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No.5/29/2001-Welfare

भारत सरकार

GOVERNMENT OF INDIA

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

पेंशन और पेंशन भोगी कल्याण विभाग

DEPARTMENT OF PENSION AND PENSIONERS WELFARE

नई दिल्ली

NEW DELHI

3rd floor, Lok Nayak Bhawan,
Khan Market, New Delhi

Dated July 22, 2005

OFFICE MEMORANDUM

Sub:- Activities/Functions of RWA's – Manning gates (entry/exit points) in localities.

Residents Welfare Associations are registered Societies under the Societies' Registration Act, 1860. Such of the Associations which adopt the model constitution prescribed by the DoPT are recognized by the DoPT. Their objectives include activities connected with the welfare of the residents like provision of general amenities, consumer protection etc. and also undertaking such other lawful acts which are incidental or conducive to general welfare of the residents.

2. In the recent past, the RWAs have been installing gates at the access points in the Govt. colonies. Some of these gates are kept permanently closed and one or two gates are used as entry or exit points. Sometimes these entry/exit points are manned by chowkidars. Any visitor wishing access into the colony is required to provide detailed information to the Chowkidar regarding his identity, his purpose of visit, the person whom he wishes to meet etc. These practices are being resented by some residents who have been complaining to this Department about it.

3. Access control is not one of the objectives of the Residents' Welfare Associations as per the model constitution. The legal position in the matter has been examined in consultation with the Min. of Law. The Min. of Law has brought to our notice the following legal provisions:-

- i) As per Section 298 (2) of the Delhi Municipal Corporation Act, all public streets vesting in Corporation shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with bye-laws made in this behalf.
- ii) As per Section 317 (1) of the above Act, 'except as provided...no person shall, erect, set up, add to or place against or in front of any premises any structure or fixture which will overhang, put or project into or encroach upon ~~and obstruct~~ in any way the safe or convenient passage of the public along any street etc....'

- iii) Section 320 of the above Act prohibits any person to erect or set up any wall, fence rail post step, booth or other structure whether fixed or movable or permanent or temporary or any fixture in or upon any street or so as to form any obstruction to etc. on such street.
- iv) The Delhi Police have also framed the Delhi Control of Vehicular and other traffic on Roads and Streets Regulations, 1980. Clause 14 of these regulations states that no person shall have any box, bales, package or other thing on a road or street so as to cause obstruction to normal and free flow of traffic or danger or inconvenience to the public.
- v) There have been instances of litigation on the subject involving Associations of Private colonies. In the case of Vasant Kunj Residents' Welfare Association Vs. Lt. Governor of Delhi (AIR 2000 Delhi 271) before the High Court of Delhi, the RWA/Petitioner sought directions *in te ralia* to the DDA to construct a boundary wall of sufficient height around the pocket of residential flats to cover the opening that have been left out to segregate the same from the commercial cum office complex. Respondents/DDA opposed it. The High Court concluded "one of the possible solutions which may be considered and examined is the installation of gates provided the same are properly manned, around the clock and do not block ingress and egress through the said gates".
- vi) A similar view was taken by the High Court of Delhi in a subsequent judgment in CWP No.5040 and CM 7765/2000 in which a RWA wanted to close certain gates of the colony between 10.30 A.M. to 5.30 P.M. The High Court directed the RWA vide Order dated 20.3.2001 that the RWA will have to ensure that they (gates) are properly manned and provide for entry to any vehicles during this period.

4. It was further considered that the management of Co-operative Housing complexes has a different legal locus standii than the RWAs in Govt. colonies. In Co-operative Housing Complexes or areas like Vasant Kunj etc., the residents have actual/notional ownership rights on the land and they form associations for management of assets and common services like electricity supply, street lighting, water supply, maintenance of internal roads etc. Such Associations are vested with certain rights. The RWAs in Govt. colonies are only registered societies which are recognized by the DOPF for the purpose of specifically carrying out certain welfare activities. The Residents' Welfare Associations in the Govt. colonies are neither the owners of the premises nor the authorities empowered by the State and they are not legally entitled to control access to the premises. Asking a visitor to disclose his identity and purpose of visit is an infringement of the rights of privacy of a citizen which cannot be done by anybody who is neither the owner of the premises into which access is sought nor the designated authority under the law. The Min. of Law has opined that access control is not one of the legitimate activities of RWAs in Govt. colonies and they are not empowered to manage the gates as they have been doing.

5. The above legal provisions may be borne in mind by the Associations while making security arrangements in Govt. colonies. Where as the concern of the Associations for ensuring safety/security of the residents is appreciated, it may be perhaps more appropriate if the Associations arrange for adequate number of watch and ward staff who can go round the colony and keep strict vigil on the residential premises, service roads within the colony etc. so as to ensure the security of the area. This would

be in keeping with the spirit of the model constitution. However, the Associations should not assume a regulatory role which is not sustainable in law and not provided for in the model constitution formulated by this Department for the Associations.

6. Hindi version of this O.M. will follow.

(Sd/-)
(Sujit Datta)
Chief Welfare Officer

To

1. All Ministries/Departments in Govt. of India
2. All Residents' Welfare Associations (List of Secretaries of RWAs attached)
3. All Area Welfare Officers (List of AWOs attached)
4. All Central Govt. Employees Welfare Co-ordination Committees (List of Chairmen of C.W.C.C. attached)

Copy to:- JS (AT & A) - For information.

(Sd/-)
(Sujit Datta)