

(2013) 04 SC CK 0145

Supreme Court of India

Case No: I.A. No. 22 in Writ Petition (C) No. 4677 of 1985, W.P. (C) No. 263 of 2006. W.P. (C) No. 264 of 2006, W.P. (C) No. 563 of 2006, W.P. (C) No. 569 of 2006. W.P. (C) No. 610 of 2006, W.P. (C) No. 4647006, W.P. (C) No. 266 of 2006, W.P. (C) No. 450 of 2006,

M.C. Mehta

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: April 30, 2013

Acts Referred:

- Delhi Development Act, 1957 - Section 31A, 31B, 31C
- New Delhi Municipal Council Act, 1994 - Section 250, 253, 254

Citation: (2013) 13 SCALE 537

Hon'ble Judges: Jagdish Singh Khehar, J; H.L. Dattu, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. These writ petitions were filed before this Court, inter alia, challenging various provisions of the Delhi Laws (Special provisions) Act, 2006. Being temporary Act of Parliament, the provisions were continued from year to year by virtue of the National Capital Territory of Delhi Laws ((Special Provisions) Ordinance, 2007, National Capital Territory of Delhi Laws (Special Provisions) Second Ordinance, 2007, National Capital Territory of Delhi Laws (Special Provisions) Act, 2007, National Capital Territory of Delhi Laws (Special Provisions) Act, 2009, National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009, National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 and National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 valid upto 31.12.2014. Some of the writ petitions also challenged the provisions of the Master Plan for Delhi 2021 as notified on the 7th February, 2007. Some of the Writ Petitions challenged notifications issued by the Delhi Development Authority (hereinafter referred to as "DDA") notifying certain streets for mixed use and/or commercial use, which were issued in the year 2006. In the matter initiated by M.C.

Mehta, various facets of mining in the Aravallis, shifting of industrial units both hazardous and noxious from Delhi, closure of industrial establishments working in non-conforming areas, setting up of sewage treatment plants and common effluent treatment plants, change of land users viz., non-conforming users of residential areas, were taken up for consideration by this Court and various orders were passed thereon. This Court had passed the following order on 30.9.2002:

Reply be filed with regard to commercial use of premises in residential areas within 4 weeks. Response to the same be filed within 4 weeks thereafter. List after 8 weeks.

In its earlier order dated 19.8.2003, this Court had observed:

In these matters various issues are involved, such as shifting of industries from non-conforming areas, setting up of CETP in the industrial areas, the change of land use, validity of proposal to regularise the non-conforming use, applicability of building bye-laws to the areas falling within Lal Dora and the impact of the guidelines issued by the Central Government on the Master Plan under preparation.

The judgment with regard to the shifting of industries from residential/non-conforming areas was rendered on 7.5.2004 and is reported as 289502

2. The judgment in regard to the misuse/non-conforming use of residential premises, and power to seal premises, arising in IA No. 22, as also, several appeals filed by the Municipal Corporation of Delhi (hereinafter referred to as "MCD") which arose out of a Full Bench of the Delhi High Court were decided by a judgment dated 16.2.2006 and is reported as, 260293 . It was, inter alia, held that the MCD had power to seal the premises for non-conforming user in terms of Section 345A of the MCD Act, and various directions were issued.

3. These cases relate to the matter of non-conforming user of premises, and the orders passed thereon, after the judgment of 16.2.2006, under the special provisions made by the Parliament qua Delhi, the various provisions of the Master Plan which according to some of the Petitioners were flawed because of the non-availability of the physical and social infrastructure. This Court had appointed a Monitoring Committee vide an order dated 24.3.2006. The same is being extracted below:

In order to over-see the implementation of the law, namely sealing of offending premises in terms of the letter and spirit of this Court's directions, it is necessary to appoint a monitoring committee instead of leaving any discretion with the officers of the MCD. Accordingly, we appoint a Monitoring Committee comprising of Mr. K.J. Rao, Former Adviser to Election Commissioner, Mr. Bhure Lal, Chairman, EPCA and Maj. Genl. (Retd.) Som Jhingan. We direct that all necessary facilities shall be supplied by MCD to the members of the Monitoring Committee, including the facility of transport, secretarial service, honorarium etc.

Further, orders were also passed by this Court on 24.3.2006, 11.5.2006 and 8.10.2007, which inter alia, read as under:

...The sealing shall continue notwithstanding any order passed by any court. The Delhi Police is directed to extend full support to the MCD for carrying on the operation of sealing." And

...on 24th March, 2006, it was directed that sealing shall continue notwithstanding any order passed by any court. Be that as it may, we reiterate that no court other than this Court will have any jurisdiction to make an order of de-sealing the premises sealed under the orders of this Court.

IA No. 22

From the Report of the Monitoring Committee dated 5.10.2007 (Report No. 43), it appears that there is a difference in perception of MCD and DDA about sealing in special areas. While the DDA in its letter dated 10.8.2007 states that properties on notified streets for payment of conversion charges as per the mixed use Regulations prescribed in MPD 2021, such mixed use/commercial activities may not be allowed on streets which are not notified in residential areas. The MCD appears to be of the view that the Special Areas are exempted for any punitive action for a period of three years from the date of notification of the MPD-2021.

A copy of the extracts of Report No. 43 (paragraphs 6 and 7) shall be supplied by the Registry to Learned Counsel for the MCD along with a copy of the letter (Annexure-B). The response of the MCD, if any, shall be filed within three weeks.

If any action for sealing is being taken pursuant to and in line with this Court's order dated 24.3.2006 and 11.5.2006, the same shall be in order.

4. (i) In this Court's order dated 29.9.2006, while hearing the writ petitions which had been filed for challenging the notifications issued after this Court's judgment dated 16.2.2006, it was observed as under:

The city of Delhi is an example of a classical case, which, for the last number of years, has been a witness of flagrant violations of municipal laws, town planning laws and norms, Master Plan and environmental laws. It is borne out from various orders and judgments passed by this Court and the Delhi High Court, whether in a case of shifting of hazardous and polluting industries or providing cleaner fuel (CNG) or encroachment of public land and streets or massive unauthorized construction and misuse of properties. It is a common knowledge that these illegal activities are also one of the main sources of corruption.

In the writ petitions, this Court further ordered as below:

The constitutional validity of the Notification dated 7.9.2006 is under challenge on various grounds in WPs. (C) No. 450, 464 and 470 of 2006. The challenge deserves to be examined in depth and, therefore, in these writ petitions, we issue rule. Counter-affidavit shall be filed by the Respondents within 4. weeks. The Respondents are further directed to place before this Court material which was taken into consideration for arriving at the decision leading to the amendment of the Master Plan in terms of the Notification dated 7.9.2006 and the consequential Notification dated 15.9.2006.

[vide 303109

(ii) Since there was a difference of perception with regard to sealing to be done by the Monitoring Committee (in the areas over-seen by NDMC and the DDA), this court passed another order on 7.5.2007:

We have considered Report No. 34 dated 4.5.2007 of the Monitoring Committee. In para 3 of the Report, it has been stated that there are large scale commercial activities being carried on public land meant for public utility services. There appears to be difference of view as to how sealing can be carried out, in terms of the orders of this Court and whether sealing has to be done by DDA or MCD. To avoid any confusion, we direct that the Monitoring Committee shall carry on sealing in the presence of functionaries of MCD and DDA. To avoid any further confusion, which is appearing in the minds of the NDMC Authorities, we direct that the sealing shall also be carried out in the areas governed by the NDMC.

5. Various orders were thereafter passed in the writ petitions and applications (IAs) preferred before this Court, for desealing of the premises from time to time. As of today, the aforestated writ petitions and IAs are still pending consideration, before this Court.

6. (i) We have heard Learned Counsel for the parties, and the learned Amicus Curiae. We feel that all these matters (writ petitions and IAs) should be remitted to the Delhi High Court for consideration of the challenge raised to Parliamentary enactments, as also, the challenge to the Master Plan and the notifications issued thereunder by the DDA. We, accordingly remit all these writ petitions and IA Nos. 2069-2069A, 2180 and other connected matters to the Delhi High Court for consideration on their own merits, in accordance with law. The Registry will transmit the entire record along with the papers filed by the Amicus Curiae, for the consideration of the High Court. Parties will have liberty to file additional affidavits, counter affidavits and additional documents, if any, with the leave of the High Court. The High Court is requested to hear these matters at an early date preferably within a period of one year from the date of receipt of the entire record and papers. The High Court may also hear the Monitoring Committee which has been acting under the directions of this Court (and has been filing reports in these matters before this Court).

(ii) This Court, by an order dated 3.1.2012, had directed as under:

Till the matter is heard by the Court, the Monitoring Committee shall not Order further sealing of the premises which are under its scrutiny.

We also direct that no construction, temporary or permanent, shall be made on the premises which have been subject matter of scrutiny of the Monitoring Committee and no order shall be passed by the Government or any authority regularizing such construction or sanction the change of user.

The Delhi Development Authority, New Delhi Municipal Corporation and Municipal Corporation of Delhi are directed to ensure that no encroachment is made on any public land, whether belonging to the Government or any public authority. They shall also ensure that no illegal construction is made on any of the properties which has been subject matter of the scrutiny by the Monitoring Committee.

The Monitoring Committee shall be entitled to inspect the premises in which any illegal construction may have been made after this order or any encroachment on public land, regularization and if necessary submit report to this Court.

The above order is continuing in nature. It shall be perceived accordingly. It will be open to the Division Bench of the High Court, to vary/alter/modify the above order, after hearing counsel for the rival parties.

(iii) The Reports filed by the Monitoring Committee (after our above order dated 3.1.2012) may also be separately considered by the High Court. This would result in a wholistic examination of the matters

(iv) With the above observations, all the Writ Petitions are disposed of.

7. (i) We had, as noticed above, by our order dated 24.3.2006, appointed the Monitoring Committee for looking into the aspect of sealing of premises, which were being put to non-conforming user. The Monitoring Committee had ordered the sealing of those premises. Against which, a large number of the applicants have approached the Court (by filing writ petitions which were converted into IAs, or by filing IAs) praying for desealing. All the said IAs are still pending consideration before this Court. We propose to issue appropriate directions in the said IAs as well.

(ii) We deem it appropriate to direct, that all these orders of sealing passed by the Monitoring Committee, and the sealing undertaken thereunder, shall be deemed to have been passed by the concerned statutory authority in exercise of powers conferred u/s 345A of the MCD Act, or u/s 250 of the NDMC Act, or in terms of Section 31A of the Delhi Development Act.

(iii) In terms of the provisions of Section 347B of the MCD Act or u/s 254 of the NDMC Act or u/s 31C of the DDA Act, an appeal lies to an Appellate Tribunal against an order passed under Sections 345A, 250 and 31A of the three Acts respectively.

(iv) These IAs which are pending before this Court for desealing of premises, on one ground or the other, will be treated as appeals under Sections 347B, 254 and 31C of the respective Acts (NDMC Act/MCD Act/DDA Act) before the respective Appellate Tribunal constituted under Sections 347A of the MCD Act, Section 253 of the NDMC Act and Section 31B of the DDA Act. The Registry will transmit all these IAs (including objections, if any) to the respective Tribunals under the MCD, NDMC and DDA Acts. The above Tribunals shall then hear these applications, as appeals preferred against an order of sealing, and decide the same on their own merits, in accordance with law. Parties will be at liberty to file additional affidavits/counter-affidavits and additional documents with the leave of the concerned Tribunal.

(v) The Monitoring Committee reports as regards all these individual IAs will also be placed before the Appellate Tribunal. The Monitoring Committee will be represented by a panel lawyer before the Tribunal (to present the view point expressed in the orders passed by the Monitoring Committee). For the above purpose, a panel of lawyers may be selected by the Monitoring Committee in consultation with the MCD/NDMC/DDA. An honorarium, to be determined by the MCD/NDMC/DDA, will be payable to every panel lawyer. The said honorarium will be paid by the MCD/NDMC/DDA. The Appellate Tribunal will endeavour to dispose of these IAs as expeditiously as possible in seriatim (by the date of the sealing order or by the date of filing of the IAs). All these IAs shall be disposed of, as far as possible, within a period of one year from the date of receipt of the papers, and this order.

(vi) The properties already sealed will continue to be sealed, till a final decision is taken by the concerned Tribunal.

(vii) In case the Tribunal decides in favour of an applicant, it will be open to the Monitoring Committee to recommend the MCD/NDMC/DDA, to prefer a writ petition before the High Court, for assailing the order passed in favour of an applicant.

8. (i) In its Report No. 47 dated 10.12.2007, the Monitoring Committee also brought to our notice, details of contempt proceedings initiated before the High Court of Delhi, qua sealing of certain premises, despite stay orders. A Division Bench of the High Court where two Hon"ble Judges differed from each other (as to whether the contempt proceedings could be initiated in view of the two orders passed by this Court on 24.3.2006 and 11.5.2006) directed that the matter be placed before a third Hon"ble Judge. This Court had by an order dated 11.12.2007 (regarding this report) passed the following order:

Report dated 10.12.2007 of the Monitoring Committee

It is stated that because of difference between two learned judges of the Delhi High Court in W.P. (C) No. 4608 of 2007, the matter is now posted before a learned third judge. Inter-alia, it relates to the jurisdiction of the Monitoring Committee appointed by this Court

and the effect of an order passed by a learned single Judge by which maintenance of status quo was directed as to possession. The further issue that appears to have been raised is whether scaling amounts to violation of the High Court's order of status quo relating to possession. Since the matters are being examined by this Court, the proceedings before the learned third Judge, to whom reference has been made because of the difference, shall remain stayed until further orders.

The Report dated 10.12.2007 of the Monitoring Committee shall be kept on record.

(ii) Similarly, vide its Report No. 75 dated 1.1.2010, the Monitoring Committee brought to the notice of this Court, pending contempt proceedings initiated by one Gyan Gupta before the High Court against the sealing of the premises, wherein the High Court vide an Order dated 11.12.2009 had restrained the DDA and Ors. from scaling the concerned property. This Court had on 6.1.2010 passed the following order:

The order dated 11.12.2009 in Contempt Case No. 932/2009 passed by the High Court of Delhi shall remain stayed until further orders.

The Report No. 75 of the Monitoring Committee shall be kept in a sealed cover.

These contempt proceedings, will be decided by this Court at a later date. The stay orders will continue, unless modified hereafter.

9. It appears that in some matters, no applications for desealing of the premises have been filed before this Court, despite sealing orders passed by the Monitoring Committee. We grant liberty to all interested parties in such matters, to prefer appeals before the concerned Tribunal in terms of Sections 347B/254/31C of the MCD/NDMC/DDA Acts within 30 days of this order. All appeals filed under the instant order, will be deemed to have been filed within time. If any such appeal(s) is/are tiled, the concerned Tribunal will proceed to consider the same, after notice to the concerned authorities and the Monitoring Committee.

10. In view of the disposal of these matters by remittance to the High Court/Tribunals, the Amicus Curiae appointed by this Court is hereby discharged. We place on record our appreciation of the work done by the Amicus Curiae and the members of the Monitoring Committee, who have been assisting this Court as and when required. We would be failing in our duty, if we do not, as a token of our appreciation, direct the Delhi Administration to pay the Amicus Curiae Rupees ten lakhs for his valuable time. The said payment, we are aware, falls short of the level of his professional fee, for such like matters. But then, it is not fee that is being ordered to be paid, it is only a token of our gratitude. The said payment be made within one month of passing of the instant order. Liberty is reserved to the parties concerned, the Amicus Curiae and the Monitoring Committee, to approach this Court in case of any difficulty in the interpretation/implementation of this Order.