

ITEM NO.301

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 4677/1985

M.C.MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IN RE: SEALING ISSUE(1) REPORT NO. 149 SUBMITTED BY MONITORING COMMITTEE(2) I.A. NOS. 61593 AND 61594/2019 (APPLNS. FOR DIRECTIONS AND EXEMPTION FROM FILING O.T. ON B/O KKH EXIM PVT. LTD. AND ANR.) (3) IA NOS. 47608 AND 75782/2019 (APPLNS. FOR DIRECTIONS AND PERMISSION TO FILE ADDITIONAL DOCUMENTS ON B/O M/S RAMAYA)IN W.P. (C) NO. 4677/1985)

Date : 07-05-2019 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Petitioner-in-person

For Respondent(s)

MR. RANJIT KUMAR, SR. ADVOCATE (A.C.)
MS. ANITHA SHENOY, SR. ADVOCATE (A.C.)
MR. A.D.N. RAO, ADVOCATE (A.C.)
Mr. Rishi Raj Sharma, Adv.
Mr. Sodipto Sircar, Adv.
Ms. Srishi Agnihotri, Adv.

Mr. A. N. S. Nadkarni, ASG
Mr. D. L. Chidananda, Adv.
Ms. Suhasini Sen, Adv.
Mr. Salvador Santosh Rebello, Adv.
Mr. Archana Pathak Dave, Adv.
Mr. Zahib Hussain, Adv.
Mr. Rajesh K. Singh, Adv.
Mr. Raj Bahadur, Adv.
Mr. G. S. Makker, Adv.
Mrs. Anil Katiyar, Adv.

Mr. Rakesh Kumar Khanna, Sr. Adv.
Mr. Abhimanyu Bhandari, Adv.
Mr. Ezaz Maqbool, Adv.
Mr. Naveen Kumar, Adv.
Mr. Avishkar Singhvi, Adv.
Ms. Roohina Dua, Adv.
Mr. Cheitanya Madan, Adv.

Ms. Akriti Chaubey, Adv.
Ms. Tanya Shree, Adv.
Mr. Kunwar Aditya Singh, Adv.
Mohd. Abdullah, Adv.
Mr. Nipun Katyal, Adv.

Mr. Dhruv Mehta, Sr. Adv.
Mr. Yashraj Singh Deora, Adv.
Ms. Sonal Mashankar, Adv.
Mr. Anmol Mehta, Adv.

Mr. Sanjiv Sen, Sr. Adv.
Mr. Praveen Swarup, Adv.
Mr. Sayan Ray, Adv.
Mr. Soumo Palit, Adv.

Mr. A. K. Kaul, Adv.
Mr. Raj Bahadur, Adv.
Mrs. Anil Katiyar, Adv.

MR. B.V. BALRAM DAS, ADVOCATE

MR. PRAVEEN SWARUP, ADVOCATE

MS. GARIMA PRASHAD, ADVOCATE
Mr. G. S. Oberoi, Adv.
Mr. Mohit Kumar Bansal, Adv.

MS. ANIL KATIYAR, ADVOCATE

MR. D.N. GOBURDHUN, ADVOCATE
Ms. Gauri Goburdhan, Adv.
Ms. Pallavi Chopra, Adv.

MR. ARVIND KUMAR SHARMA, ADVOCATE

Mr. Vijay Panjwani, Adv.

MR. CHIRAG M. SHROFF, ADVOCATE.

MR. NAVEEN KUMAR, ADVOCATE

MR. EJAZ MAQBOOL, ADVOCATE
MS. MISHA ROHTAGI MOHTA, ADVOCATE

Mr. Ranjan Mukherjee, Adv.
Mr. K. V. Kherlyngdoh, Adv.
Mr. Deniel Stone Lyngdoh, Adv.

Mr. Bhavanishankar V. Gadnis, Adv.
Mr. Arvind Kumar Sharma, Adv.
Mr. G. S. Makker, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Ranjit Kumar, learned senior counsel and Amicus Curiae, and the learned senior counsel appearing on both the sides.

I.A.No. 61593/2019 and 61594/2019

A question has been raised whether the Committee has the jurisdiction to decide about the premises which have been erected for residential purposes only and are not being used for commercial purposes and the buildings have not been erected and used for industrial purposes. Question is also raised whether the Committee has been empowered to take care of unauthorised construction, when they are purely for residential purpose.

We request the Committee to send its opinion whether in the past, it has exercised its power and jurisdiction where the premises are only constructed and are used as residential one and there is an allegation of raising unauthorised construction or some deviation has been made in the existing structure. We request the Committee to furnish its considered opinion in this regard before this Court.

Our attention has also been invited to the Office Memorandum dated 23.05.2018 issued by the Ministry of Housing and Urban Affairs, which has some reference to certain orders of this Court. Be that as it may, at this stage, we do not take a final call on this. We want the opinion of the Committee first on this aspect.

It also transpires that earlier we have requested the Committee to look into the representation filed by the applicants in I.A.No. 61593 of 2019. Thereafter, some material has been

placed on record.

A reply has been filed by SDMC supporting the case of the applicants and a letter of the SDM dated 03.04.2019 has also been filed in favour of the applicants. Certain Revenue entries have also been pointed out. Certain structures have been shown to be existing in the revenue papers for the year 2012-2013. The question is about its precise location on which survey number this construction existed and whether it was at the same place and same survey no. where it exists at present, whether the construction in question is made and on the same survey nos. on which constructed portion is reflected in the Khasra for the year 2012-2013. This is a question purely to be gone into by way of measurement and fixation of the boundaries. Let that exercise be done and measurements be furnished to point out whether the construction in question is at the same place where it was shown in the year 2012-2013. There is some reference in other documents also with respect to certain structures that may also be ascertained at which place the same was existing. Obviously, the measurement has to be done by the Revenue Authorities. Let the concerned Tehsildar of the area appoint an officer to make the measurement and submit a report to the Committee within three weeks from today.

It was also submitted that as per the provisions contained in Delhi Municipal Corporation Act, 1957 and Delhi Development Act, 1957, notification was issued by the DDA on 22.03.2016. Chapter 1 contains the provision of regularisation. Paragraph 2.27 is extracted hereunder :-

"2.27 Any building or part thereof constructed unauthorisedly with or without obtaining the Sanction/Completion Certificate communicated thereof by a written intimation/undertaking can be regularised, if the same is within the ambit of BBL and MPD provisions by paying requisite fees and charges as per Annexure IV."

It was also submitted that the construction is in accordance with the Master Plan and is in low density residential area. Whether it is a case of deviation or wholly unauthorised construction in view of the report of measurement, may also be gone into by the Committee and thereafter, the matter may be decided in an objective manner, whether it can be compounded or not in accordance with the aforesaid provisions. Let the Committee decide the matter afresh within 15 days of the receipt of the report after hearing the concerned parties. Factual position from SDM may also be ascertained as he has written letter dated 03.04.2019.

As prayed for by Mr. Abhimanyu Bhandari, learned counsel, it is open to the applicants to maintain the horticulture and watering of the plants etc.

For taking out the essential items etc., it is open to the applicant to apply to the Committee.

List on 08.07.2019.

Other Noticees of Report No. 149

As requested by Mr. Rakesh Khanna, learned senior counsel, let reply to Report 149 be filed by the noticees within four weeks from today. Response thereto be filed within another 15 days

thereafter.

I.A.No. 47608/2019

Let Monitoring Committee file reply to the application within four weeks. Response to the reply, if any, be filed within two weeks thereafter.

List on 08.07.2019.

The affidavits filed by the owners are taken on record.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER