

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

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 263 OF 2006

DELHI PRADESH CITIZEN COUNCIL

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln(s) for stay and directions and impleadment and office report )

With Writ Petition (C) No.264 of 2006

(With appln. for stay and office report)

AND Writ Petition (C) No.266 of 2006 ((Item No.31)

(With appln. for intervention and office report)

Date: 10/08/2006 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

Mr. Ranjit Kumar, Sr.Adv. (A.C.)

For Petitioner(s)

in WP 263/06:

Mr. Jasbir S.Malik, Adv.

Mr. S.K. Sabharwal,Adv.

in WP 264/06:

Mr. Satya Prakash-in-person

in WP 266/06:

Mr. R.L. Panjwani, Adv.

Mr. Deepak Vaswani, Adv.

Mr. K.K. Pahuja, Adv.

Mr. Mushtaq Ahmad, Adv.

Mr. M.F.A. Shuttari, Adv.

For Applicant(s)

in WP 263/06:

Mr. Somvir Singh Deswal, Adv.

Mr. Shree Pal Singh, Adv.

in WP 266/06:

Mr. Anoop Bambwani, Adv.

Ms. Madhumita Bhattacharjee, Adv.

Mr. Avijit Bhattacharjee, Adv.

For Respondent(s)

Union of India:

Mr. G.E. Vahanvati, S.G.

Mrs. Indira Jaisingh, Sr.Adv.

Mr. Devadatt Kamat, Adv.

Ms. Sandhya Goswami, Adv.

Mr. V.K. Verma, Adv.

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M.C.D.:

Mr. Sanjiv Sen, Adv.

Mr. Praveen Swarup, Adv.

-DDA:

Mr. V.B.Saharya, Adv.

UPON hearing counsel the Court made the following

O R D E R

is Court by judgment Considering the large scale violation of various laws, th

(2006 (3) SCC dated 16th February, 2006, reported in M.C.Mehta Vs. Union of India [

399], issued various directions for taking immediate steps to seal residential premises

being misused for commercial activities. A Monitoring Committee was constituted to

ensure compliance of law and directions of this Court. The judgment, by way of

illustration, highlighted various illegal and unauthorized users in many colonies despite

the orders and directions made from time to time. After the judgment, in terms of

directions contained therein, the sealing of the premises commenced. This led to some of

the applicants' filing applications in this Court seeking time to stop the misuser on giving

undertaking that the applicants on their own would stop the same by 30th June, 2006.

According to the report of the Monitoring Committee, 40,814 affidavits were filed stating

therein that the misuser would be stopped by 30th June, 2006. Further, 5006 commercial

establishments were sealed by the time the impugned legislation was enacted. In terms of

orders dated 1st August, 2006, we have admitted the petitions and issued rule observing

that serious challenge had been laid to the constitutional validity of Delhi Laws (Special

Provision) Act, 2006.

We have heard learned Solicitor General, Mr. Ranjit Kumar, learned senior

counsel as amicus and other counsel and Mr. Satya Prakash-in-person on the issue of

grant of stay.

Mr. Jasbir Malik, learned counsel appearing for one of the petitioners,

challenging the validity of the Act, contends 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 implementation of the directions contained in the main

judgment dated 16th February, 2006. Our attention has been drawn by learned counsel

to para 24 of the affidavit filed on behalf of the Government of India to demonstrate how

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the Government authorities, in particular Delhi Development Authority, were responsible

for the mess that has been created. Para 24 shows that as per the norms under the

Masterplan 1962, 75 District Centres should have come up against which only 9 were

established, as against 300 Community Centres, only 35 came up. Likewise, as against

1250 local shopping centres under the norms of Masterplan 1962, 135 such centres were

established and 435 convenient shopping centres were established as against 3000 which

should have been set up. In the same context, learned counsel appearing for

Mr.P.K.Dave, former Lt.Governor of Delhi, drew our attention to the Notification dated

20th may, 2006 issued by the Ministry of Urban Development in exercise of power under

Section 3 and 5 of the Act directing in effect the local authority to de-seal the premises

which have been sealed as directed by this Court and permitting those who had given

undertaking to continue unauthorized misuser beyond 30th June, 2006. Directions 1 and

2 of the Notification dated 20th May, 2006 read as under:

"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 the 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 at such premises, 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."

It is vehemently contended that no law can permit or ask the instrumentalities of the State to disobey or disregard the directions of a court. The contention is that the aforesaid two directions have the effect of overruling the directions of this Court and asking the authorities to act contrary thereto.

Having heard learned counsel and examined the various facets of the problem, at this stage, we are not inclined to grant a complete stay of the impugned legislation

though, prima facie, agreeing with the counsel for the petitioners, we are of the view that

it is a unique statute. We are, however, of the view that partial stay deserves to be

granted. Directions 1 and 2, as above reproduced, deserve to be stayed since these

directions amount to overruling the orders and directions issued by this Court and acts

consequent thereupon. This order of stay will mean that the properties which were sealed

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under the directions of this Court (5006 as per the report of the Monitoring Committee)

shall have to be resealed. It will also mean revival of the undertakings given to cease the

misuser by 30th June, 2006. Directions will have to be issued to them to now comply with

the undertakings despite the fact that the time to comply stood expired on 30th June, 2006

but it is evident that they did not, in all probability, stop misuser by 30th June, 2006 in view of the impugned law and the notice dated 20th May, 2006.

Having considered the report of the Monitoring Committee, we extend the time to comply with the undertakings given in respect of 40,814 commercial establishments upto 15th September, 2006. Likewise, the premises which were de-sealed pursuant to the notice dated 20th May, 2006 shall have to be resealed with effect from 16th September, 2006 in case the misuser is not stopped by 15th September, 2006. The Monitoring

Committee will examine these cases and ensure the compliance of the undertakings and directions in respect of sealing and file reports in this Court in terms of the directions already issued.

We direct the Monitoring Committee to examine broadly the roads and/or activities in respect whereof undertakings were given as also in respect of 5006 premises sealed so that we may consider issuing directions for stopping of misuser by others similarly placed to those who gave undertakings and to those whose premises already stood sealed before the enactment of the law in question.

Learned Solicitor General, on taking instructions and having discussion with the officers, has filed a brief note on basis whereof we have heard him and other learned counsel. Considering that note, despite the impugned Act and the notices, we direct that following activities shall not be carried on in residential areas:

1. Banquet halls.

2. Any trade or activity involving any kind of obnoxious, hazardous, inflammable, non-compatible and polluting substance or process.

3. Retail shops of the following kind:

a) building materials (timber, marble, iron and steel and sand), firewood, coal and any fire hazardous and other bulky materials;

b) repair shops of automobiles repair and workshop, cycle rickshaw

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repair, tyre resoling and re-treading, and battery charging;

c) Storage, godown and warehousing;

d) Junk shop;

e) Liquor shop;

f) Printing, dyeing and varnishing.

Note: (i) In (a) will not be included business of finished marble products where cutting and polishing activity of marble is not undertaken.

(ii) The repair shops and workshops in case of automobile and cycle rickshaws,

would presently be not stopped on plots abutting mixed use streets of right of way of 30 m. or more.

4. Retail shops on floors other than ground floor except (a) on streets of 24m right of way or more, (b) where it was permissible as per Master Plan 1962.

5. Professional activities will not be permissible except by Architects, Chartered

Accountants, Doctors and Lawyers. Even by these professionals, professional activity will

not be carried on in excess of 50% permissible coverage in residential premises and by

anyone who is not a resident in such premises.

6. Banks and Nursing Homes operating on plots of less than 200 sqm in the case of residential plotted development (160 sqm in villages, special areas and rehabilitation colonies) and more than 1000 sqm, except those operating on master Plan and Zonal Plan roads.

7. Guest Houses operating on plots of less than 200 sqm in the case of residential plotted development (160 sqm in villages and rehabilitation colonies) and more than 1000 sqm, except those operating in special areas or on Master Plan and Zonal Plan roads.

8. Pre-primary Schools, fitness centers and gyms operating on floors other than ground floor.

The protection of the Act would not be available in respect of the following

unauthorized development:

a) Any construction that is over 15 m. in height in residential plotted development and regularized colonies;

b) Any construction beyond Ground + 3 floors in residential plotted development

and regularized colonies.

Learned Solicitor General has made a statement that the aforesaid prohibition would be applicable to the entire Delhi irrespective of the width of the road.

It seems that out of 2025 colonies, 28 colonies are placed in Category A and 51

in Category B. In the colonies of Category A and Category B, except professional activities as above-noted and subject to the stipulations noted, no other commercial activity would be permissible.

It further appears that there are 51 colonies in Category C and 244 in Category

D. In respect of the colonies in Category C and D, for the present, what is stated in the public notice dated 21st July, 2006, would be applicable and any user contrary thereto would be stopped with effect from 16th September, 2006. The Public Notice dated 21st July, 2006, as applicable to colonies falling in Category C and D reads as under:

"b. In colonies falling in Category C and D, subject to consultation of the RWA in residential plots facing streets/roads with a minimum 18 m ROW in regular residential plotted development, 13.5 m ROW in rehabilitation colonies and 9 m ROW in special area and urban villages."

In addition to these, aforesaid directions would also be applicable to colonies falling in Category C and D.

The aforesaid interim directions would operate till the decision of the Writ Petitions. We make it clear that any direct or indirect violation of these directions would entail consequences of disobedience of the directions of this Court.

The Government of India may issue, within one week, requisite directive in exercise of power under Section 3(4) of the Act withdrawing the relief to the above-mentioned categories of the unauthorized development and, accordingly, amend the

Notification dated 20th may, 2006, also keeping in view this order.

Pleadings in the Writ Petitions may be completed within three months.

The Monitoring Committee shall give its report in terms of the aforesaid

directions within one month. To consider the report and for issue of further directions,

list the matter in the second week of September, 2006.

Application for intervention in W.P.(C) No.266/2006 is allowed.

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(N. Annapurna)

(V.P. Tyagi)

Court Master

Asstt.Registrar

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