



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 8th March, 2022**
Pronounced on: 29th March, 2022

+ **W.P.(CRL) 2094/2020**

TEPANDER GIRI Petitioner

Through: **Mr. Puneet Goel, Advocate**
(Through VC)

versus

SHO & ORS. Respondents

Through: **Mr. Sanjay Lao, Standing Counsel**
with **ASI Bijender, P.S. Anti**
Corruption
Ms. Tajinder Viridi, Advocate for R-2
to R-6 (Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Article 226 of the Constitution of India, read with Section 482 of Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed by the Petitioner seeking the following reliefs:

"a. Direct the respondent no. 1 to conduct detail and thorough enquiry/investigation on the complaint dated 29-10-2020 of the petitioner (given through speed post dated 29.10.2020) and provide a copy of complete enquiry report to the petitioner in term of law laid down by Hon'ble Supreme Court of India in case title "Lalita Kumari Vs. State of Uttar Pradesh."



b. Direct the respondent no. 1 to register the FIR on the complaint dated 29.10.2020 of the petitioner for the offence under section 13 (1) (c) and (d) of Prevention of Corruption Act and under section 217 IPC against respondent no. 3 to 6 and start investigating the matter in accordance with law, in interest of justice.

c. Any other or further relief which this Hon'ble Court deem fit and proper may kindly be granted in favour of petitioner and against respondents in interest of justice.”

2. Mr. Puneet Goel, learned counsel appearing on behalf of the petitioner submitted that one Mr. Netrapal Yadav had vacated the property bearing plot No. B-281, Gharoli Dairy Farm, Delhi (hereinafter “the said property”) and ran somewhere with all his belongings. It is further submitted that one Mr. Joginder Bhati and his associates tried to encroach the said property, demolished the entire structure and raised illegal/unauthorized construction and have taken unlawful possession of the said property.

3. Learned counsel appearing on behalf of the petitioner submitted that as per the provisions of the Delhi Municipal Corporation Act, 1957, no one can raise any construction without obtaining prior approval from the Municipal Corporation. It is submitted that in the instant case, no approval had been taken by Mr. Joginder Bhati to carry out the said construction on the said property.

4. It is submitted that the petitioner had written several complaints to the respondents, but no action has been taken by the officials of East Delhi Municipal Corporation (hereinafter “EDMC”). Further, it is submitted that respondent nos. 3 to 6 are involved in criminal conspiracy with Mr. Joginder Bhati and by misusing their official position, they have allowed the illegal



construction. Therefore, the said officers of the Municipal Corporation are guilty of committing the offence under Section 13(1)(c) and (d) of Prevention of Corruption Act, 1988 (hereinafter “PC Act”).

5. Learned counsel appearing on behalf of the petitioner submitted that complaints were addressed to the highest officers of the Corporation as well as the police officers of respondent no. 1, therefore, it was mandatory for the police/investigating agency to register an FIR and thereby direct for investigation. It is submitted that there are serious allegations against the concerned Junior Engineer and the Assistant Engineer who have misused their official position and corruptly discharged their official duty to obtain the pecuniary benefit by allowing such illegal construction. The petitioner had given a complaint through Speed Post on 29th October 2020 to respondent no. 1 for registration of FIR under Section 13 (1) (c) and (d) of PC Act and Section 217 of the Indian Penal Code, 1860 (hereinafter “IPC”) against respondent nos. 3 to 6. It is argued by the learned counsel for the petitioner that it was the statutory and official duty of respondent no. 1 to register the FIR and start the investigation of the matter, however, till date nothing has been done on the said complaint.

6. Learned counsel appearing on behalf of the petitioner has relied upon the Constitution Bench decision of the Hon’ble Supreme Court in ***Lalita Kumari v. Govt. of U.P. & Ors. (2014) 2 SCC 1***, which has been referred to in the subsequent paragraphs.

7. *Per Contra*, Mr. Sanjay Lao, learned Standing Counsel appearing on behalf of the State vehemently opposed the submissions made by learned counsel for the petitioner and submitted that the petitioner has filed various complaints against the EDMC Officials. It is submitted that the complaints



were forwarded to the Chief Vigilance Officer (hereinafter “CVO”) of EDMC, Delhi, for inquiry and necessary action vide following office reference letters No. (hereinafter “abovementioned reference letters”):

- i. 984/SO/ACB/OC-391/20 Dated 19/2/2020
- ii. 4379/SO/ACB/OC-2228/20 Dated 6/11/2020
- iii. 5032/SO/ ACB/OC-2372/20 Dated 27/11/2020
- iv. 5244/SO/ACB/OC-2481/20 Dated 9/12/2020

8. Learned Standing Counsel for the State submitted that the complaints given by the petitioner have no specific allegations of demand/acceptance of bribe, misappropriation of funds or abuse of official position against any specific officer of the Corporation. Such type of complaints are normally forwarded to the concerned CVO for inquiry and necessary action at their end.

9. It is submitted that even the Constitution Bench of the Hon’ble Supreme Court in *Lalita Kumari’s case (Supra)* has carved out certain exceptions and has approved ordering preliminary enquiry before registering an FIR. One of the exceptional cases which have been carved out by the Hon’ble Supreme Court is a case where allegations of corruption are made out. He submitted that in the present case, the allegations of corruption have been made against the officers of the Corporation. Hence, looking into the nature of allegations, the complaints of the petitioner have rightly been referred to CVO for enquiry and necessary action. Learned Standing Counsel submitted that the preliminary inquiry will be completed and final report will be submitted at the earliest.

10. Ms. Tajinder Viridi, learned Counsel appearing on behalf of respondent nos. 2 to 6 (hereinafter “Corporation”) vehemently opposed the



contentions of the Petitioner and submitted that the frivolous petition has been filed by the petitioner with ulterior motives for illegal possession and he is guilty of suppression and concealment of true and material facts. It is also submitted that the petitioner has no *locus standi* in this petition as the mother of the petitioner as well as the petitioner herein are not the allottee(s) of the property in question, and the petitioner himself is trespasser on the said property.

11. Learned counsel appearing on behalf of the Corporation submitted that as per the affidavit/status report, the Corporation has allotted some plots for the purpose of Animal Husbandry/running the Dairy Farms, and the said property was allotted to one Smt. Gian Devi in the year 1976, who had expired in the year 2000. However, the mother of the Petitioner had moved into the property in question without anyone's permission and has been in actual possession of the said property since 2nd January, 1977. It is further submitted that the mother of the petitioner after acquiring the possession of the suit property had constructed two rooms, one verandah, and the boundary wall including the front gate, without any authorization or any legal position of the said property. Learned Counsel appearing on behalf of the Corporation submitted that the petitioner herein has made all malicious attempts to mislead this Hon'ble Court. It is further submitted that the petitioner has not impleaded the encroacher Mr. Joginder Bhati.

12. Learned Counsel appearing on behalf of the Corporation submitted that the grievance of the petitioner that Mr. Joginder Bhati has been trying to encroach upon the said property is a matter of proper adjudication before the Civil Court as the petitioner herein and his mother had preferred multiple litigations before the Civil Court in regard to the said property which does



not belong to them, and in fact, the Municipal Corporation has a title/ownership over it. It is therefore submitted that the instant writ petition is nothing but a gross misuse of the process of law and devoid of any merit and is liable to be dismissed.

13. I have considered the submissions of learned counsel for the parties and perused the record. Before I proceed to examine the rival contentions, it is relevant to refer the letter dated 29th October 2020 which was sent by the petitioner to the SHO, Anti-Corruption Branch. The relevant portion of the said complaint is reproduced hereunder: -

*“9. ... I immediately went at East Delhi Municipal Corporation office and duly informed **Dy. Commissioner, South Shahdara Zone** about such illegal construction by way of a written complaint date **30.09.2020**.*

*10. That a written complaint was also given on 19.10.2020 and 22.10.2020 to the **Commissioner East Delhi Municipal Corporation** regarding such illegal construction.*

*11. That a separate written complaint regarding such illegal construction was also given on 19.10.2020 and 22.10.2020 to the **Superintendent Engineer (building-II)**.*

*12. That a separate written complaint regarding such illegal construction was also given to the **Assistant Engineer (building-II)** On 19.10.2020 and 22.10.2020.*

*13. That a separate written complaint regarding such illegal construction was also given on 19.10.2020 and 22.10.2020 to **Junior Engineer. (building-II)** South Shahdara Zone, East Delhi Municipal Corporation.*



14. That a separate written complaint regarding such illegal construction was also given on 21.10.2020 to the **Director Veterinary Services East Delhi Municipal Corporation**.

15. That a separate written complaint regarding such illegal construction was also given to **Dy. Director, Veterinary services, South Shahdara Zone, East Delhi Municipal Corporation** on 19.10.2020 and 22.10.2020.

16. That a separate written complaint regarding such illegal construction was also given on 19.10.2020 and 22.10.2020 to the **Assistant Commissioner, South Shahdara Zone, East Delhi Municipal Corporation**.

17. That a separate written complaint regarding such illegal construction was also given to **Sh. P.K. Tomer, Executive Engineer (building-II) South Shahdara Zone, East Delhi Municipal Corporation** on 19.10.2020 and 22.10.2020.

18. That despite receiving all such complaints by all such officers., no action have been taken. As on today he has made the complete base of the plot and concrete column and has also erected the wall of the building and now they have made the shattering for making the lanture/Slab of ground floor. Till today neither the said illegal construction has been booked for demolition. As per law, it was the statutory duty of concerned J.E. and A.E. to register the FIR immediate after receiving the information about such illegal construction and then should book such illegal construction for demolition but the concerned area J.E. and A.E have not yet registered the FIR and have not yet booked such illegal construction for demolition which apparently proves that these officials are in collusion with such trespassers. The concerned A.E. and J.E. are abusing their official position and corruptly discharging their official duty to obtain the pecuniary benefit for such



trespassers. The concerned A.E. and J.E. are allowing such trespassers to encroach upon such plot thereby, they are guilty for committing the offence under section 13 (1) (D) of Prevention of Corruption Act.

19. That Gharoli Dairy farm, Delhi-96 were entrusted to concerned area J.E and A.E being a Public Servant under their colour of duty that they would not allow any person to convert any property for their use except those who are entitled for the same but concerned are J.E. and A.E. allowed such trespasser to convert such property for their use by allowing them to raise illegal construction and trespass upon such property thereby, concerned J.E. and A.E. of Gharoli Dairy farm, Delhi-96 are guilty for committing the offence under section 13 (1) (C) of Prevention of Corruption Act.

20. That as per DMC Act, 1957, if a person wilfully flout the provision of DMC Act, 1957, the penal provision is prescribed for such person under DMC Act. In the instant case, it was the statutory duty of concerned J.E. and A.E. to initiate prosecution action under the relevant provision of DMC Act against all those persons who attempted to encroach upon such Municipal License Property and raising illegal construction thereupon but as area J.E. and A.E. are in deep collusion with such criminals thereby, they have not booked such criminal for penal action under DMC Act. Hence, concerned J.E. and A.E. are guilty for disobeying the direction of law to save the accused persons from legal punishment as envisage under section 217 IPC.

21. That on 30.09.2020 I personally met to Sh. P.K. Tomer Executive Engineer (Building-II) and requested him for taking appropriate legal action under the provision of DMC Act and also provided a written complaint to him. At the time of taking written complaint, Executive Engineer P.K. Tomer had assured me for taking



appropriate action but Executive Engineer P.K. Tomer despite receiving a written complaint did not take any action which further prove that executive Engineer P.K. Tomer is also involved somehow in this criminal conspiracy thereby, he is also liable to be booked under the relevant provision of POC Act as well as IPC and is liable to be arrest immediately.

22. That on 19.10.2020 I personally met to J.E and A.E South Shahdara Zone, East Delhi Municipal Corporation and requested them for taking appropriate legal action under the provision of DMC Act and also provided a written complaint to them. At the time of taking written complaint, J.E and A.E, South Shahdara Zone, East Delhi Municipal Corporation had assured me for taking appropriate action but area J.E and A.E South Shahdara Zone, East Delhi Municipal Corporation despite receiving such written complaint did not take any action which further prove that area J.E and A.E South Shahdara Zone, East Delhi Municipal Corporation are also involved somehow in this criminal conspiracy thereby, they are also liable to be booked under the relevant provision of POC Act as well as IPC and is liable to be arrest immediately.

It is, therefore under the fact and circumstances as stated above kindly register the FIR under section 13 (1) (C), 13 (1) (D) of Prevention of Corruption Act and under section 217 IPC against above named Municipal Officers and arrest them forthwith.”

14. The petitioner had also written a letter dated 2nd November 2020 which was sent to the Deputy Commissioner of Police, Anti-Corruption Branch. The contents of the aforesaid letter dated 2nd November 2020 are same as the contents of the letter dated 29th October 2020.



15. Section 154 of Chapter XXII of Cr.P.C. deals with the information to the Police and their powers to investigate. It is relevant to note that the complaints of the petitioner had already been referred to the CVO of EDMC. Ld. Standing Counsel for the State has referred to the abovementioned reference letters by which the said complaints were referred to the CVO, and submitted that after the preliminary enquiry on the said complaint by the CVO, the FIR may or may not be registered.

16. The crucial question, which is to be examined and answered, is as to whether the department committed any error by referring the complaints of the petitioner vide abovementioned letters for preliminary enquiry and not immediately registering an FIR on receipt of the letter dated 29th October 2020. The question regarding lodging of FIR, its registration, investigation and consequent action has been engaging the attention of this Court and the Hon'ble Supreme Court in large number of cases.

17. Learned counsel appearing on behalf of the parties have placed reliance on ***Lalita Kumari's case (supra)***. As per the learned counsel for the petitioner, the Constitution Bench has unequivocally laid down that if the information given to a police officer discloses cognizable offence, the concerned police officer has no option, but to register an FIR. On the other hand, learned Standing Counsel for the State submitted that the judgment itself has carved out various exceptions where it is not mandatory to register an FIR and there is a discretion given to SHO to direct for preliminary enquiry before registering an FIR. It is further submitted that corruption case is one of the exceptions where preliminary inquiry has to be directed.

18. Before I proceed further, it is relevant to extract the directions issued by the Hon'ble Supreme Court in ***Lalita Kumari's case (supra)*** as under:



*“120. In view of the aforesaid discussion, we hold:
120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/ family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*



(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

19. Learned Standing Counsel for the State has referred to paragraphs 115 and 117 of ***Lalita Kumari's case (supra)*** which are reproduced hereinbelow:

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"115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. Once such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.



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117. In the context of offences relating to corruption, this Court in P. Sirajuddin expressed the need for a preliminary inquiry before proceeding against public servants.”

20. The Constitution Bench has laid down that registration of FIR is mandatory under Section 154 of Cr.P.C. when cognizable offence is disclosed and no preliminary inquiry is permissible in such situation. However, in para 120.6 of ***Lalita Kumari's case (supra)*** it has been laid down by the Constitutional Bench as to which cases require preliminary inquiry depending on the facts and circumstances of each case. Some category of cases in which preliminary inquiry may be made, have been enumerated in para 120.6, which include ‘corruption cases’. There is no dispute between the parties that allegations are in realm of corruption of the officers of the Corporation.

21. Looking into the nature of allegations, which are contained in the letter dated 29th October 2020, the fact that the same has been referred to the CVO to conduct preliminary inquiry, and the fact that the allegations are made against the Government officials including public servants, this Court is of the view that the said decision cannot be held to be palpably wrong. Moreover, this Court is of the view that since the preliminary inquiry which has been directed to be conducted as stated by learned Standing Counsel appearing on behalf of the State will be completed expeditiously in the near future, it would be appropriate in the fitness of things that the competent authority be directed to take a decision on the basis of the report of the inquiry in accordance with the provisions of the Cr.P.C.



22. Apart from the above, this Court finds that as on date, the preliminary inquiry is pending with the competent authority and it is at preliminary stage, therefore in the considered opinion of this court it would be premature to pass any direction to the respondents as prayed for, in the instant petition. Finding no merit in the present petition filed by the petitioner, the same is accordingly dismissed.

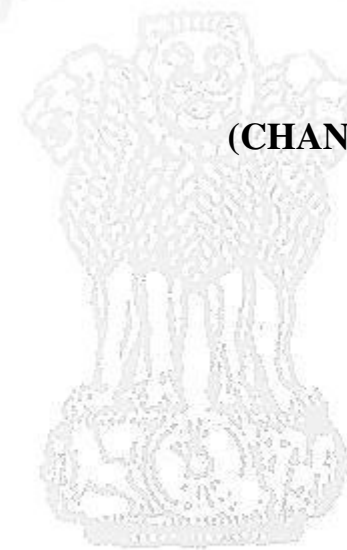
23. Pending application, if any, also stands disposed of.

24. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MARCH 29, 2022

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