

BEFORE THE HON'BLE LOKAYUKTA OF DELHI  
JUSTICE HARISH CHANDRA MISHRA  
COMPLAINT NO. C-3759/LOK/2018

IN THE MATTER OF:

SHRI VINAY KUMAR WALIA ... COMPLAINANT

VERSUS

SMT. ANITA

... RESPONDENT

CAV on 04.05.2022

Pronounced on 06.05.2022

ORDER

Heard learned counsels for both the sides and perused the record.

2. This matter was received on 12.06.2018 through the Assistant Director (Vigilance), Directorate of Vigilance, Govt. of NCT of Delhi, forwarding therewith the complaint filed by the Complainant Shri Vinay Kumar Walia, claiming himself to be the General Secretary of Corruption Removal Society, New Delhi.
3. The complaint is directed against Smt. Anita, who had been the Councillor of Ward No. 169 (Now S-67), Lado Sarai, New Delhi, from the year 2012-2017. The main allegation against the respondent was that she had misused her position as Councillor and had amassed wealth disproportionate to her known sources of income, by illegal means. To buttress his allegation. the complainant has stated in his complaint that during the municipal elections held in the year 2012, while filing her nomination, she had filed an affidavit on 26.03.2012 before the concerned Returning Officer, stating that the

1<sup>st</sup> Floor and 2<sup>nd</sup> Floor with terrace of house No. F-574/A situated in Lado Sarai, New Delhi, were in her name, whereas the basement and the ground floor of the said house were in the name of her husband. Alleging that misusing her position as Councillor during the year 2012-2017, the respondent had amassed wealth disproportionate to her known source of income by illegal means, and during the year 2015-2016 constructed two more floors, i.e., 3<sup>rd</sup> Floor and 4<sup>th</sup> Floor in the said house, with all modern and costly amenities. The said house was also constructed illegally in connivance with the MCD officials and in violation of the provisions of The Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the 'DMC Act') and the Building Bye-Laws.

4. On the said complaint, action was initiated and the respondent was noticed, who appeared through her advocate. She filed her reply on 29.10.2018 through her advocate, mainly denying all the allegations and stating *inter alia*, that she was Councillor from the year 2012-2017, during which period no construction was made in the said house property. The construction up to the 2<sup>nd</sup> Floor was made much prior to her election as Councillor, and subsequently, construction of 3<sup>rd</sup> and 4<sup>th</sup> Floor were started somewhere in the year 2018, when she was not a Councillor. Accordingly, the main challenge to the complaint is that whatever illegal action is alleged over the said house property, it is either prior the period in which she was the public functionary, or after that period, when she was not a public functionary and accordingly, her actions, even if illegal, cannot fall within the purview of the Delhi Lokayukta and Uploakyukta Act, 1995, and this Forum

has no jurisdiction to entertain this complaint. She has also denied the allegation that the house property was constructed out of any illegal money earned during the period she was a public functionary. She has vehemently denied that any construction was made during the year 2015-2016 as alleged in the complaint. It may be stated at this juncture that though there are allegations and counter allegations in the complaint and its reply by the respondent, but since there is no material on record to support the other allegations, I am not taking those allegations and counter allegations into consideration and confining this order only to the facts, in support of which there are materials available on record.

5. In the rejoinder to the reply filed by the complainant on 06-08-2019, the complainant has reiterated his allegation of the 3<sup>rd</sup> and 4<sup>th</sup> Floor of the building in question being built between Feb 2015 to March 2016, and rebutted the contention of the respondent of having built the same in 2018 when her term as Councillor was over. It is further stated in the rejoinder that the constructions in question were built by the respondent using her influence as sitting Councillor.

6. Vide order dated 06.08.2019 a Status Report was called from the Executive Engineer, South Delhi Municipal Corporation with regard to the house belonging to the respondent, especially with respect to 3<sup>rd</sup> and 4<sup>th</sup> Floors of the said building. The Status Report was filed on 29.01.2020, and is available on record. The Report shows that upon inspection it was found that the house consisted of basement to 4<sup>th</sup> Floor and was residentially occupied. The MCD record also revealed that the Department had booked the property vide File No.

426/UC/B-II/SZ/2018 dated 10.07.2018 and again vide file No. 581/UC/B-II/SZ/2019 dated 24.12.2019 for actions under the DMC Act on the ground of unauthorized construction. Letters were also sent to the Police Authorities for stopping of work under Section 344(2) of the DMC Act, launching of prosecution under Section 466-A of the DMC Act, as also to the Delhi Jal Board and BSES for disconnection of water and electricity supplies. The demolition / sealing actions were also planned on 31.01.2018, 20.09.2018, 29.10.2018, 06.12.2018 and 29.01.2019, but no action could be taken due to the non-availability of police force and other reasons. The prosecution report dated 06.08.2018, attached to the said Status Report shows unauthorized construction on 4<sup>th</sup> Floor, and it also shows unauthorized construction from basement up to 3<sup>rd</sup> Floor, which were old and occupied.

7. Along with the said Status Report, a copy of a notice issued by MCD on 10.07.2018, upon the owner / builder of the said property, has been brought on record. This notice is also giving the same details of the property, i.e., unauthorized construction at 4<sup>th</sup> Floor and unauthorized constructions up to 3<sup>rd</sup> Floor, old and occupied. This notice was issued under Sections 343 and 344(1) of the DMC Act. The record shows that this notice was refused to be taken by the person available at the site and ultimately had to be pasted at the site on 13.07.2018. Other similar notices of different dates have also been brought on record with the Status Report, including one document dated 01.08.2018, stating that the construction was unauthorized and against Building Bye-Laws and also without any sanction or prior permission of the S.D.M.C., and cannot



be considered for regularization. This document shows that the demolition order was also passed.

8. The prosecution report to the Station House Officer, Police Station Saket, New Delhi, by the Dy. Commissioner of South Delhi Municipal Corporation dated 20.09.2018 has also been brought on record along with the Status Report, with the same allegations of unauthorized construction.

9. There is yet another notice dated 24.12.2019, issued under Sections 343 and 344(1) of the DMC Act, to the owner / builder of the said house bearing No. F-574/A, Lado Sarai, New Delhi, which has been brought on record along with the Status Report, which shows that one more floor, i.e., 5<sup>th</sup> Floor was also added in above house property by that time.

10. A vacation notice under Section 349 of the DMC Act dated 10.01.2020 is also annexed to the said Status Report, which also reveals the same facts, i.e., unauthorized construction on 4<sup>th</sup> Floor, and old occupied unauthorized construction from basement up to 3<sup>rd</sup> Floor. By the said notice the respondent was asked to vacate the unauthorized construction within 48 hours of the receipt of the notice otherwise demolition / sealing proceeding was to be initiated.

11. Another Status Report was submitted before this Forum on 20.08.2020 by the Executive Engineer (Building) South Zone, again reiterating that there was old and occupied unauthorized construction up to 3<sup>rd</sup> Floor in violation of DMC Act and Building Bye-Laws, as also stating about the unauthorized constructions of 4<sup>th</sup> and 5<sup>th</sup> Floors, mentioning that the demolition order had been passed. A letter to the Police

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Authorities had also been given for stopping the construction, and the entire 4<sup>th</sup> and 5<sup>th</sup> Floors had been sealed by the Department. The photographs of sealing the property have also been attached with this Status Report, which clearly shows that the constructions on these floors were also completed by the time of sealing.

12. During the proceedings before this Forum a report was also called from Assistant Director (Investigation), who visited the site, conducted the investigation and submitted a detailed report on 30.07.2020, wherein he has given the floor-wise description of the property as under:-

"The said property is approx. 200 sq. yards in area and it has three more floors above 2<sup>nd</sup> floor. The floor wise description is as under:-

- 1) **Third Floor** – this floor is occupied by the family of Smt. Anita, the respondent who is residing there with her family. This floor consists of three bedrooms in total, one with attached lat./bath and all these are of approx. 12' X 10' area each, one lobby of approx. 16' X 10' with one attached lat./bath, one drawing room of approx. 16' X 14', one kitchen, one store room, one small study room and balcony.
- 2) **Fourth Floor** - this floor is meant for rent purpose. This floor consist of total eight rooms in a row of approx. 12' X 10' area each having door in a lobby, on other side of lobby there are three independent lat./baths and two small kitchens in a row and balcony. The rooms were either found closed or vacant as the occupants have moved to their native places due to the lockdown situation.
- 3) **Fifth Floor** - this floor is also meant for rent purpose. This floor consists of five

rooms in a row of approx. 10' X 09' area each having door in a lobby, on other side of lobby are two kitchens and two lat./bath in a row, one small store and an open place above of Fourth Floor.

The construction is of good quality. The third floor is well furnished having modern POP roof and some of the walls are covered/decorated with wall papers."

13. The report of the Assistant Director (Investigation) also contains the photographs of the entire 3<sup>rd</sup> Floor, 4<sup>th</sup> Floor and 5<sup>th</sup> Floor, which clearly show that the constructions are completed and fitted with all modern fittings.

14. Based on these materials on record, hearing was given to learned counsels for both the sides.

15. Learned counsel for the complainant has drawn my attention towards affidavit filed by the respondent at the time of filing of nomination in the year 2012, wherein she had stated about her house property bearing House No. F-574/A, Lado Sarai, New Delhi, with 1<sup>st</sup> Floor and 2<sup>nd</sup> Floor of the said house standing in her name, whereas the basement and the ground floor stood in her husband's name. He has submitted that till the year 2012 the house property was constructed up to 2<sup>nd</sup> Floor only. It is further submitted by learned counsel for the Complainant that during her tenure as Councillor between 2012-2017 she had amassed wealth disproportionate to her known source of income by illegal means, and she constructed the 3<sup>rd</sup> Floor and 4<sup>th</sup> Floor in the year 2015-2016 and subsequently even the 5<sup>th</sup> Floor has been illegally constructed in the property, and she has not been able to show from where the money came for such constructions. It is also submitted

that the entire construction is in complete violation of Building Bye-Laws and without taking the necessary permission, which clearly shows the misuse of the power during the period she worked as a public functionary. Learned counsel further submitted that even though there were notices / orders for demolition of the building, but the building has not yet been pulled down and still stands, as is apparent from the reports available on record. Learned counsel for the Complainant submitted that as such, there are ample materials on record to demonstrate that the respondent Smt. Anita, while working as a Municipal Councillor has failed to act in accordance with the norms of integrity and conduct which ought to have been followed by her as a public functionary, and accordingly, appropriate action is mandated against her under the Delhi Lokayukta and Uplokyukta Act, 1995.

16. *Per contra*, it is submitted by learned counsel for the respondent that it is a fact that respondent worked as a Municipal Councillor from the year 2012-2017, but the property in question was constructed up to 2<sup>nd</sup> Floor much prior to that when she was only a private person and not a public functionary. Similarly, the other floors were added to the property only after she ceased to be the public functionary in the year 2017, and the constructions were made in the year 2018 onwards. It is further submitted by learned counsel for the respondent that since the notices, which have been brought on record along with the Status Report submitted by the Executive Engineer, South Delhi Municipal Corporation, show that they were also issued under Section 344(1) of the DMC Act, and the notices were issued only in the year 2018



onwards, these clearly demonstrate that the constructions on the 3<sup>rd</sup> Floor onwards were made in the year 2018, as the notice under Section 344(1) of the DMC Act is given for stoppage of the construction work where any such illegal construction work has commenced or being carried out, but has not been completed. Learned counsel very fairly submitted that the constructions have been made up to 5<sup>th</sup> Floor in the building, which may be illegal, but he has pointed out that the two floors, i.e., 4<sup>th</sup> and 5<sup>th</sup> Floors have already been sealed by MCD. As per the submissions of the learned counsel for the respondent, there is no denial to the fact that illegal constructions have been made, but learned counsel vehemently argued that the constructions were made either prior to the period when the respondent was working as Municipal Councillor, or after that period when the respondent was no more a Municipal Councillor and accordingly, during the entire construction work the respondent was only a private person and not a public functionary. Learned counsel for the respondent accordingly, submitted that no action can be taken against the respondent under the provisions of the Delhi Lokayukta and Uplokayukta Act, 1995, as the respondent was not a public functionary during the period of constructions. Learned counsel submitted that the respondent may be held liable for actions under the DMC Act, but only as a private person, for which there is a separate Forum. Learned counsel for the respondent accordingly, concluded that the Lokayukta has no jurisdiction to proceed in the matter, and the same is fit to be dismissed.

17. Having heard the learned counsels for both the parties and upon going through the record, I find that following facts are undisputed in this matter:-

- (a) At the time of filing of her nomination, the respondent in her affidavit given before the Returning Officer in the year 2012, stated that the 1<sup>st</sup> Floor and 2<sup>nd</sup> Floor of the house property bearing No. F-574/A, Lado Sarai, New Delhi, was in her name, whereas the basement and the ground floor of the said property was in the name of her husband. She makes no reference of any other floor on the said property. This clearly shows that till the year 2012, as per her own version, the respondent's house property, consisted only of basement, ground floor (in the name of her husband) and 1<sup>st</sup> and 2<sup>nd</sup> Floors (in her name).
- (b) The house property as on date is constructed up to 5<sup>th</sup> Floor.
- (c) In the notice given to the respondent by the MCD under Sections 343 and 344(1) of the DMC Act on 10.07.2018, which appears to be the earliest notice on record, the construction has been shown up to 4<sup>th</sup> Floor, out of which the basement, ground Floor, 1<sup>st</sup> Floor, 2<sup>nd</sup> Floor and 3<sup>rd</sup> Floor have been shown as old and occupied. Same is the position in the subsequent notices also, and in the last notice the construction has been shown up to 5<sup>th</sup> Floor.

18. At this stage, it would be appropriate to refer to Sections 343(1) and 344(1) of the DMC Act, which read as follows:-

*"343. Order of demolition and stoppage of buildings and works in certain cases and appeal.—(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, 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, within such period, (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person), as may be, specified in the order of demolition."*

*"344. Order of stoppage of buildings or works in certain cases.—(1) Where the erection of any building or execution of any work has been commenced or is being carried on (but has not been completed) without or contrary to the sanction referred to in section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or bye-laws made thereunder, the Commissioner may in addition to any other action that may be taken under this Act, by order require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith."*

19. A plain reading of Section 343(1) of the DMC Act clearly shows that the action of demolition under this provision can be taken even in such cases where the construction of the building had been completed in contravention of the provisions of the Act. Such action can also be taken when the work has commenced, or is being carried out. Whereas, Section 344(1) of the DMC Act shows that the action under this Section can be taken when the erection of any building has been commenced, or is being carried on, but no action is contemplated under this provision once the construction is complete.

20. Since notice was given to the respondent on 10.07.2018 also under Section 343 of the DMC Act, it cannot be said that the construction of at least 3<sup>rd</sup> Floor had not been completed by 10.07.2018, as contented by learned counsel for the respondent. Indeed, this notice clearly also shows that up to 3<sup>rd</sup> Floor of the building the constructions were old and occupied as on 10.07.2018, and this fact is also supported by the investigation report submitted by the Assistant Director (Investigation) on 30.07.2020. As such, the submission of the learned counsel for the respondent that even 3<sup>rd</sup> Floor of the house was not constructed up to the year 2017 and construction of this floor was also started only in the year 2018 when the respondent ceased to be the Municipal Councillor, cannot be accepted and is only fit to be rejected. Indeed the construction work of the entire building is against the provisions of DMC Act and the Building Bye-Laws and the affidavit sworn by herself in the year 2012 before the Returning Officer, coupled with the notice under Section 343



of the DMC Act dated 10.07.2018 clearly show that at least 3<sup>rd</sup> Floor of the building was illegally constructed by the respondent while she was a Municipal Councillor and a public functionary within the meaning of Section 2(m) of the Delhi Lokayukta and Uplokayukta Act, 1995.

21. The quality of construction is expensive as have been depicted in the photographs taken by the Assistant Director (Investigation), which are attached to his report submitted in this Forum. As such, the respondent also owes an explanation about the source of income for the expenditures incurred by her on such constructions, which responsibility / burden she has failed to discharge.

22. The action by Lokayukta is recommendatory in nature and appropriate recommendations can be made to the 'Competent Authority' even if the Lokayukta is satisfied that there are *prima facie* materials to show that the public functionary concerned has misused his / her authority in such a manner, so as to attract the provisions of clauses (i) to (iv) of Sub-section (b) of Section 2 of the Delhi Lokayukta and Uplokayukta Act, 1995.

23. In the facts of this case and on the basis of materials available on record, I am of the considered view that there are ample material on record to establish the fact that the 3<sup>rd</sup> Floor of the building bearing house No. F-574/A, Lado Sarai, New Delhi, was constructed by the respondent illegally and in violation of the DMC Act and the Building Bye-Laws, prior to the year 2018, while the respondent was still a Municipal Councillor, and she failed to act in accordance with the norms

of integrity and conduct which ought to have been followed by her as a public functionary, being the Municipal Councillor.

24. I am also satisfied that there are ample materials on record to *prima facie* show that the costs incurred in construction of 3<sup>rd</sup> to 5<sup>th</sup> Floor of the building were disproportionate to her known sources of income as Municipal Councillor, even though the construction of 4<sup>th</sup> and 5<sup>th</sup> Floors of the building might have started in the year 2018, after she ceased to be a public functionary.

25. In view of the above, and taking into consideration the fact that the respondent Smt. Anita is no more a Municipal Councillor, but she was a public functionary at the relevant time, in exercise of the powers conferred under Section 12 of the Delhi Lokayukta and Uplokayukta Act, 1995, the following actions are recommended to be taken by the Competent Authority, i.e., the Hon'ble Lt. Governor, NCT of Delhi, against Smt. Anita, Ex-Municipal Councillor of Ward No. 169 (Now S-67), Lado Sarai, New Delhi.

**RECOMMENDATIONS:-**

- I. **Warning / caution may be issued to Smt. Anita, Ex-Municipal Councillor of Ward No. 169 (Now S-67), Lado Sarai, New Delhi, not to indulge in such unfair practices in future, and to be more careful in the event she is re-elected at any point of time in her 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 she belongs.**

- II. Censure may be communicated to Smt. Anita, Ex-Municipal Councillor of Ward No. 169 (Now S-67), Lado Sarai, New Delhi, for having illegally constructed 3<sup>rd</sup> Floor of her house No. F-574/A situated in Lado Sarai, New Delhi, in violation of the DMC Act and Building Bye-Laws, by misusing her position as Municipal Councillor, in order to gain favour to herself.
- III. Directions may be issued to the Commissioner, South Municipal Corporation of Delhi for bringing the demolition proceeding to its logical end in accordance with law, pending at their end with respect to the illegal constructions of house No. F-574/A situated in Lado Sarai, New Delhi.
- IV. Directions may be issued to the Commissioner of Police, Delhi, for lodging FIR for the offences which may be made out under the Prevention of Corruption Act, 1988, Indian Penal Code, and / or any other law which may be found applicable, against Smt. Anita, Ex-Municipal Councillor of Ward No. 169 (Now S-67), Lado Sarai, New Delhi, and to carry out the investigations to ascertain whether the constructions have been made out of the income derived by illegal means disproportionate to the known source of income of the respondent, and upon such investigation, if it is found that the constructions have been made out of the 'proceeds of crime' as defined under the Prevention of

Money-Laundering Act, 2002, to initiate proceedings under the Prevention of Money-Laundering Act, 2002, for the Scheduled Offences therein, which may be made out and found to be applicable.

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

27. Let the copy of this order be sent to both the parties and all concerned. The records be consigned to the record room.

New Delhi,  
The 6<sup>th</sup> of May, 2022.

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