

CASE NO.:
Writ Petition (civil) 4677 of 1985

PETITIONER:
M.C. Mehta

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 29/09/2006

BENCH:
CJI Y.K. Sabharwal, C.K. Thakker & R.V. Raveendran

JUDGMENT:
J U D G M E N T
I.A. NO. 1970 IN I.A. NO. 22

IN

WRIT PETITION (C) NO. 4677 OF 1985

[With W.P. (C) Nos. 263, 264, 266, 450, 464 & 470 of 2006, I.A. Nos. 3-6, 8-12, 15-16, 18-22 in W.P. (C) No. 263 of 2006, I.A. No. 17 in I.A. Nos. 5-6 in W.P. (C) NO. 263 of 2006 AND I.A. Nos. 1926-27, 1928-29, 1948, 1949, 1961, 1969, 1971-72, 1974, 1975, 1976, 1977-78, & 1973 IN I.A. 22 IN W.P. (C) No. 4677 of 1985]

Y.K. Sabharwal, CJI.

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 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 misuser of properties. It is a common knowledge that these illegal activities are also one of the main sources of corruption.

The issue of commercial use of residential premises was decided by this Court by judgment dated 16th February, 2006 in M.C. Mehta v. Union of India and Ors. reported in (2006) 3 SCC 399. While reversing a Full Bench decision of Delhi High Court, the stand of Municipal Corporation of Delhi (MCD) was accepted and it was held that the Commissioner of MCD is empowered to exercise power of sealing in case of misuse of any premises. The judgment also noted certain individual cases as also other residential properties being illegally used for commercial purposes. Besides noting orders passed by this Court, from time to time, in the last so many years which had no effect on the authorities, reference was also made to some of the orders passed by the High Court in last about 15 years. There was, however, no implementation. It was also observed that such large scale misuser cannot take place without the connivance of the officers who will have to show as to what effective steps were taken to stop the misuser but the issue of accountability of officers would be taken up after misuser is stopped at least on main roads. The misuser activities included big furnishing stores, galleries, sale of diamond and gold jewellery, sale of cars etc. While issuing

directions for implementation of laws, it was noted that if the entire misuser cannot be stopped, at one point of time because of its extensive nature, a beginning has to be made in a phased manner by first taking sealing action against major violators. The cases of small shops opened in residential houses for catering day-to-day basic needs were left out for the present.

Thus, the plea of M.C.D. that it has power to seal premises in case of misuser having been accepted, various directions were issued. The directions included giving of wide publicity for stoppage of misuser by the violators on their own and the commencement of sealing process if the misuser is not stopped. The sealing process in a phased manner was to commence on 29th March, 2006.

On 24th March, 2006, considering the prayer of the traders, time to stop misuser was extended upto 30th June, 2006 subject to persons claiming benefit of extended time filing affidavit stating that (i) on or before 30th June, 2006, misuser shall be stopped and no further extension on any ground whatsoever shall be asked for, and (ii) giving an undertaking to the effect that violation of condition of not stopping the misuser by 30th June, 2006 would subject him/her to offence of perjury and contempt of court for violation of the order of the court. It was further directed that premises in respect of which affidavits are not filed the process of sealing shall commence with effect from 29th March, 2006.

A Monitoring Committee was also appointed to oversee the implementation of the law, namely, sealing of the offending premises in letter and spirit of the court's directions. However, on 28th March, 2006, a Notification was issued by Delhi Development Authority (DDA) modifying Master Plan insofar as the chapter on mixed use is concerned.

The Union of India filed I.A. No.1931, inter alia, praying that the local bodies be directed to complete the exercise of identification of mixed use of roads/streets in residential areas within a period of six months. An order was, therefore, passed on 28th April, 2006 permitting the Government to place detailed facts before the Monitoring Committee to find out if it is possible to give some relief to the traders. It was directed that the Monitoring Committee will examine the facts broadly from prima facie point of view to assist the Court and report if, in its view, some relief in regard to the ongoing sealing can be given in respect of some of the areas temporarily till the exercise as contemplated in the application was complete. The Monitoring Committee heard all concerned including Secretary of the Urban Development Ministry of Government of India and examined the matter and filed its report on 4th May, 2006. When the Application along with the report of the Monitoring Committee came up for consideration before this Court, the same was withdrawn by the Government of India on 11th May, 2006.

On 12th May, 2006, the Delhi Laws (Special Provision) Bill, 2006 was passed by Lok Sabha; Rajya Sabha passed it on 15th May, 2006 and on receipt of assent of the President on 19th May, 2006, it was notified the same day.

On 20th May, 2006, the Government of India issued a Notification placing a moratorium for a period of one year in respect of all notices issued by local authorities in respect of categories of unauthorized development. In exercise of powers conferred by Section 5 of the Delhi Laws (Special Provisions) Act, 2006 (22 of 2006), the Central Government directed local authorities to give effect to provisions of the said Act, namely, 1) the premises sealed by any local authority in pursuance of a judgment, order or decree of any court after the 1st day of January, 2006, shall be eligible to be restored, for

a period of one year, with effect from 19th day of May, 2006, to the position as was obtaining as on 1st day of January, 2006.

2) All commercial establishments which are required to cease carrying out commercial activities at their premises by the 30th day of June, 2006, may continue such activities, as they were being carried out on the 1st day of January, 2006 for a period of one year, with effect from 19th day of May, 2006.

By the aforesaid Act and the notice dated 20th May, 2006, the Government purported to relieve the persons of the undertaking though given to this Court and also purported to issue directions for removal of seals though placed on the premises under the order of this Court.

On writ petitions being filed to declare the aforesaid Act unconstitutional, on 23rd May, 2006, notices returnable for 17th July, 2006 were directed to be issued to the respondents in the writ petition as well as on the Applications for stay. The matters were, however, taken up on 1st August, 2006, when the writ petitions were admitted and rule issued by the Court noting that serious challenge had been made to the constitutional validity of the Act.

The stay applications were considered on 10th August, 2006. In support of plea for grant of stay, it was contended on behalf of the petitioners that it is a unique statute which overrules, annuls and sets aside the decision of this Court dated 16th February, 2006 and other orders passed thereafter. In terms of Order made on 10th August, 2006 while not granting the complete stay of the impugned legislation, the aforesaid two directions were stayed. Considering, however, that those who had given undertaking may have been misled by directions contained in the notice dated 20th May, 2006, time to comply the same was extended upto 15th September, 2006. It was further directed that premises de-sealed pursuant to notice dated 20th May, 2006 shall have to be again sealed with effect from 16th September, 2006 in case misuser is not stopped by 15th September, 2006. Certain other directions were also issued on 10th August, 2006. After this Order, the Government withdrew the public notice that had been issued on 20th May, 2006 in respect of the undertakings and the premises that were sealed by the Court.

We may further note that on 21st July, 2006, public notices were issued by DDA in exercise of power under Section 11-A of Delhi Development Act stating that it proposed further modifications in the Master Plan and inviting objections within 30 days from the date of publication of the notice, namely, 23rd July, 2006.

The aforesaid public notice was in respect of mixed use policy. Another public notice was also issued on the same date inviting objections to the proposal for regularization of constructions carried out in excess of the norms laid down by the notification dated 23rd July, 1998. According to the Government, public hearings on the aforesaid notice were conducted between 23rd August, 2006 and 3rd September, 2006. DDA recommended the amendment of the Master Plan on 5th September, 2006. The Master Plan was accordingly amended. On 7th September, 2006 and on 15th September, 2006 about 2002 patches/streets were notified for mixed use.

The constitutional validity of the Notification dated 7th September, 2006 is under challenge on various grounds in W.P.(C) Nos.450, 464 and 470/2006. The challenge deserves to be examined in depth and, therefore, in these writ petitions, we issue Rule. Counter affidavit shall be filed by 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 7th September, 2006 and the consequential Notification dated 15th September, 2006.

Mr.Ranjit Kumar, senior advocate appearing as Amicus Curiae and other learned counsel appearing for the petitioners as also petitioners appearing in person seek stay of the impugned Notification dated 7th September, 2006. The Government, on the other hand, seeks modification of Order dated 10th August, 2006 in the light of the said Notification. In the writ petition of Mr.Omesh Sehgal, a former Chief Secretary of Delhi, one of the pleas raised is that inviting objections and grant of hearing was a farce since decision had already been made to amend Master Plan even before inviting objections and the hearing was a mere formality and further the modification of an already expired Master Plan is not permissible. It has been further submitted that if any interim relief is to be granted, it should be confined only to small shops.

The small shops are presently protected as noted in the M.C.Mehta (supra). Further, the Monitoring Committee classifying shops measuring 20 sq. meters as 'small shops' has recommended that the said shops be exempted from the purview of sealing operation in the residential areas. According to the Reports dated 14th September, 2006 and 27th September, 2006 of the Monitoring Committee, the shops falling in the category of small shops trading in the following items may be allowed in residential areas :

- i. Vegetables/fruits/flowers;
- ii. Bakery items/confectionary items;
- iii. Kirana/General stores;
- iv. Dairy products;
- v. Stationery/Books/Gifts/Book binding;
- vi. Photostat/Fax/STD/PCO;
- vii. Cyber cafi/Call phone booths;
- viii. LPG Booking office/Show room without LPG cylinders;
- ix. Atta chakki;
- x. Meat/Poultry and Fish shop;
- xi. Pan shop;
- xii. Barber shop/Hair dressing saloon/Beauty Parlour;
- xiii. Laundry/Dry cleaning/ironing;
- xiv. Sweet shops/Tea stall without sitting arrangements;
- xv. Chemist shops;
- xvi. Optical shops;
- xvii. Tailoring shops;
- xviii. Electrical/Electronic repair shop; and
- xix. Photo studio
- xx. Cable TV/DTH Operations
- xxi. Hosiery/Readymade Garments/Cloth shops
- xxii. ATM

In the report dated 14th September, 2006, the Monitoring Committee has also noted about the survey conducted by MCD on 185 notified roads to find out nature of activities of the commercial establishments on those roads. Broadly the activities of commercial establishments on these roads are of automobile showrooms; automobile workshops; branded showrooms; call centers; coaching institutes; business offices; building materials; godowns; tent houses; guest houses; jewellery shops; restaurants and iron & steel shops.

At this stage, the question to be considered is whether pending the decision of the writ petitions, should this Court modify Order dated 10th August, 2006 and decline prayer for stay of the Notification dated 7th September, 2006 or decline

modification of the Order and stay the Notification or pass any other order having regard to the facts and circumstances of the entire situation. We have heard extensive submissions made by learned counsel.

Many of persons, who gave undertakings to remove the misuser by 30th June, 2006 have filed separate applications in view of the Notification dated 7th September, 2006 and in substance sought to be relieved of the undertakings so that they could continue commercial user. Likewise, those whose premises were sealed also seek issue of directions for the opening of the seals.

The sealing was to commence on 29th March, 2006.

However, in view of the undertakings, misuser was allowed to be continued upto 30th June, 2006. Despite the undertakings, the misuser has continued till date, as noted hereinbefore. There cannot be any doubt that the Legislature would lack competence to extend the time granted by this Court in the purported exercise of law making power. That would be virtually exercising judicial functions. Such functions do not vest in the Legislature. In fact, those who gave undertakings are already in breach of the undertakings by not stopping misuser by 30th June, 2006. The dignity and authority of the Court has to be protected not for any individual but for maintenance of the rule of law. The fact that those who gave undertakings may have been misled in view of subsequent developments can only be a mitigating factor while considering the action to be taken for breach of the undertakings. Further, there are no equities in favour of those who gave undertakings to this Court and obtained the benefit of time otherwise their premises could have been sealed on 29th March, 2006 or soon thereafter. The nature of trade conducted by most of them who gave undertakings has been noted above. There is serious challenge to the validity of the Act and the Notification. Pending determination thereof, such persons cannot be allowed to claim any benefit of the Notification.

In the background of the above facts and having considered the submissions made, we issue the following directions :

(i) Re : Premises relating to which undertakings were given
The commercial activities by those who gave undertakings deserve to be stopped forthwith. Having regard, however, to the plea of forthcoming major festivals, we permit those who gave undertakings to stop misuser on or before 31st October, 2006.

(ii) Re : Small Shops

Small Shops, i.e., measuring not more than 20 sq. mts.

in residential areas are allowed trading in the following items :

- i. Vegetables/fruits/flowers;
- ii. Bakery items/confectionary items;
- iii. Kirana/General stores;
- iv. Dairy products;
- v. Stationery/Books/Gifts/Book binding;
- vi. Photostat/Fax/STD/PCO;
- vii. Cyber cafi/Call phone booths;
- viii. LPG Booking office/Show room without LPG cylinders;
- ix. Atta chakki;
- x. Meat/Poultry and Fish shop;
- xi. Pan shop;
- xii. Barber shop/Hair dressing saloon/Beauty Parlour;
- xiii. Laundry/Dry cleaning/ironing;
- xiv. Sweet shops/Tea stall without sitting arrangements;
- xv. Chemist shops;
- xvi. Optical shops;

- xvii. Tailoring shops;
- xviii. Electrical/Electronic repair shop; and
- xix. Photo studio
- xx. Cable TV/DTH Operations
- xxi. Hosiery/Readymade Garments/Cloth shops
- xxii. ATM

(iii) Re : Other premises for which protection is extended by Notification dt. 7.9.2006

Regarding the remaining premises which may be covered by the Notification dated 7th September, 2006 read with 15th September, 2006, we direct that the said premises may not be sealed pending decision of these petitions on undertakings being filed before the Monitoring Committee on or before 10th November, 2006 that misuser shall be stopped as per the directions of this Court if the Act is invalidated and/or the Notification is quashed. Further, the undertakings shall state that the trade is being conducted in respect of the permissible items and only in that part of the premises in which commercial activity is now permitted as per the impugned Notification dated 7th September, 2006 read with Notification dated 15th September, 2006, viz. if commercial activity has been made permissible on the ground floor, the affidavit shall state that it is being carried out only in the ground floor and not on the other floors and in support a certificate of the registered Architect shall be annexed. Any Architect giving wrong certificate would subject himself to appropriate action including cancellation of certificate to carry on the profession of Architect.

(iv) Re : Premises for which protection is not extended by Notification dated 7.9.2006

In respect of the remaining premises not covered by the Notifications dated 7th September, 2006 and 15th September, 2006, the sealing process will continue in terms of the Order dated 16th February, 2006 and 10th August, 2006. The direction of sealing premises will also apply to specific properties mentioned in the judgment dated 16th February, 2006 and in the Report of the Monitoring Committee dated 14th September, 2006. The sealing would be done in a systemic manner as per directions of Monitoring Committee and not in a haphazard manner. There shall be no misuser of public land or public street. The authorities shall ensure that the Roads, Public Streets and pathways meant for public is kept free for their use and the commercial activity is not extended thereupon. The commercial user in contravention of judgment in M.C. Mehta's case (supra), order dated 10th August, 2006 and Notifications dated 7th September, 2006 and 15th September, 2006 subject to what is stated in this order shall be liable to be sealed.

(v) General Directions :

(a) We direct that the owner/occupier of small shops and also others who have been permitted to continue and not stop commercial activity for the present, under this order shall get themselves registered upto 31st December, 2006.

(b) In respect of the premises which have been sealed under the orders of this Court, we permit them to approach the Monitoring Committee which will consider each case on its merit and make appropriate report to this Court on consideration whereof necessary directions may be issued.

(c) The respondents are restrained from issuing any other Notification for conversion of residential user into commercial user except with the leave of this Court.

(d) We also hope that without any further loss of time the

Government and the concerned authorities, instead of ad hoc measures like the present, would now undertake proper planning keeping into consideration all relevant factors including the interests of those residents which may not have any voice.

(e) Before concluding, we may note the grievance placed before us on behalf of professionals including Doctors, Lawyers, Chartered Accountants and Architects in respect of the Notification dated 7th September, 2006. Relying upon notifications dated 27th November, 1998 and 7th June, 2000 and Press Release dated 27th November, 1998, they say that restrictions sought to put in the Notification dated 7th September, 2006 were not there earlier and may be restrictions have been put by inadvertence. Mrs. Indira Jaisingh, appearing for Government of India says that she will have it examined by the Government and, if required, necessary correction will be made.

The Common Cause Society is permitted to intervene in the matter. The Interlocutory Application Nos. 5, 6, 8 to 12, 15-16, 18 to 22 in Writ Petition (C) No. 263 of 2006, I.A. No. 17 in I.A. Nos. 5-6 in Writ Petition (C) No. 263 of 2006 and I.A. Nos. 1970, 1926-27, 1928-29, 1948, 1949, 1961, 1969, 1971-72, 1974, 1975, 1976, 1977-78 and 1973 in I.A. No. 22 in Writ Petition (C) No. 4677 of 1985 are disposed of in terms of the aforesaid order. List the matters in the month of November 2006 for further directions.