

## M.C. Mehta Vs Union of India (UOI) and Others

**Court:** Supreme Court of India

**Date of Decision:** Feb. 16, 2006

**Acts Referred:** Delhi (Control of Building Operations) Act, 1955 " Section 31A  
Delhi Development Act, 1957 " Section 12, 12(1), 12(2), 15, 2  
Delhi Municipal Corporation Act, 1957 " Section 2(24), 2(26), 2(3), 2(34), 2(59)

**Citation:** AIR 2006 SC 1325 : (2006) AIRSCW 979 : (2006) 127 DLT 226 : (2006) 2 JT 448 : (2006) 2 SCALE 364 :  
(2006) 3 SCC 399 : (2006) 2 Supreme 179

**Hon'ble Judges:** Y. K. Sabharwal, C.J; R. V. Raveendran, J; B. N. Srikrishna, J

**Bench:** Full Bench

**Advocate:** B. Dutta, A.S.G., Ranjit Kumar A.C., Ashwani Kumar, V.P. Singh and Manmohan, Party in Person, B. Vijayalakshmi Menon, Sanjiv Sen, Praveen Swarup N.P., Sudhir Nand Raj Yog, Vishnu B. Saharya, for V.B. Saharya and Co., Vijay Panjwani, Sheel Sethi, Vikas Sharma, Anil Katiyar, D.N. Goburdhan, Sandhya Goswami, Ajay Siwach, Sandeep Sharma, T.V. George, Ashok Bhan, Kiran Bhardwaj, S. Wasim A. Qadri, Manish Jha, Bina Gupta, Rakhi Bhardwaj, Inklee Barooah, Kamendra Mishra, Rajiv Kumar Dubey, Rashmi Singh, Arun K. Sinha, Varinder Kumar Sharma, B.K. Prasad, B.V.B. Das, Suresh Chandra Tripathy, Indu Malhotra, Vibha Datta Makhija, Rajan Narain, R.P. Sharma and Madhu Sikri, for the Appellant;

**Final Decision:** Allowed

### Judgement

Y.K. Sabharwal, C.J.

In respect of large number of Immovable properties throughout Delhi, flagrant violations of various laws including

Municipal Laws, Master Plan and other plans besides Environmental Laws have been engaging the attention of this Court for number of years.

With a view to secure the implementation of laws and protect fundamental rights of the citizens, various orders were passed from time to time.

2. This Court has a constitutional duty to protect the fundamental rights of Indian citizens. What happens when violators and/or abettors of the

violations are those, who have been entrusted by law with a duty to protect these rights? The task becomes difficult and also requires urgent

intervention by court so that the rule of law is preserved and people may not lose faith in it finding violations at the hands of supposed

implementers. The problem is not of the absence of law, but of its implementation.

3. Considering such large-scale flagrant violations, this Court had to prioritize as to which violations may be taken up first and then issue

appropriate directions. In this view, at first instance, directions were issued in respect of shifting of hazardous and noxious industries out of Delhi.

Directions were also issued for shifting of heavy and large industries as also some extensive industries. For shifting polluting industries had to be

given top most priority. Later, directions were issued for shifting of other extensive industries considering the continued unauthorized use contrary

to Master Plan and Zonal Plan, by those industries as well as some other industries continuing in residential/non-conforming areas.

4. On one hand repeated orders were made to seek implementation of the laws and, on the other hand, simultaneously, more and more violations

were taking place. Detailed reference to earlier orders made from time to time, the shifting stand of the authorities, various laws being violated,

requirements of Town Planning and the constitutional obligations of the authorities, has been made by this Court in the judgment dated 7th May,

2004 while dealing with unauthorized industrial activity and issuing time bound directions for compliance and appointing a Monitoring Committee

with directions for filing of periodical progress reports 289502 . The order dated 19th August, 2003 sets out various issues involved including the

issue of misuse but, at that stage, the issue of unauthorized industries was given priority and the directions in respect of shifting of industries were

issued. In a way, this judgment is in continuation of the judgment dated 7th May, 2004 with the difference that now we have taken up the issue of

large scale misuse of residential premises for commercial use.

5. With regard to commercial use of premises in residential areas, it has been more than three years, i.e., 30th September, 2002 when the order

was made directing respondents to file reply. In fact, the question of misuse of residential premises for commercial purposes was taken up even

earlier as is apparent from the orders dated 31st July, 2001 and 20th February, 2002. By order dated 31st July, 2001 passed in Writ Petition No.

725 of 1994 titled News Item AQFMY v. Central Pollution Control Board, the Court directed that:

The MCD will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of

buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential

usage is permitted.

6. Again on 20th February, 2002, the Order dated 31st July was reiterated in the following terms:

MCD is also directed to file within four weeks from today an affidavit indicating as to what it intends to do for stopping the misuse of the buildings

in the residential areas which are being used for commercial purposes as has been directed by this Court's order dated 31st July, 2001. If no

affidavit is filed, the explanation in respect thereof should be given to the Court by the Municipal Commissioner.

7. The learned Amicus Curiae filed IA No. 1860/04 referring to aforesaid orders dated 31st July, 2001, 20th February 2002, 30th September,

2002 and 19th August, 2003 and bringing to the notice of this Court a press release dated 22nd July, 2004 issued by Municipal Corporation of

Delhi ("MCD" for short) declaring a scheme to facilitate registration of shops, establishments, commercial establishments etc. in the non-

conforming/residential areas by granting ad hoc licences in respect of premises existing till 31st March, 2003. This shows the apathy of a municipal

body, which is constituted, amongst others, to ensure compliance of the laws. In this application, learned Amicus Curiae sought stay of the press

release and the scheme. By order dated 2nd August, 2004, the press release and the ad hoc Trade Registration Scheme were stayed by this

Court.

8. The question under consideration also is about the power of MCD and Delhi Development Authority (DDA) to direct demolition and/or sealing

of the properties being misused. Few residents of a residential colony by the name of Green Park Extension, making averments about large scale

unauthorized constructions and stating that various letters written to the MCD complaining about the illegal and unauthorized constructions and

misuser and consequent violation of Master Plan etc. resulted in no action, filed in about October 1994, a writ petition in Delhi High Court alleging

how misuse of residential premises for commercial purposes was taking place, citing specific instances and complaining about total inaction on the

part of the authorities in stopping such misuse. According to them, the officers were, in fact, encouraging or conniving with persons who were

indulging in such misuse. The officers failed to carryout their statutory duties in stopping such misuse. A writ of mandamus was sought against the

authorities directing them not to allow illegal commercial user. Petitioners therein alleged that such misuser and acts of omission and commission by

the authorities was resulting in the environment in the residential colony being totally polluted and civic amenities jeopardised.

9. MCD, in reply, filed in April 1995, i.e., more than 10 years ago, admitted the violations and said that show cause notices had been issued under

the Delhi Municipal Corporation Act, 1957 (for short, "the DMC Act") and the Corporation was doing its best in the matter. The same was the

stand of DDA. All officers being directed to file affidavits reporting as to what action had been taken, filed affidavits with reference to the

properties of which instances had been given, inter alia, stating that owners had been booked and action was being taken. Similar affidavits were

filed by both MCD and DDA. In March 2000, MCD filed a status report giving particulars of approximately 663 properties in Green Park Main

and 407 properties in Green Park Extension stating that many properties were being used as commercial and others partly commercial. When this

was the position in a small colony, one can well imagine the plight in manifold other residential colonies and of residents living in those colonies in

the capital city of Delhi.

10. By impugned judgment dated 31st May, 2002, disposing of the aforementioned writ petition and other connected matters, a Full Bench of the High

Court came to the conclusion that neither under the DMC Act nor under the Delhi Development Act, there was any power to seal property for its

misuse, inter alia, holding that the power of sealing of premises is drastic as by reason of such sealing, a person could become homeless, thus,

affecting his human or fundamental rights and that the power of sealing in relation to misuse has been intentionally excluded from the provisions of

two Acts. Later, some other matters were also decided by the High Court following the Full Bench decision. Those judgments are also under

challenge.

11. The judgment of the Full Bench is under challenge in civil Appeal No. 5413 of 2002 filed by the original writ petitioners/residents of Green

Park colony and civil Appeal No. 8694 of 2002 filed by the MCD. The questions to be determined are:

A. Whether MCD under the DMC Act has power to seal the premises in case of its misuser?

B. Whether DDA, under the Delhi Development Act, has also similar power of sealing or not?

C. Directions to be issued in respect of residential properties used illegally for commercial purposes.

12. In these matters, we are considering only the issue of misuser. We are not considering the issue of unauthorized constructions.

Re: Question A - Whether MCD under the DMC Act has power to seal premises in case of its misuser

13. It is not in dispute that large numbers of residential premises are being misused for commercial purposes. The question is \_ can the MCD stop

such misuser by putting a seal on misused property? For dealing with the question of power of MCD to seal the premises in case of misuser, it is

necessary to examine few provisions of the DMC Act. The expression "building" is defined in Section 2(3) of the DMC Act as a house, out-

house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or

other material but does not include any portable shelter.

14. The expression "land" as per Section 2(24) includes benefits to arise out of land, things attached to the earth or permanently fastened to

anything attached to the earth and rights created by law over any street.

Section 2(26) defines "market" as under:

Section 2(26) - ""market"" includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, meat, fish, fruits,

vegetables, animals intended for human food or any other articles of human food whatsoever, with or without the consent of the owner of such

place notwithstanding that there may be no common regulation for the concourse of buyers and sellers and whether or not any control is exercised

over the business of, or the person frequenting, the market by the owner of the place or by any other person;

Section 2(34) defines "occupier" as under:

Section 2(34) ""occupier"" includes-

(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect

of which such rent is paid or is payable;

(b) an owner in occupation of, or otherwise using his land or building;

(c) a rent-free tenant of any land or building;

(d) a licensee in occupation of any land or building; and

(e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;

Under Section 2(59) "trade premises" means:

2(59) - ""trade premises"" means any premises used or intended to be used for carrying on any trade or industry;

Chapter XVI of the DMC Act deals with building regulations and comprises Sections 330A to 349A.

15. The definition of the expression "building" shows that it is very wide and encompasses any structure only excluding portable shelter with which

we are not concerned. We are concerned with the building and its erection.

16. The definition of the words "to erect a building" is very pertinent for deciding the present question. The expression "to erect a building" is

defined in Section 331 as under:

Section 331 Definition.--

In this Chapter, unless the context otherwise requires, the expression ""to erect a building"" means--

(a) to erect a new building on any site whether previously built upon or not;

(b) to re-erect--

(i) any building of which more than one-half of the cubical contents above the level of the plinth have been pulled down, burnt or destroyed, or

(ii) any building of which more than one-half of the superficial area of the external walls above the level of the plinth has been pulled down, or

(iii) any frame building of which more than half of the number of the posts or beams in the external walls have been pulled down;

(c) to convert into a dwelling house any building or any part of a building not originally constructed for human habitation or, if originally so

constructed, subsequently appropriated for any other purpose;

(d) to convert into more than one dwelling house a building originally constructed as one dwelling house only;

(e) to convert into a place of religious worship or into a sacred building any place or building not originally constructed for such purpose;

(f) to roof or cover an open space between walls or buildings to the extent of the structure which is formed by the roofing or covering of such

space;

(g) to convert two or more tenements in a building into a greater or lesser numbers;

(h) to convert into a stall, shop, warehouse or godown, stable, factory or garage any building not originally constructed for use as such or which

was not so used before the change;

(i) to convert a building which when originally constructed was legally exempt from the operations of any building regulations contained in this Act

or in any bye laws made thereunder or in any other law, into a building which had it been originally erected in its converted form, would have been

subject to such building regulations;

(j) to convert into or use as a dwelling house any building which has been discontinued as or appropriated for any purpose other than, a dwelling

house.

Clauses (c), (h) and (j) are very significant. These clauses bring in the concept of user of a building for the purpose of definition of the expression

"to erect a building". Under Clause (h), if any building not originally constructed for use as a stall, shop, warehouse etc. is converted for use as

such, it would fall within the expression "to erect a building".

17. In respect of an area where the notified/specified land use is residential, sanction for erection of a commercial building cannot be accorded, as

is apparent from Sub-section (2) of Section 336.

Section 336 reads as under:

Section 336. - Sanction or refusal of building or work.--

(1) The Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the

provisions of Sub-section (2) of this section or the provisions of Section 340.

(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:--

(a) that the building or work or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan,

elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order

made under such other law;

(b) that the notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made in this behalf;

(c) that any information or documents required by the Commissioner under this Act or any bye-laws made thereunder has or have not been duly

furnished;

(d) that in cases falling u/s 312, lay-out plans have not been sanctioned in accordance with Section 313;

(e) that the building or work would be an encroachment on Government land or land vested in the Corporation;

(f) that the site of the building or work does not abut on a street or projected street and that there is no access to such building or work from any

such street by a passage or pathway appertaining to such site.

(3) The commissioner shall communicate the sanction to the person who has given the notice; and where he refuses sanction on any of the grounds

specified in Sub-section (2) or u/s 340 he shall record a brief statement of his reasons for such refusal and communicate the refusal along with the

reasons therefore to the person who has given the notice.

(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf.

18. This takes us to the provision of sealing as contained in Section 345A of the DMC Act. That provision was inserted by Act 42 of 1984 with

effect from 10th December, 1985. One of the objects for the amendments, as stated in the Statement of Objects & Reasons, is to contain massive

conversion of residential constructions into commercial complexes. The Statement of Objects and Reasons, inter alia, states that "in recent years,

growth of unauthorized colonies, encroachment on public streets, unauthorized construction of public and private lands and conversion of

residential constructions into commercial complexes have assumed alarming proportions".

Section 345A reads as under:

Section 345A. Power to seal unauthorised constructions.--

(1) It shall be lawful for the Commissioner, at any time, before or after making an order of demolition u/s 343 or of the stoppage of the erection of

any building or execution of any work u/s 343 or u/s 344, to make an order directing the sealing of such erection or work or of the premises in

which such erection or work is being carried on or has been completed in the manner prescribed by rules, for the purpose of carrying out the

provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on, has or have been sealed, the Commissioner

may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except--

(a) under an order made by the Commissioner under Sub-section (2); or

(b) under an order of an Appellate Tribunal or the Administrator, made in an appeal under this Act.

19. A plain reading of the aforesaid provisions shows that sealing can be resorted to at any time, before or after making an order of demolition u/s

343 or u/s 344 in respect of such erection being carried on or completed, for the purpose of carrying out the provisions of the Act.

Sections 343 and 344 read as under:

Section 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 therefore has been delivered to that person), as may

be, specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the

Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order,

whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until

the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under Sub-section (1) may prefer an appeal against the order to the Appellate

Tribunal within the period specified in the order for the demolition of the erection or work to which it relates.



(3) Where an appeal is preferred under Sub-section (2) against an order of demolition the Appellate Tribunal may, subject to the provisions of

Sub-section (3) of Section 347C stay the enforcement of that order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of

demolition, no order staying the enforcement of the order of demolition shall be made by the Appellate Tribunal unless security, sufficient in the

opinion of the said Tribunal has been given by the appellant for not proceeding, with such erection or work pending the disposal of the appeal.

(4) No court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from

taking any action or making any order in pursuance of the provisions of this section.

(5) Subject to an order made by the Administrator on appeal u/s 347D, every order made by the Appellate Tribunal on appeal under this section,

and subject to the orders of the Administrator and the Appellate Tribunal on appeal, the order of demolition made by the Commissioner shall be

final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under Sub-section (1) or where an order of

demolition made by the Commissioner under that sub-section has been confirmed on appeal, whether with or without variation, by the Appellate

Tribunal in a case where no appeal has been preferred against the order of the Appellate Tribunal, and by the Administrator in a case where an

appeal has been preferred against the order of the Appellate Tribunal the person against whom the order has been made shall comply with the

order within the period specified therein, or as the case may be, within the period, if any fixed by the Appellate Tribunal or the Administrator on

appeal and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection or the work

to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under

this Act.

Section 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.

(2) If an order made by the Commissioner u/s 343 or under Sub-section (1) of this section directing any person to stop the erection of any building

or execution of any work is not complied with, the Commissioner may require any police officer to remove such person and all his assistants and

workmen from the premises or to seize any construction material, tool, machinery, scaffolding or other things used in the erection of any building or

execution of any work within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(2A) Any of the things caused to be seized by the Commissioner under Sub-section (2) shall be disposed of by him in the manner specified in

Section 326.

(3) After the requisition under Sub-section (2) has been complied with, the Commissioner may, if he thinks fit, depute by a written order a police

officer or a municipal officer or other municipal employee to watch the premises in order to ensure that the erection of the building or the execution

of the work is not continued.

(4) Where a police officer or a municipal officer or other municipal employee has been deputed under Sub-section (3) to watch the premises, the

cost of such deputation shall be paid by the person at whose instance such erection or execution is being continued or to whom notice under Sub-

section (1) was given and shall be recoverable from such person as an arrear of tax under this Act.

20. Section 347 contains a specific prohibition for change of the use of any land or building. The said section reads as under:

Section 347 Restrictions on uses of buildings.--

No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the conditions, if any, of such

permission--

(a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used

for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and the bye-laws

made thereunder;

(b) change or allow the change of the use of any land or building;

(c) convert or allow the conversion of one kind of tenement into another kind.

21. Section 349A contains the power of the Central Government to make bye-laws for carrying out the provisions of Chapter XVI. Regulations

may provide for various matters including the use of sites for buildings from different areas etc. as mentioned in Clauses (a) to (w) of Sub-section

(2) of Section 349A, having regard to the requirement of town planning by the municipalities. Town planning is now part of constitutional obligation

on insertion of Part IX-A in the Constitution of India w.e.f. 1st June, 1993. Section 349A was inserted soon thereafter on 1st October, 1993.

22. Reference may also be made to Chapter XX of the DMC Act which deals with markets, slaughter houses, trades and occupations and

maintenance and regulations thereof. Section 416 recognises the importance of the density of population, pressure on the services in case more

number of persons use the facilities or services. The said section under the heading "Trade and Occupations" reads as under:

Section 416 Factory, etc., not to be established without permission of the Commissioner.-

(1) No person shall, without the previous permission in writing of the Commissioner, establish in any premises, or materially alter, enlarge or

extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power.

(2) The Commissioner may refuse to give such permission, if he is of the opinion that the establishment, alteration, enlargement or extension of such

factory, workshop or trade premises, in the proposed position would be objectionable by reason of the density of the population in the

neighbourhood thereof, or would be a nuisance to the inhabitants of the neighbourhood.

23. A bare perusal of building bye-laws shows how relevant is the user, commercial or residential, and the large impact of occupation load on

various facilities including water, sanitation and drainage.

24. Keeping future needs in view, experts prepare Master Plans. Perusal of the Delhi Master Plan, 1962 and 2001 shows what were plan

projections. At the time of planning, the experts in the field of town planning, take into account various aspects, such as, healthy living, environment,

lung space need, land use intensity, areas where the residential houses to be built and where the commercial buildings to be located, need of

household industries etc. Provision for household industries in residential areas does not mean converting residential houses in the commercial

shops. It only means permitting activities of household industry in a part of a residential property. It does not mean that residential properties can

be used for commercial and trading activities and sale and purchase of goods. Master Plan contemplates shops in District centers, Community

centers, Local Shopping centers etc. and not in residential areas. Be that as it may, for the present, we are not considering the cases of small shops

opened in residential houses for catering to day-to-day basic needs, but are considering large-scale conversion, in flagrant violation of laws, of

residential premises for commercial use.

25. In respect of planning, reference can usefully be made to Section 313 of the DMC Act as well. The said section provides for the requirement

of layout plan of the land. It, inter alia, provides that before utilizing, selling or otherwise dealing with any land u/s 312, the owner thereof shall send

to the Commissioner a written application with a layout plan of the land showing various particulars including the purpose for which the building will

be used. For breach of Section 313, action can be taken u/s 314. It has rightly not been disputed by any counsel that neither layout plan, nor the

building plan, can be sanctioned by MCD except in the manner and for the purpose provided in the Master Plan. If in the master plan, the land use

is residential, MCD cannot sanction the plan for any purpose other than residential.

26. In the impugned judgment, while dealing with the provisions of the layout plan, it was observed that the provisions for user "are only regulatory

in nature". While dealing with the user, the High Court observed that "the power, whereby and whereunder the basic human rights or the

fundamental rights conferred upon a person is taken away, must be specifically conferred by a statute". The provision of user may be regulatory

but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory

provisions on massive scale can result in plans becoming merely scraps of papers. That is the ground reality in the capital of the country. None has

any right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorised. Further,

the words "unless the context otherwise requires" in Section 331 of the DMC Act are of no consequence for determining the point in issue as the

context herein does not provide otherwise for the present purposes. It does not provide that the power of sealing u/s 345A cannot be exercised in

case of misuser. In view of the clear language of Section 345A, we are also unable to sustain the view of the High Court that action u/s 345A can

be taken only when there exists order of demolition u/s 343 or an order under Sub-section (1) of Section 344. The conclusion of the High Court

that action u/s 345A can be taken only when there exists an order of demolition u/s 343, or on passing of an order under Sub-section (1) of

Section 344, and in no other contingency cannot be accepted in view of the clear provision of Section 345A that action can be taken even before

or after an order is made under those provisions.

27. It is clear from a conjoint reading of the definition of the expression "to erect a building" in Section 331 and Section 345A that conversion of

user would come within the purview of the expression "to erect a building". In this respect useful reference can also be made to Building Bye-Laws

for the Union Territory of Delhi, 1983, in particular Bye-Law Nos. 2.17 and 2.85, defining the expressions "Conversion" and "To Erect"

respectively, which read as under:

2.17 Conversion- The change of an occupancy to another occupancy or change in building structure or part thereof resulting into change of space

or use requiring additional occupancy certificates.

2.85 To Erect- To erect a building means:

- (a) To erect a new building on any site whether previously built upon or not;
- (b) To re-erect any building of which portions above the plinth level have been pulled down, burnt or destroyed; and
- (c) Conversion from one occupancy to another.

28. Having regard to these definitions if a Building/structure not originally constructed for use as a shop, is put to use as a shop, such conversion of

use would come within the ambit of the expression "to re-erect" and, consequently, within the ambit of the definition of the expression "to erect a

building".

29. In view of the aforesaid, reversing the impugned judgment of the High Court, we hold that u/s 345A of the DMC Act, the Commissioner of

MCD is empowered to exercise power of sealing in case of misuser of any premises.

Re: Question No. B - Whether under the Delhi Development Act, DDA has power to seal premises on account of its misuser?

30. The High Court held that both u/s 345A of the DMC Act and u/s 31A of the Delhi Development Act, there is no power to seal premises on

account of "its" misuser. We have held that MCD has such a power under the DMC Act. The position, however, is different when the provisions

of the Delhi Development Act are examined.

31. The Delhi Development Act defines in Section 2(e) "development area" to mean any area declared to be a development area under Sub-

section (1) of Section 12. Section 12 reads as under:

Section 12 - Declaration of development areas and development of land in those and other areas.--

(1) As soon as may be after the commencement of this Act, the Central Government may, by notification in the Official Gazette, declare any area

in Delhi to be a development area for the purposes of this Act:

Provided that no such declaration shall be made unless a proposal for such declaration has been referred by the Central Government to the

Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days from the date of the receipt of the reference

or within such further period as the Central Government may allow and the period so specified or allowed has expired.

(2) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a

development area.

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a

department of Government) unless,--

(i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the

provision of this Act,

(ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the

local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with the provisions made by or

under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the

grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955, (53 of 1955), and in force immediately

before the commencement of this Act:

Provided that the local authority concerned may subject to the provisions of Section 53A amend those regulations in their application to such area.

(4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such

development is also in accordance with such plans,

(5) Notwithstanding anything contained in Sub-sections (3) and (4) development of any land begun by any department of Government or any local

authority before the commencement of this Act may be completed by that department or local authority without compliance with the requirements

of those sub-sections.

32. The power of DDA to develop land in non-development area is provided in Section 22A, which reads as under:

Section 22A Power of Authority to develop land in non-development area.--

Notwithstanding anything contained in Sub-section (2) of Section 12, the Authority may, if it is of opinion that it is expedient to do so, undertake or

carry out any development of any land which has been transferred to it or placed as its disposal u/s 15 or Section 22 even if such land is situate in

any area which is not a development area.

33. u/s 36, DDA has been empowered to require the local authority, within whose local limits area developed by it is situated, to assume

responsibility for the maintenance of the amenities provided in the area by DDA and other ancillary matters. Section 30 provides for power of

DDA to make an order of demolition of building where any development has been commenced or is being carried on or has been completed in

contravention of the master plan or zonal development plan or without the permission, approval or sanction referred to in Section 12 or in

contravention of any condition subject to which such permission, approval or sanction has been granted. Section 31 empowers DDA to stop

development which is in contravention of the plan, permission, approval or sanction, mentioned therein or contravention of the conditions stipulated

in such permission, approval or sanction.

34. Section 31A empowers DDA to seal unauthorised development. If the misuser of the premises would come within the ambit of unauthorised

development, DDA would have power to seal the premises. On the other hand, if misuser does not come within the ambit of "unauthorised

development", the power of sealing would be lacking. Section 31A of the Delhi Development Act reads as under:

Section 31A Power to seal unauthorised development.--

(1) It shall be lawful for the Authority or the competent authority, as the case may be, at any time, before or after making an order for the removal

or discontinuance of any development u/s 30 or Section 31, to make an order directing the sealing of such development in the manner prescribed

by rules, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such development.

(2) Where any development has been sealed, the Authority or the competent authority, as the case may be, may, for the purpose of removing or

discontinuing such development, order the seal to be removed.

(3) No person shall remove such seal except--

(a) under an order made by the Authority or the competent authority under Sub-section (2); or

(b) under an order of the Appellate Tribunal or the Lieutenant Governor of the National Capital Territory of Delhi, made in an appeal under this

Act.

The expression "development" is defined in Section 2(d) as under:

Section 2(d) ""development"" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over

or under land or the making of any material change in any building or land and includes redevelopment;

35. The Scheme under the Act clearly seems to be that during development it is the responsibility of DDA to demolish and seal any premises if

there is contravention. After the handing over of the area to the local authority u/s 36, the power of demolition and/or sealing is conferred on that

authority. That local authority may be MCD or cantonment or any other authority depending upon the developed area falling in the local limits of

one or the other. The "development area" is any area declared to be such under Sub-section (1) of Section 12. So long as an area is a

development area, the power to deal with it remains with the "authority" which means Delhi Development Authority in terms of Section 3(1) of the

Act. After the responsibility of any area has been assumed by the local authority in the manner provided in Section 36, the power to deal with

properties in that area for any contravention would be exercisable by such authority depending upon the statutory provisions governing the said

local authority, referred to in Section 31A as "competent authority". The power of "Competent Authority" to seal premises would depend upon

the statute governing it. The language of Section 31A when it states that "it shall be lawful for the authority, or the competent authority, as the case

may be" shows that either the authority or the competent authority would have the power therein. The Act does not contemplate that both DDA

and the competent authority would have concurrent power even after the local authority has assumed responsibility as provided in Section 36.

Unlike Section 331, there is no provision in the Delhi Development Act to confer on the authority the power of sealing in case of misuse. The

power u/s 31A is to seal development u/s 30 or Section 31. The words "such development" in Section 31A refers to removal or discontinuance of

development u/s 30 or Section 31A and not for any development for the purpose of carrying out the provisions of the Act, as was sought to be

contended by Mr. Ranjit Kumar. Section 31A does not provide that sealing can be resorted to also for the purpose of carrying out the provisions

of the Act. It can be resorted to for sealing of development u/s 30 or Section 31 for the purpose of carrying out the provisions of the Act. Misuse

does not come within the ambit of development.

36. In view of the aforesaid, the High Court has rightly held that under the Delhi Development Act, there is no power of sealing in case of misuser.

Re: Individual cases and the Directions to be issued in respect thereof and also in respect of other residential properties used illegally for

commercial purposes.

37. In Special Leave Petitions and civil Appeal Nos. 608- 611 of 2003 challenge is to the judgments of High Court disposing of writ petitions in

terms of law laid down by Full Bench.



38. In civil Appeal No. 610 of 2003, it is contended on behalf of the private respondents that a factual error seems to have occurred when the

matter was disposed of by the High Court along with batch matters. It has been pointed out that the Court has failed to note that the plot in

question has been leased out by DDA for commercial purposes; due licence has been issued by the MCD to open a restaurant which is being run

in the name of Copper Chimney and, therefore, there is no misuser. Our attention has been drawn to the copy of the lease deed and the licence. If

this is the factual scenario, the authorities will examine it before taking action, if any, and the same would be subject to such legal remedy as may be

available in law to the private respondents.

39. In SLP No. 23896 of 2002 on behalf of respondent\_bank, it has been pointed out that as per scheme of DDA, banks have been permitted in

the residential properties. For DDA, it was submitted that the benefit of the scheme is available subject to the fulfillment of various conditions

stipulated therein. In this view, the matter will have to be examined by the authorities in the light of the scheme, before proceeding to take action, if

any, that may be available in law and subject to legal remedies of the Bank.

40. In respect of C.A. No. 608 of 2003, MCD issued to the respondents, a show cause notice dated 1st August, 2000 u/s 345A read with

Sections 347, 343 and 344 of the DMC Act stating that property No. 39 Ring Road, Lajpat Nagar III was being misused in the name and style of

Jagdish Store". In reply dated 15th September, 2000, it was, inter alia, stated that the MCD itself has been allowing non-residential activities in

residential areas under a special scheme, without, however, giving any details or filing any document in support thereof. Further, we asked the

learned Counsel for the respondents to place on record the plan for the construction of the building which may have been sanctioned so as to

ascertain whether the sanction was for construction of the residential property or commercial property. The plan has not been filed. The reasons

are not far to seek. One of the simple method for ascertaining that there is misuser or not, is to examine the sanctioned plan.

41. At this stage, it would be useful to notice letter dated 28th August, 2000 sent by the Ministry of Urban Development to the Commissioner,

MCD, Vice-Chairman, DDA and other authorities conveying the deep concern of Parliament Consultative Committee over the rising menace of

unauthorized construction, suspected connivance of the staff of the different authorities in the matter and requesting the authorities to take strong

and prompt action and suggesting ten measures for strict enforcement. The letter reads as under:

Annexure-R-1

No. J-13036/3/96-DDIIB

Government of India

Ministry of Urban Development & Poverty

Alleviation

\*\*\*

Nirman Bhawan, New Delhi

Dated: 28.08.2000

To

1. Shri P.S. Bhatnagar,

Chief Secretary,

Government of National Capital

Territory of Delhi,

Delhi.

2. Shri P.K. Ghosh,

Vice-Chairman,

Delhi Development Authority,

Vikas Sadan, INA, New Delhi

3. Shri S.P. Aggarwal,

Commissioner,

Municipal Corporation of Delhi,

Town Hall,

Delhi

4. Shri B.P. Misra,

Chairperson

New Delhi Municipal Committee,

Palika Kendra,

New Delhi

5. The Development Commissioner,

Government of National Capital

Territory of Delhi, Town Hall,

New Delhi

Subject: Unauthorised Encroachment and Illegal Constructions in Delhi

Sir,

I am directed to say that the menace of illegal encroachment/unauthorized construction in Delhi has been considered by the Government of India at

its highest level and it has been decided to eliminate this menace with a firm hand. You are, therefore, requested to take strong and prompt action

against all illegal constructions/unauthorized encroachments and also against misuses of land in violation of the provisions of the Master Plan of

Delhi. The following measures are particularly required to be enforced strictly.

(i) All illegal constructions should be demolished, not cosmetically but in toto.

(ii) The cost of demolition should be recovered from the illegal builders within 15 days of demolition. In case of non-payment within 15 days, the

amount due should be recovered as arrears of land revenue.

(iii) In all cases of illegal constructions, prosecution should invariably be launched against builders under the Delhi Municipal Corporation Act, Delhi

Development Authority Act, New Delhi Municipal Council Act, etc. and the cases followed vigorously with the police authorities/courts.

(iv) Wherever the property is on lease, action should be taken under the terms and conditions of lease agreement and re-entry effected within the

shortest permissible period under such lease agreement. After re-entry, physical possession of the property should be taken by invoking the

provisions of Public Premises Eviction Act and damages collected immediately. The rates of damages/misuse charges should be the same as per

the formula followed by the L&DO and approved by the Ministry of Urban Development.

(v) In case of DDA flats, where constructions have come up beyond the condonable limits, cancellation of allotment should be carried out in

addition to the demolition of the additional construction. Orders in respect of condonable and non- condonable items are being issued separately.

(vi) In cases, where after demolition, reconstruction is done, personal responsibility of the officer in-charge should be fixed and departmental action

taken against him.

(vii) In cases where illegal construction have taken place on rural agricultural lands, action under the Provisions of the Delhi Land Reforms Act,

1954, should also be taken and such lands should be taken over as per provisions of the Delhi land Reforms Act. Action in this respect should be

taken as soon as the plots are cut by the colonisers and construction done in the shape of boundary walls, etc. In other words, construction should

be nipped in the bud. If it comes up, it should be demolished immediately. Action in this respect should also be taken by the concerned local

agencies/DDA as per the bye-laws pertaining to lay out/service plans, etc.

(viii) In all cases where party obtains stay/status quo orders, prompt action to get the stay order vacated should be taken and higher court moved,

wherever necessary.

(ix) All Senior Field Officers should be asked to carry out physical inspection of the area under their charge and the Supervising Officer should also

make surprise checks to ensure that the subordinate staff takes immediate action to check/demolish unauthorised construction. Deterrent action

should also be taken against the subordinate staff such as Building Inspectors, Junior Engineers, Assistant Engineers, etc. who do not take prompt

action.

(x) Field officers should be asked to maintain filed diaries and submit them to the Supervisory Officer regularly.

2. It is also requested that a monthly report should be sent to the Ministry of Urban Development by the 5th of each succeeding month.

3. In this connection, it may be noted that both the Parliament and the Parliament Consultative Committee have expressed deep concern, through

questions and interpolations, over the rising menace of unauthorised constructions in Delhi and the suspected connivance of the staff of the different

authorities in the matter. A Flying Squad has been constituted in the Ministry and if, as a result of findings of this Squad, it is found that the

subordinate staff has not done its duty or not carried out the aforesaid instructions, strict action against the Subordinate/Supervisory Staff would be

taken by the Government.

Yours faithfully,

Sd/-

(Dr. Nivedita P.Haran)

Joint Secretary to the Government of India

Copy for information and necessary action to:

1. Deputy C.V.O., Ministry of UD&PA, Nirman Bhawan, New Delhi.

2. L&DO, Ministry of UD&PA, Nirman Bhawan, New Delhi

3. DG(W), CPWD, Nirman Bhawan, New Delhi

Sd/-

(N.L. Upadhyay)

42. The aforesaid letter has been considered by this Court while passing order dated 31st July, 2001, part whereof has been quoted earlier.

Although the letter and also the observations made in the order are in the context of unauthorized constructions, the same would equally apply to

the misuser as well. It would be useful to reproduce the entire order which reads as under:

Order dated 31.7.2001 in W.P.(C) No. 725/1994-

We have seen two affidavits, one of the Chief Secretary as well as the affidavit on behalf of the M.C.D. We are sorry to note that the affidavits do

not specifically deal with the points in issue. Vide our order dated 9th May, 2001 these authorities along with Vice-Chairman, D.D.A,

Chairperson, N.D.M.C. and the Development Commissioner were required to file affidavit to indicate as to what measures they have taken in the

implementation of the letter dated 28th August, 2000. At least ten measures were required to be taken in terms of the said letter dated 28th

August, 2000. The affidavits in reply do not deal with them specifically and general averments have been made which are not satisfactory.

The perusal of the affidavits further shows that the parties concerned have not even touched the tip of the iceberg as far as demolition of

unauthorised constructions is concerned. The number of unauthorised constructions which are said to have been demolished are a small fraction of

what is required to be done. It is quite evident that there is now no fear of the law catching up at least with those persons who do not believe in

adhering to following the rules and regulations laid down with respect to construction of property. Unauthorised encroachment and illegal

construction even as per the affidavits are increasing. It is dangerous trend if the people do not have either respect for or fear of law primarily due

to non-enforcement of the law. It is something which causes us some concern and it would be appropriate if serious thought is given to this aspect

at the highest quarters.

We direct the Chief Secretary as well as the Commissioner, M.C.D. to file within four weeks specific affidavit dealing with each of the clauses of

the letter dated 28th August, 2000. They will also indicate as to what is the total encroached area in Delhi as well as the number of

unauthorized/illegal constructions which have been raised.

The affidavit of the Chief Secretary seems to give some indication of action taken for removing encroachment from some of these areas in Delhi.

We would require the Union of India/Ministry of Urban Development to check and inform the Court whether what is stated in the annexures to the

affidavit of the Chief Secretary from pages 43 to 63 is correct. The Central Government will be at liberty to ask for information from the local

authority in order to enable it to comply with the orders passed today.

The M.C.D. will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of the

buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential

houses are permitted. To come up after four weeks.

43. Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect

the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves,

does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its

extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have

hereinbefore noted in brief, the orders made in the last so many years but it seems, the same has had no effect on the authorities. The things cannot

be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is

made in the plans also to tackle the problem of existing unauthorised constructions and misuse and, on the other hand, such illegal activities go

on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens. We have noticed above the

complaints of some of the residents in respect of such illegalities. For last number of years even the High Court has been expressing similar anguish

in the orders made in large number of cases. We may briefly notice some of those orders.

44. More than fifteen years ago, on 17th May, 1990, a Division Bench of the Delhi High Court presided over by Justice B.N. Kirpal (as the

former Chief Justice of India then was) in the case of 825873 , dealt with a writ petition in respect of a building in Kailash Colony, New Delhi and

noticed the extent of illegalities and the massive construction made that could not be used for residential purposes since there was no kitchen or

kitchen facilities. Dealing with the argument put forth on behalf of builder that there is no power to seal any building u/s 345A, dismissing the writ

petition, it was observed that the petitioner had admittedly violated the law and cannot now be permitted to cry wolf. The Court said that the

petitioner had admittedly constructed a building not only at variance with the sanctioned plan but also at variance with the completion certificate

and completion drawings.

45. Again on 22nd October, 1990, another Division Bench dealt with a property in Greater Kailash II, New Delhi in the case of 808775 and

observed that the residential buildings can only be used for residential purposes. The use of premises for widespread commercial activities is

prohibited. This was while dealing with a criminal matter arising out of prosecution u/s 29 of the Delhi Development Act.

46. On May 18, 1995, Justice R.C. Lahoti (as the former Chief Justice of India, then was) in the case of 807299 echoed similar words and

referred to decision of this Court, observing that the word "environment" is of broad spectrum which brings within its ambit hygienic atmosphere

and ecological balance. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. There is

constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an

imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. Dealing with the

Municipal Laws providing for power of demolition, it was observed that while interpreting municipal legislation framed in public interest, a strict

constitutional approach must be adopted. A perusal of the Master Plan shows that the public purpose behind it is based on historic facts guided by

expert opinion.

47. The injurious effects on the health and well being of those living in the neighbourhood were also noticed. Further, notice was taken of the fact

of the unscrupulous builders building properties in deviation of laws, master plan with the connivance or collusion of the authorities.

48. On 9th February, 1996 dealing with various properties at Pusa Road in the case of 811157 writing separate opinion as a member of Division

Bench of Delhi High Court, one of us (Y.K. Sabharwal, CJ) noticed that the unauthorised constructions and unauthorised user of residential

building for commercial purposes in Delhi had gained alarming proportions and crossed all limits. It was said that these activities are against the

interests of the society at large and need to be dealt with firmly and that the public interest demands that the court should not come to the aid of

those who break the law with immunity and put up commercial complexes on the land meant admittedly for residential use. These complexes are

put up and spaces purchased for petty commercial consideration without any regard to the hardship and inconvenience of other citizens. It was

further said that in respect of blatant unauthorised constructions and misuser, it cannot be said that the Commissioner of MCD has a discretion to

order demolition or not and vesting of discretion in the circumstances would itself be arbitrary and illegal.

49. In the concluding paragraph it was stated that:

In the end, I regret to notice that despite warning and caution given by the Apex Court and also this Court, from time to time, that stern action will

be taken against unauthorised constructions and misuse, these activities have gone on unabated, without any let or hindrance and all the warnings

have fallen on deaf ears without any effect on the unscrupulous builders and purchasers of these spaces. It is, therefore, necessary to once again

send a message, loudly, clearly and firmly to all those who indulge in such illegal activities that courts will not come to the aid of persons who

indulge in such blatant unauthorised constructions and misuser of the properties. It is also the duty of the courts to examine these matters carefully

before granting injunction restraining demolition of such unauthorised constructions. Ordinarily the courts before issuing injunctions in such matters

should insist upon filing of the sanctioned plans and details about the existing structures to prima facie find out whether the existing structures are in

accordance with the sanctioned plan and building bye laws etc or not. The courts may also consider appointment of independent person to verify

correctness of representations made about existing structures as in many cases unauthorised constructions are raised after issue of injunctions and

in cover and garb of orders of injunction. The alarming nature of such illegal activities can be controlled only by due cooperation from all citizens

including the Media and the Press. It is the duty of all to expose these law breakers. I hope the Media would bring to the notice of public in general

that unauthorised constructions and misuser have been severely dealt with by this Court and henceforth also no leniency would be shown in such

matters. A copy of this judgment shall be sent forthwith to Delhi Doordarshan and All India Radio. Everyone has to be told that such unauthorised

activities are against public interest. These activities have to be stopped forthwith. If in spite of this warning anyone indulges in such unauthorised

construction or misuse or in purchase of these unauthorised constructions he would be doing it at his own risk and peril and would not be heard to

say that he has made large investments. I hope that at least now this message would be taken with all seriousness.

In view of the above, in my opinion, all the petitions and appeals deserve dismissal with costs quantified at Rs. 10,000/- in each case. These costs

would be utilised by M.C.D. for creating in a Special Cell which should be set up to curb unauthorised construction and misuser of the Immovable

properties so that at least a beginning is made now to promptly check these illegal activities. The officials and officers manning this Cell will have to

be informed that any dereliction of duty would be severely dealt with.

50. It seems that in view of the aforesaid judgment attaining finality, some formal or cosmetic demolition had taken place. What is the position of

these properties now is evident from the affidavit dated 16th November, 2005 filed by Additional Commissioner, MCD placing on record the

present status after conducting inspections in second week of November, 2005. A perusal of the status report in respect of properties referred in

the aforesaid case shows large scale violations in the shape of show-rooms, commercial offices, shops, law institutes and gymnasiums. The report



shows that even after a lapse of 10 years, commercial activity is in full swing. This also shows the urgent need to introduce stringent measures for

fixing accountability.

51. Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the

orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can

only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs.

Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption.

therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties

that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to

third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused

to others. Similar would also be the accountability of errant officers as well since, prima facie, such large scale misuser, in violation of laws, cannot

take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.

52. We have perused the suggestions given by MCD. It has suggested four steps. MCD requires six months to complete the whole survey in 12

zones divided into 134 wards. As a second step, after initial survey of all the zones, notice of the proposed action/sealing and/or stopping misuse to

be given to the concerned persons. The third step is grant of opportunity to them of being heard. The fourth step is the operations for sealing

blatant and obvious cases of large scale misuse at the first instance. Further suggestion is that the major violations would be sealed first and

simultaneously action in all 12 zones would be conducted after following the due process of law. It is stated that the success of operation would

largely depend on the availability of the Police force. Recognising that the parties later tamper the seal, it is suggested that necessary directions be

issued warning those who tamper the seal that they shall be punished for contempt of court.

53. Regarding the Ad hoc Trade Registration Scheme, 2004, the stand of the MCD is that, if allowed by the Court, it will be implemented in the

same area as is permitted by the Master Plan for category "A" household industry to the extent of 25% of the floor space or 30 sq. mt., whichever

is less, and this will be the maximum space permissible. The minimum space having already been specified in the scheme as 30 sq. ft. We may note

that the scheme for ad hoc registration itself provides that it is applicable to the following areas:

1. Walled city and other built up areas.
2. Schemes executed by the Delhi Improvement Colonies.
3. Schemes executed by the Ministry of Rehabilitation Colonies.
4. Resettlement Colonies.
5. Urban Villages
6. Unauthorised regularized colonies.

This scheme is not applicable to the following areas:

1. NDMC and Delhi Cantonment area.
2. Planned Colonies and housing schemes developed after 1957.
3. Unauthorised colonies not regularized.
4. J.J. Clusters.
5. Staff Housing colonies.
6. Rural Settlement (except household and rural industrial units Group A & A1-Annexure-II)

54. The areas and the colonies above-referred themselves show that the so-called Registration Scheme, 2004 can have no applicability to the

nature of misuse under consideration. It deserves to be noted that it is implicit in the scheme that a person to get benefit of the scheme has himself

to be resident of such premises.

55. The introduction of the Ad hoc Registration Scheme would not only regularize the illegalities but further encourage more illegalities to take

place by sending a wrong message underlying the press release. This ad hoc scheme has been stayed by this Court. A similar scheme was also

sought to be introduced by DDA as well for grant of temporary permission for commercial use in industrial plots and for condonation of misuse of

industrial premises for offices and other commercial purposes on payment of requisite charges. On learned Amicus Curiae filing IA 1816 of 2002

seeking stay of the said scheme, the scheme was given up and an affidavit filed that no action is being taken by DDA upon the scheme or the

notice, subject matter of the application. The introduction of such schemes by MCD and DDA show the extent of the apathy and lack of concern

of these bodies.

56. Mr. Ashwini Kumar, learned senior Advocate appearing for MCD, also contended that since there is a large scale misuse of residential

premises for commercial purposes, it is a physical impossibility to remove the misuser. The contention deserves outright rejection. We have already

noted how the misuser has attained such enormity. Despite repeated orders and directions, MCD took no action. Such a contention is not open to

MCD. It is not merely a case of only lack of will to take action, it appears to be a case of predominance of extraneous considerations.

57. Rule of law is the essence of Democracy. It has to be preserved. Laws have to be enforced. In the case in hand, the implementation and

enforcement of law to stop blatant misuse cannot be delayed further so as to await the so called proposed survey by MCD. The suggestions would

only result in further postponement of action against illegalities. It may be noted that the MCD has filed Zone wise /ward wise abstract of violations

in terms of commercialisation as in November, 2005. According to MCD, the major violation has been determined in respect of those roads

where commercialisation of the buildings is more than 50%. According to it, the major violations in 12 zones are spread on 229 roads. Roads on

which there are major violations are, thus, known. In respect of these, there is no need for any survey or individual notice. Beginning must be made

to stop misuser on main roads of width of 80 ft. or more. The names of these roads can be published in newspapers and adequate publicity given,

granting violators some time to bring the user of the property in conformity with the permissible user, namely, for residential use if the plans have

been sanctioned for construction of a residential house. In case owner/user fails to do so, how, in which manner and from which date, MCD will

commence sealing operation shall be placed on record in the form of an affidavit of its Commissioner to be filed within two weeks. On

consideration of this affidavit, we will issue further directions including constitution of a Monitoring Committee, if necessary. The issue of

accountability of officers and also the exact manner of applicability of Polluter Pay Principle to owners and officers would be further taken up after

misuser is stopped at least on main roads. civil Appeal Nos. 608/2003 above referred relates to Ring Road, Lajpat Nagar-II. The other cases

relate to areas like Green Park Extn., Green Park Main, Greater Kailash, New Friends Colony, Defence Colony, West Patel Nagar, etc. These

areas are illustrative. The activities include Big Furnishing Stores, Galleries, Sale of Diamond and Gold Jewellery, sale of Car Parts etc.

58. Having held that the Commissioner of MCD has power under the DMC Act to seal premises in case of its misuser, we issue the following

directions for taking immediate steps to seal residential premises being used for commercial purpose:

1. MCD shall within 10 days give wide publicity in the leading newspapers directing major violations on main roads (some instances of such

violators and roads have been noted hereinbefore) to stop misuser on their own, within the period of 30 days.

2. It shall be the responsibility of the owner/occupier to file within 30 days an affidavit with Commissioner of MCD stating that the misuser has

been stopped.

3. In case misuser is not stopped, sealing of the premises shall commence after 30 days, from the date of public notice, first taking up the violations

on roads which are 80 ft. wide and more. All authorities are directed to render full assistance and cooperation. After expiry of 30 days from the

date of public notice, electricity and water supply shall be disconnected.

4. Details of the Roads and the violations shall also be placed on the website by the MCD and copies also sent to Resident Welfare Associations

of the area which should be involved in the process of sealing of misuser. The Commissioner of MCD shall file an affidavit, within two weeks, in

terms of directions contained in this judgment, whereafter directions for constitution of the Monitoring Committee would be issued. The sealing

would be effected by the officers authorised by the Commissioner of MCD in consultation with the Monitoring Committee.

5. The appropriate directions for action, if any, against the officers responsible for the misuse and for payment of compensation by them and by

violators would be issued after the misuser is stopped.

6. None will tamper with the seals. Any tampering with seal will be sternly dealt with. Tampering with seal will include opening another entrance for

use of premises.

7. It would be open to the owner/occupier to approach the Commissioner for removal of the seal on giving undertaking that the premises would be

put to only authorised use.

8. Particulars of cases where violators may have obtained orders of stay will be filed in this Court by MCD.

9. MCD shall file monthly status report as to action taken by 15th of each month commencing from 10th April, 2006.

10. In case misuser is not stopped in the premises involved in the civil appeals and special leave petitions, subject to what is stated in this judgment,

the MCD will take immediate steps to seal those premises soon after expiry of 30 days.

59. civil Appeals, Interlocutory Applications (except I.A.22) and Special Leave Petitions are disposed of but MCD is granted liberty to seek

further directions from this Court from time to time.