestion that his ownership documents are

fabricated. He had paid the consideration at both the times in cash. He has further admitted in his cross-examination that the land is shown in the revenue records as belonging to the old farmers of Jasola Village, and he had never applied for the lands to be mutated in his name or entering his name in the revenue records. He has also admitted to be keeping pigeons, *desi* hens, two dogs and five emus on the land.

10. Sh. Harmeet Singh Pahuja, is an official witness being Director (LM-I), DDA, who has proved the possession report in respect of Village Jasola bearing Award No. 21/92-93 dated 29.8.2007. Sh. Gulfam Ahmad is another official witness who was working as Kanoongo, and has proved some revenue documents. Similarly, Sh. Chandan Kumar is also an official witness and has proved the list of 22 FIRs as well as their current status which was lodged against the respondent and same were marked as Ex CW-4/2. The FIRs were also marked as CW-4/3(Colly). Sh. Ashish Mishra is a Tehsildar of Sarita Vihar, who has proved the Records of Rights (Kathauni) with respect to Khasra No. 409 in Village Jasola, and transactions thereof which have been collectively marked as CW-5/2A to 2K, and has also proved the other documents. He also stated that in Khasra No. 409, there is lot of built up area which is enclosed by boundary, while covering 18 Bighas and 12 Biswas of DDA land, but the DDA has taken possession of 14 Bighas and 15 Biswas which would be evident from the demarcation report already filed on record.

11. It may be stated at this stage that there is one more recorded statement of the respondent Sh. Asif Md. Khan, in which he has stated that he has not brought the documents regarding the chain of ownership which would establish his title. This witness was also directed to file the same within 15 days which is recorded therein. There is also an order dated 23.04.2018 passed by the then Lokayukta, directing the respondent to produce the entire chain of documents in respect of ownership of lands mentioned in his reply, within four weeks from the date of order. The subsequent orders show that this direction was never complied with by the respondent.

12. Without entering into the detailed discussions of the evidence brought on record, the admission of the respondent himself in his evidence shows that though he claims 2000 Sq. Yards and 1000 Sq. yards of land to have been purchased by him from different sellers in the year 1991 and 1993 respectively, but the fact remains that he has admitted in his evidence that he never got his name recorded in the Records of Rights. The case of the complainant is that sellers were never the owner of land in question, gets support from the Records of Rights proved by Sh. Ashish Mishra, Tehsildar of Sarita Vihar, as Ex. CW5/2A to 2K. All these documents clearly shows that the recorded tenants of lands in Khasra No. 409 in Village Jasola, were of a different religion and community altogether, from the sellers named by the respondent in his evidence, who had allegedly executed the documents contained in Ext-RW/1 (Colly), in favour of the respondent. The names of the sellers of the

respondent do not find mentioned in those Records of Rights. In spite of clear direction by the former Lokayukta in order dated 23.04.2018, the chain of documents establishing the ownership of the respondent have never been filed or proved by the respondent. The objections taken by the complainant with regard to the ownership documents that they are without any number allotted by the Notary from his register nor there is any number of Notary allotted by the Government and there is no number and description of vendor of non-judicial papers, are also supported from the bare perusal of the documents contained in Ext-RW/1 (Colly).

13. The complainant and the respondent both have placed reliance over the demarcation report dated 01.05.2012 of the DDA, in support of their respective claims.

14. Though these facts *prima facie* show that the respondent has no valid title over the land in question, and his possession over the land in question cannot have a legal sanction, there is yet another aspect of the matter. As stated earlier Complaint No. 1571 / Lok/2012 was initiated on the basis of an order dated 02.05.2012 passed by the Division Bench of Hon'ble Delhi High Court in W.P.(C) No. 1038 of 2012. Through this order, the Hon'ble High Court had directed the Registry to send the entire paper book to Lokayukta for initiating an inquiry into the matter. However, the detailed order shows that the Hon'ble High Court took into consideration various reports filed by the DDA and other authorities, including the one demarcation report

of DDA dated 01.05.2012, which have been proved by the complainant and also relied upon by the respondent. After taking into consideration all aspects of the matter, the Hon'ble High Court has adjudicated the writ application in the following terms, which is quoted from the copy of the order sent to this Forum by the Registrar General of Delhi High Court, through his letter dated 19.5.2012, on the basis of which Complaint No. 1571/Lok/2012 was initiated:-

"5. The SHO, PS Sarita Vihar though has filed a report but to no avail. The respondent DDA in its counter affidavit has pleaded that the subject land falls in Khasra No. 409 of Village Jasola; total of 53 bighas 2 biswas of the said land was acquired vide Award No. 21/93-94 for the channelization of Yamuna river; however the Land Acquisition Collector handed over physical possession only of 14 bighas 15 biswas and which was fenced; that in the year 2008 the wife of the respondent no. 5 filed W.P. (C) No. 1472/2008 alleging that the respondent DDA had illegally occupied 4 bighas 1 biswas of her land and included the same in the boundary/fencing aforesaid; the said writ petition was disposed of vide order dated 29th October, 2009 by issuing directions for demarcation of 14 bighas 15 biswas of land of which possession was given to the respondent DDA; that however despite repeated requests of the respondent DDA demarcation was not carried out by the Revenue Department of GNCTD; that the respondent no. 5 in the meanwhile made an attempt to encroach upon the land of the respondent DDA by raising a boundary wall around 2400 sq. yards of land; report thereof was lodged with SHO, PS Jamia Nagar on 23rd March, 2011 and FIR registered on 25th March, 2011; that the area in

question falls in the erstwhile development area wherein no construction is permissible without obtaining sanction plan; however the same has on 19th April, 2011 being de-notified and building activity therein vests with MCD; that the respondent no. 5 has committed an offence under Section 3 of Prevention of Damage to Public Property Act, 1984 by destroying respondent DDA's fencing and illegal construction over public land; that the respondent no. 5 recently on 27th February, 2012 has erected tents with wooden bamboos and canvass on the respondent DDA's land.

6. The respondent no. 5 in his counter affidavit has denied that he is in possession of any portion of 14 bighas 15 biswas of land of the respondent DDA; that the land in his possession forms part of the unauthorized colonies with respect where to provisional certificate of registration has been issued; and he is keeping

- (i) 2 horses for school riding
- (ii) 20 hen.
- (iii) 8 Turkey hen.
- (iv) 5 Emu Australian birds.
- (v) 50 pigeons.
- (vi) 15 white ducks.

on the said land; that none of the aforesaid animals are protected animals; that the complaints against him are mala fide. He claims to have been in possession of the land for over 20 years.

7. Mr. Waziri, Counsel for GNCTD has during the course of hearing handed over a copy of the plan prepared at the time of demarcation carried out in pursuance of the directions aforesaid. He further states that the respondent no. 5 has encroached upon an area measuring 1129.07 sq. mtrs. Indicated as "raised

platform" in the said site plan and which is within the boundary/fencing of 14 bighas 15 biswas of land of the respondent DDA. It is further informed that the respondent no. 5 has also occupied another adjoining area shown as office block in the site plan and which area is also part of the acquired land. It is unequivocally stated that as per the demarcation report, the respondent no. 5 has encroached upon the respondent DDA's land.

8. The aforesaid, to show the least, shows a dismal state of affairs. In spite of complaints/reports against the respondent no. 5, no action has been taken. So much so that the demarcation directed in the writ petition filed by the wife of the respondent no. 5 also was not done for the last over two years. The respondent no. 5 is a public functionary and owned a duty to, upon such allegations made against him, come clean. Rather it appears that no action was taken on the said allegations.

9. In view of the categorical stand of the respondent DDA, we direct the respondent DDA to immediately take suitable measures in accordance with law for taking back possession of its land stated to be in illegal occupation of the respondent no. 5 and to re-fence the same to prevent re-encroachment. Similarly, the respondent GNCTD also is directed to take action with respect to the other acquired land if in illegal possession of the respondent no. 5.

10 The counsel for the petitioner has controverted the stand of the respondent no. 5 regarding the animals kept on the said land. It is contended that the respondent no. 5 is also keeping deers, parrots & peacocks. We direct the Director, Wildlife Preservation, being the constituted authority under

the Wildlife (Protection) Act, 1972 to immediately carry out inspections to find out the ground realities and to thereafter also from time to time carry out surprise inspections to the premises of the respondent no. 5 to detect violations if any of the said Act.

11. We, on the basis of the demarcation report prima facie find that the respondent no. 5 has failed to act in accordance with the norms of the integrity and conduct which ought to be followed by public functionaries and/or has abused or misused his position, within the meaning of Section 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995. We accordingly direct the Registry to send a copy of the entire paper book to the Lokayukta for initiating appropriate inquiry into the matter.

12. The writ petition is disposed of."

(Emphasis supplied through bold letters.)

15. In course of his arguments Ld. Counsel for the Complainant submitted that the evidence on record clearly shows that the respondent has encroached upon the public land in Khasra No. 409, Village Jasola. It is submitted by Ld. Counsel that the respondent is a 'Public Functionary' since 1997 and the materials brought to record would clearly show that the respondent has misused his position as a 'public functionary' and has made encroachments over the public land. Even the Hon'ble High Court in W.P. (C) No. 1038 of 2012 has clearly found that the respondent has encroached over the public land and has given the direction for taking action against him under the appropriate law.

16. Ld. Counsel for the respondent on the other hand submitted that the respondent has not made any encroachment on any public land, rather the respondent is the lawful owner of the lands measuring 2000 Sq. Yards and 1000 Sq. Yards in the area, which he had purchased in the years 1991 and 1993 respectively, when he was not a public functionary. It is submitted by the Ld. Counsel that in any case even if it is held to be encroachment by the respondent, the encroachment, if any, was done in the years 1991 and 1993 itself, when the respondent was not the 'public functionary', and as such, his action would not come within the purview of Lokayukta Act. Ld. Counsel has also submitted that taken into consideration the fact that the respondent had purchased the lands in the years 1991-1993, any action against the respondent before the Lokayukta is also barred under Section 8(ii) of the Lokayukta Act, as more than five years has elapsed thereafter. Ld. Counsel, accordingly submitted that the matter is fit to be dropped.

17. Having heard the Ld. Counsels for both the sides and upon going through the record, I am of the considered view that the submissions of Ld. Counsel for respondent that the Lokayukta has no jurisdiction to deal with the matter, or that the matter is barred by limitation, are absolutely misconceived and are only fit to be rejected. The documents of ownership brought by the respondent are not reliable documents of ownership. Even the persons who allegedly executed the documents in favour of the respondent cannot be termed to be the legal owners of the land at any point of time. In spite of direction of the Hon'ble

previous Lokayukta to the respondent to bring on record the chain of documents of his ownership, respondent has not filed any such document. He himself has admitted in his evidence in so many words that the lands in question were never recorded in favour of his sellers or in favour of the respondent himself.

18. As such, the submission of Ld. Counsel for the respondent that the lands were purchased in the years 1991 and 1993 have no legs to stand in the eyes of law, and the submission that the encroachment if any, was done in the years 1991-1993 itself when the respondent was not the 'public functionary', and this action would not come within the purview of Lokayukta Act, is only fit to be rejected.

19. The other submission of Ld. Counsel for the respondent regarding limitation also falls flat, as encroachment of land by respondent is continuous wrong. Admittedly, the respondent is a 'public functionary' since the year 1997 and he has continued to do the continuous wrong of encroachment till date. The continuing wrong of the respondent of encroachment over the land in question thus could not be said to be barred by limitation, as at no point of time even according to the respondent, he had left the possession over the lands in question after becoming a 'public functionary'.

20. The finding of the Division Bench of the Hon'ble Delhi High Court against the respondent are based on the reports submitted by DDA and other officials, including the demarcation report dated 01.05.2012 of the DDA, upon which reliance has

been placed by both the parties. In my considered opinion, after the specific findings given by the Hon'ble High Court much less is required to be done by the office of the Lokayukta. Once the finding is given by the Division Bench of Hon'ble Delhi High Court, and based thereon directions are given by the Division Bench of Delhi High Court, the same are binding on all, unless reversed by the Apex Court. Nothing has been brought on record either by way of evidence or during the arguments that the order of Hon'ble High Court dated 02.05.2012 in W.P. (C) No. 1038 of 2012 was ever challenged before the Hon'ble Supreme Court of India. In such a situation the order has already attained its finality and commands obedience by one and all. In that view of the matter, the office of the Lokayukta is virtually not in a position to give a finding contrary to the findings of the Hon'ble High Court, wherein upon being satisfied about the encroachments made by the respondent, the Hon'ble High Court has directed "*the respondent DDA to immediately take suitable measures in accordance with law for taking back possession of its land stated to be in illegal occupation of the respondent and to re-fence the same to prevent re-encroachment*". And has also directed the GNCTD "*to take action with respect to the other acquired land if in illegal possession of the respondent*". And further directed the Director, Wildlife Preservation, being the constituted authority under the Wildlife (Protection) Act, "*to immediately carry out inspections to find out the ground realities and to thereafter also from time to time carry out surprise inspections to the premises of the respondent to detect violations if any of the said Act*".

21. In the aforesaid facts and circumstances, in my considered view all that is required from the Office of Lokayukta in the aforesaid matter is to reiterate the directions of the Hon'ble Delhi High Court and to make recommendations to the competent authority for taking action in accordance with the directions of the High Court.

22. On the basis of the materials brought on record I am satisfied that the respondent Sh. Asif Md. Khan has abused and misused his position as a 'public functionary' to gain favour for himself and his family members in making encroachments over the public lands and has also failed to act in accordance with the norms of integrity and conduct which ought to have been followed by him as such 'public functionary'.

23. In view of the aforesaid discussions, in exercise of the powers conferred under Section 12 of the Delhi Lokayukta and Upalokayukta Act, 1995, the following actions are recommended to be taken by the Hon'ble Lt. Governor, NCT of Delhi, who under the Lokayukta Act is the Competent Authority in the matter, against the respondent Sh. Asif Md. Khan, who was a 'Public Functionary' within the meaning of the Lokayukta Act, being an Ex Municipal Councilor and Ex MLA from Okhla Legislative Assembly Constituency:-

RECOMMENDATIONS:-

- (i) To direct the authorities of the DDA to immediately take suitable measures in accordance with law for taking back possession of its land in Khasra No. 409,

situated in Village Jasola stated to be in illegal occupation of the respondent Sh. Asif Md. Khan, Ex Municipal Councilor and Ex MLA, and to re-fence the same to prevent re-encroachment, and to get the order dated 02.05.2012 passed by the Hon'ble Delhi High Court in W.P. (C) No. 1038 of 2012, in this regard, fully implemented in its letter and spirit, without any further delay.

- (ii) To direct the authorities of the GNCTD to take action with respect to the other acquired land if in illegal possession of the respondent Sh. Asif Md. Khan, Ex Municipal Councilor and Ex MLA, and to get the order dated 02.05.2012 passed by the Hon'ble Delhi High Court in W.P. (C) No. 1038 of 2012, in this regard, fully implemented in its letter and spirit, without any further delay.
- (iii) To direct the Director, Wildlife Preservation, being the constituted authority under the Wildlife (Protection) Act, 1972 to immediately carry out inspections to find out the ground realities and to thereafter also from time to time carry out surprise inspections to the premises of the respondent Sh. Asif Md. Khan, Ex Municipal Councilor and Ex MLA, to detect violations if any of the said Act, and to get the order dated 02.05.2012 passed by the Hon'ble Delhi High Court in W.P. (C) No. 1038 of 2012, in this regard, fully

implemented in its letter and spirit, without any further delay.

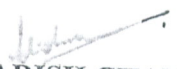
- (iv) Directions may be issued to the Commissioner of Police Delhi, or the other authorities of DDA / GNCTD or Director Wildlife Preservation for lodging FIR for the offences which may be made out under the Indian Penal Code, and / or any other law relating to encroachments over public land and Wildlife (Protection) Act, 1972 which may be found applicable, against the respondent Sh. Asif Md. Khan, Ex Municipal Councilor and Ex MLA, and to carry out the investigations, and upon such investigation, if it is found that the offences have been made out, to initiate legal proceedings under the appropriate applicable laws.
- (v) Censure may be communicated to the respondent Sh. Asif Md. Khan, Ex Municipal Councilor and Ex MLA, for having illegally encroached upon the public land in Khasra No. 409, situated in Village Jasola, which is a DDA land, in order to gain favour to himself.
- (vi) Warning / caution may be issued to respondent Sh. Asif Md. Khan, Ex Municipal Councilor and Ex MLA, not to indulge in such unfair practices in future, and to be more careful in the event he is re-elected at any point of time in his political career, and to strictly adhere to the norms of integrity and

conduct which ought to be followed by the public functionaries of the class to which he belongs.

24. The Registry shall take steps to send the recommendations to the Hon'ble Lieutenant Governor, NCT of Delhi, accompanied with all the relevant papers.

25. Let the copies of this order be sent to both the parties and all concerned. The records be consigned to the Record Room.

New Delhi,
The 10th February, 2023.


(JUSTICE HARISH CHANDRA MISHRA)
LOKAYUKTA, NCT of DELHI.