



LEGISLATIVE ASSEMBLY
NATIONAL CAPITAL TERRITORY OF DELHI

COMMITTEE ON PETITIONS

TWENTIETH REPORT OF THE SIXTH ASSEMBLY

SUBJECT: IN THE MATTER OF ALLEGED
ENCROACHMENT IN S-BLOCK, PANCHSHILA PARK

PRESENTED ON 02nd DECEMBER, 2019

ADOPTED ON 3RD DECEMBER, 2019

Legislative Assembly, Old Secretariat, Delhi – 110054

INDEX

1. Composition of the Committee	Page-1
2. Preface	Page-2
3. Genesis	Page-3
4. Introduction	Page-5
5. Proceedings	Page-6
6. Observations and Conclusion	Page-10
7. Recommendations	Page-13

DELHI LEGISLATIVE ASSEMBLY
COMMITTEE ON PETITIONS

Composition of the Committee

1. Sh. Saurabh Bhardwaj	CHAIRMAN
2. Sh. Pankaj Pushkar	MEMBER
3. Sh. Akhilesh Pati Tripathi	MEMBER
4. Ms. Bhawna Gaur	MEMBER
5. Ms. Bandana Kumari	MEMBER
6. Ch. Fateh Singh	MEMBER
7. Sh. Girish Soni	MEMBER
8. Sh. Raju Dhingan	MEMBER
9. Sh. Shri Dutt Sharma	MEMBER

Assembly Secretariat:

1. Shri C. Velmurugan	Secretary
2. Shri Sadanand Sah	Deputy Secretary
3. Sh. Manjeet Singh	Deputy Secretary

PREFACE

1. I, the Chairman, Committee on Petitions, having been authorised by the Committee to present on their behalf, this Report on the petition received from Col S.P. Sarma (Retd), Secretary, Panch Shila Co-operative Housing Building Society Ltd, countersigned and presented by Sh. Prakash Jarwal, Hon'ble MLA, Deoli Constituency and referred to the Committee on Petitions by the Hon'ble Speaker, Delhi Legislative Assembly. The Petition was about illegal construction of shops in the area earmarked as Park, in S-Block, Panchshila Park, New Delhi in the guise of structure with God's idols in it.
2. The Committee considered and adopted the Draft Report at their sitting held on 29.11.2019.
3. The observations/recommendations of the Committee on the above matter have been included in the Report.
4. I would like to thank all the Members of the Committee for their continued guidance.
5. The Committee place on record their profound appreciation for the valuable assistance rendered to them by Sh. Sadanand Sah, Deputy Secretary, Sh. Manjeet Singh, Deputy Secretary, Sh. Subhash Ranjan, Section Officer, Ms Chhavi Banswal, Fellow, Delhi Assembly Research Centre (DARC) and other staff of the Assembly Secretariat in preparation of the report.



Dated: 30.11.2019

Place: Delhi

(SAURABH BHARDWAJ)
CHAIRMAN
COMMITTEE ON PETITION

GENESIS

Opportunistic land encroachment is predominantly an unsavory aftermath of urbanisation. What starts with a temporary and seemingly harmless shanty, overtime swamps its surrounding areas, derailing all aspects of urban planning. Beginning at the most basic level of city planning, the problem often snowballs into the issue of distribution of resources, road safety, dissemination of public services as well as a threat to environment and preservation of heritage structures.

Taking cognisance of the magnitude of the problem of encroachment in the National Capital Territory of Delhi, the Hon'ble Supreme Court had remarked in 2018, *"...it is a matter of great distress that more than 2000 kms of roads in Delhi have been encroached upon."*¹

In 2018, a Special Task Force was set up by the Hon'ble Supreme Court to oversee enforcement of laws on unauthorised constructions and for removal of encroachments in Delhi. The STF is headed by the Vice Chairman, Delhi Development Authority and also consists of officers from all Delhi Municipal Corporations. One of the primary objectives of the STF is "to identify encroachments on Government land in different localities of NCT Delhi and to reclaim the encroached Government land"².

However, many a times, inaction on the part of the concerned authorities is cited with respect to the ownership of the land encroached. This exposes the policy gaps at implementation level. Even in instances where agencies are quick to act on the removal of encroachment, it is found that in the absence of repeated inspections of the site, the encroachments often return.

¹ M.C. Mehta vs Union of India & ORS (2018)

² Delhi Development Authority Notification, New Delhi, the 8th March, 2019 [F. No. 15(03)2019/MP]

Thus, there is an urgent need to hold the officers of the concerned authorities accountable in case of inaction/delayed action. At the end of the day, this encroachment is not just on a piece of land but also on the rights of the citizens to move freely in areas meant for public use.

INTRODUCTION

1. A Petition alleging illegal construction of shops in the area earmarked as Park, in S-Block, Panchshila Park, New Delhi, was filed by Col S.P. Sarma (Retd), Secretary, Panch Shila Co-operative Housing Building Society Ltd on 08.05.2019. The Petition was countersigned by Sh. Prakash Jarwal, Hon'ble MLA, Deoli Constituency and presented to the Hon'ble Speaker on 14.05.2019. Thereafter referred to the Committee on Petitions.
2. The Petition alleged that an illegal construction of shops was started by the residents of Lal Gumbad³, J.J. Cluster at S-Block Panchshila Park, near Malviya Nagar, New Delhi 110017 in February 2013. According to the petition, "*Various nefarious activities are being carried out like refiling of **gas cylinders, selling grocery items etc. besides selling of cigarettes and pan masala in the garb of temple***".
3. The Petition also alleged that the frequent congregations involving blaring music were being held at the structure which had turned into a nuisance for the residents of Panchshila Park, S-Block.
4. However, the Petitioner alleged that despite running from pillar to post, no concerned authorities took action and as a result the encroachment area continued to expand every month.
5. It was alleged in the Petition that fresh attempts of expansion of the illegal structures were being made, wherein, a wall had been created within 100 meters from Lal Gumbad. "*Residents of the J.J. Cluster have further developed the complex by putting an iron gate, marble tiles and cement plastering,*" the Petition said.

³ Lal Gumbad is a 14th Century 'Protected Monument' as declared by the Archeological Survey of India.

PROCEEDINGS

1. To ascertain the veracity of the allegations made in the Petition, the matter was deliberated on by the Committee on Petitions in five meetings, convened on 03.06.2019, 01.07.2019, 03.10.2019, 11.10.2019 and 22.11.2019. The proceedings were attended by officers from SDMC, Revenue Department and DUSIB.
2. A copy of the Petition was forwarded to the Divisional Commissioner, Department of Revenue, GNCT of Delhi, the Commissioner, South Delhi Municipal Corporation (SDMC) and the Chief Executive Officer, Delhi Urban Shelter Improvement Board (DUSIB), vide letter dated 21.05.2019. The above Agencies/Local Bodies were asked to furnish their comments on the said Petition by 30.05.2019. Thereafter, the first meeting on the matter was held on 03.06.2019.
3. After the deliberations in the first meeting, it was noted that none of the Department/Local Body/ claimed ownership of the land in question. Thus, the remainder of the meetings were aimed at addressing the following matters of contention:
 - A) Whether there had been an encroachment on street, through construction of structures by the residents of Lal Gumbad, J.J. Cluster?
 - B) Which Department/Authority/Local Body was liable for removing the alleged encroachment?

A) Whether there had been an encroachment of area earmarked as Park, through construction of temple by residents of Lal Gumbad, J.J. Cluster?

1. The site of alleged encroachment was visited by the Department of Revenue on 28.05.2019 and a Field Visit Report was submitted by Sh. Sudhakar, SDM (Hauz Khas) on 31.05.2019.
2. The Report substantiated that the allegations of encroachment were indeed true and that *“the land behind the Panchsheel Montessori School, turning towards Baradari of Sadhna Enclave and Lal Gumbaj has been encroached by shops, slums, jhuggis and a Shani Dev Mandir”*.
3. The allegations of the Petitioner that new constructions were being carried to expand the encroached area were also found to be true. However, SDM (Hauz Khas) added that the said land comes under the Revenue Estate of Sheikh Sarai, which has already been notified as urbanised village.

B) Which Department/Authority/Local Body was responsible for the removal of the encroachment?

1. In response to the copy of the Petition that was forwarded to the Chief Executive Officer, DUSIB, for comments, a Status Report was submitted by the Chief Engineer, DUSIB on 23.05.2019. The Report stated that the land owning agency of the concerned J.J. Cluster was Delhi Development Authority (DDA), while the encroachment had been done on the road **which came under the purview of SDMC**. The Report further clarified that DUSIB's role on the said land only revolved around providing basic amenities like CC Pavement and Drains in the lanes, toilet facilities, Basti Vikas Kendra and Shishu Vatika etc.
2. Meanwhile, Assistant Director (Hort.), SDMC South Zone, informed the Committee, vide letter dated 29.05.2019, that the land concerning Lal Gumbad was outside S-Block, Panchshila Park and was being maintained by the Archeological Survey of

India. The letter added that the said structure and shop(s) had been constructed on the land belonging to DDA.

3. However, the contention over which authority was liable to take action against the said encroachment started to emerge from the first meeting held on 03.06.2019. Neither SDMC nor Department of Revenue or DUSIB claimed responsibility to remove the said encroachment. In the subsequent meetings held on 01.07.2019 and 05.07.2019 the matter continued to broil as Sh. Vishwendra, Deputy Commissioner, SDMC expressed his apprehensions that any action by the Department on DDA land could potentially invite litigation.
4. While SDMC informed in the meeting on 05.07.2019 that the said land belonged to DDA and was maintained by DUSIB. On the other hand, Chief Engineer-I, DUSIB, vide letter dated 11.07.2019, reiterated that the Board's role was limited to providing basic amenities to the J.J. Cluster. The letter further stressed that the road on which encroachment had taken place came under SDMC.
5. With SDMC not willing to take responsibility, in the meeting held on 03.10.19 it was decided that a joint action must be taken by the concerned department to remove the said encroachment. Both, Commissioner and Deputy Commissioner, SDMC assured the Committee of coordinating with Sh. R.N. Sharma, Commissioner (Land Management), DDA, to establish the ownership of the land and take necessary action against the said encroachment.
6. Thereafter, Additional Commissioner, SDMC, had submitted a Status Report during the Committee meeting on 11.10.2019, which stated that a meeting had been conducted with the Commissioner (Land Management), DDA on 04.10.2019,

wherein it was agreed that the action to remove the encroachment would be initiated on 15.10.2019.

7. Noting the above commitment during the Committee meeting, the Revenue Department was requested to designate an officer on site to facilitate the joint action by the SDMC and DDA on the encroachment.
8. After four Committee meetings and several communications, partial action to remove the said encroachment was initiated by Horticulture Department and SDMC Maintenance Department on 15.10.2019, according to the Deputy Commissioner, SDMC, vide letter dated 17.10.2019. Simultaneously, SDMC had informed DDA of the partial action with a request to complete the encroachment removal process.
9. In spite of affixing accountability and responsibility in the previous meeting, it was learnt in the meeting on 22.11.2019 that action had been initiated on some of the shops on the encroached area, though a significant part of the encroachment remained unscathed. Deputy Commissioner, SDMC was, thereby, conveyed to conduct a follow up action to ensure that all encroachment is removed.
10. The Committee on Petitions reminded Sh. Vishwendra, Deputy Commissioner (South Zone), SDMC that it was well within his jurisdiction and in consonance with the powers accorded by the Delhi Municipal Corporation Act, 1957, that he can take action against such encroachments on streets.
11. It was also noted that a majority of residents of the J.J. Cluster were happy that action would be taken against encroachments on the street.

OBSERVATIONS AND CONCLUSION

After a close scrutiny of the facts presented in the case and responses filed by the concerned Departments, it was found that the allegation of encroachment on street, through construction of structures and shops, was found to be true. During the course of the proceedings, it was also learnt that the said encroachment had been blocking the way for the garbage pickup tempo, thus becoming a nuisance for the residents. In the course of the proceedings of the Committee, the following observations were made:

1. Negligence on the part of concerned authorities

1.1. In the view of the nature of encroachment, which was not vast, the time taken by the Local Bodies/Departments to act upon it was disproportionate. When the matter was first taken up in the meeting held on 03.06.2019, it was learnt through the Petitioner that a complaint about the same had first been made to the DDA and SDMC in 2013, when the structure was merely a shanty. However, continual negligence of the concerned authorities for six years led to the encroachment area becoming a nuisance for the residents on S-Block, Panchshila Park as well as J.J. Cluster.

1.2. Even during the course of the proceedings, SDMC did not take the responsibility for initiating action against the encroachment.

1.3. Sh. Vishwendra, Deputy Commissioner (South Zone), SDMC misled the Committee and committed Breach of Privileges of the Committee.

2. Ambiguity over land ownership

2.1. It was not only negligence on the part of the concerned authorities, but also the ambiguity over the ownership of land that complicated the issue further. During the meeting on 05.07.2019, SDMC suggested that the Department of Revenue should send a

task force for removal of the said encroachment. The Department of Revenue, on the other hand, was of the view that the task force can only assist action taken by the concerned authority. SDMC also maintained throughout that the land belonged to DDA and that only DDA could initiate action for the removal of the encroachment. The confusion over ownership of the encroached land had become an excuse to shift the blame and responsibility from one department to another, which exposed the communication gaps among them.

2.2. It was only when the Committee expressed its displeasure over no action being taken, did the Commissioner, SDMC commit to coordinating with DDA to take appropriate action. While the joint effort by SDMC and DDA to remove the encroachment was heart-hearted, it also raises a pertinent question, why was this action not initiated before the Petition was written to the Hon'ble Speaker? The Petitioners found no respite for six years until the matter was taken up by the Hon'ble Speaker, and the encroachment continues to increase till date.

3. The Committee wants to draw attention to Section 320⁴, 321⁵ and 322⁶ of the Delhi Municipal Corporation Act, 1957, where SDMC has all the powers to remove encroachments on the streets. A plain reading of the Act and definition of street clears all doubts that

⁴ DMC Act, 1957: Section 320(1): "No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street or upon or over any open channel, drain, well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank."

⁵ 321(1): "No person shall, except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit, place or deposit upon any street, or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto or encroachment thereon."

⁶ 322(1): "The Commissioner may, without notice, cause to be removed—
(a) any stall, chair, bench, box, ladder, bale or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act;
(b) any article whatsoever hawked or exposed for sale on any public street or in other public place in contravention of this Act and any vehicle, package, box or any other thing in or on which such article is placed."

irrespective of the land owning agency, SDMC has the power to remove encroachments on streets.

It is also important to note that irrespective of the nature of encroachment, big or small, this Petition is a reflection of the apathy of SDMC that seems to have normalised such illegality through inaction for years. Thus, accountability for this negligence must be fixed and the defaulting officers must be brought to the book.

RECOMMENDATIONS

1. An Action Taken Report regarding the complete removal of the said encroachment must be submitted by South Delhi Municipal Corporation within 30 days of the adoption of this Committee Report by Delhi Legislative Assembly.
2. An inquiry must be conducted by the Chief Secretary on the issue of the said encroachment to find out why no action had been taken in the last six years. Accountability for inaction/delayed action must be fixed and the suitable action must be taken against the defaulting officers of the concerned department. A report of the above mentioned inquiry must be submitted to Delhi Vidhan Sabha within 90 days of the adoption of this Committee Report by Delhi Legislative Assembly.
3. South Delhi Municipal Corporation must conduct a follow-up inspection once every six months to ensure the area is not encroached again. A report of the inquiry must be submitted to the Department of Revenue, signed by the Commissioner, South Delhi Municipal Corporation, within seven days of the inspection.
4. In cases where the ownership of the encroached land is unclear, Local Bodies are duty bound to take action to ensure the removal of the encroachment on streets. All actions must be executed in the presence of at least one officer from the Department of Revenue.
5. Sh. Vishwendra, Deputy Commissioner (South Zone), SDMC willfully misled the Committee and wasted time by trying to shift the blame on DDA. Whereas a plain reading of the Act and definition of street clears all doubts that irrespective of the land owning agency, SDMC has the power to remove encroachments on streets. Thus, he has committed Breach of Privileges of the Legislative Assembly. Privilege Proceedings must be initiated

against Sh. Vishwendra, Deputy Commissioner (South Zone), SDMC.

6. There is a need for a well-laid down mechanism, for instance a Special Task Force, with well-defined roles for immediate identification and corrective steps against illegal construction and encroachment on streets and public land.
7. Department Proceedings must be initiated against Sh. Vishwendra, Deputy Commissioner (South Zone), SDMC for failing to act on encroachments, misleading the Committee and trying to shift the blame on Delhi Development Authority.
8. Worthy Chief Secretary of Government of National Capital Territory Delhi should submit an Action Taken Report on the recommendation of the Committee to Delhi Legislative Assembly within 30 days of the adoption of this Committee Report by Delhi Legislative Assembly.



Dated: 30.11.2019

Place: Delhi

(SAURABH BHARDWAJ)

CHAIRMAN

COMMITTEE ON PETITIONS