

ITEM NO.49

COURT NO.1

SECTION PIL

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

## RECORD OF PROCEEDINGS

I.A.No.22 in WRIT PETITION (CIVIL) NO(s). 4677 OF 1985

M.C.MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(Regarding shifting of industries from residential area of Delhi/New Delhi)

(For directions)

WITH

I.A.Nos.1918-1919 in W.P.(C) No.4677/1985

(For intervention &amp; extension of time on behalf of M/s. Seasons Furnishings Ltd.)

I.A.No.1920 in I.A.No.22 in W.P.(C) No.4677/1985

(For intervention &amp; direction on behalf of VFS (India) Pvt.Ltd.)

I.A.No.1921 in I.A.No.22 in W.P.(C) No.4677/1985

(For impleadment/modification of Court's order dated 16.2.2006 &amp; extension of time on behalf of

Scooter Traders Assoc.)

I.A.No.1922 in I.A.No.22 in W.P.(C) No.4677/1985

(For impleadment/modification of Court's order dated 16.2.2006 &amp; extension of time on behalf of

Bazar Traders Welfare Assoc.)

I.A.No.1923 in I.A.No.22 in W.P.(C) No.4677/1985

(For impleadment/modification of Court's order dated 16.2.2006 &amp; extension of time on behalf of

Federation of Delhi Traders Assoc.)

Date: 24/03/2006 These Applications were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

For Petitioner(s) Mr. Ranjit Kumar, Sr.Adv. (A.C.)

Petitioner-In-Person

For Applicant(s)

in IA 1918-19: Mr. Rajiv Dutta, Sr.Adv.

Mr. Atul Jha, Adv.

Mr. Nirmal Mittal, Adv.

Mr. D.K. Sinha, Adv.

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in IA 1920: Mr. Sanjeev Anand, Adv.

in IAs.1921-1923: Mr. Soli J. Sorabjee, Sr.Adv.

Mr. Mukul Rohtagi, Sr.Adv.

Mr. Sandeep Sethi, Sr.Adv.

Mr. Gopal Jain, Adv.

Mr. Ratnesh Kumar, Adv.

Mr. Mahadev Rana, Adv.

Mr. Rajnesh, Adv.

Mr. Naveen Kumar, Adv.

Ms. Ruby Singh Ahuja, Adv.

For Respondent(s)

-UOI: Ms. Sandhya Goswami, Adv.

Mr. V.K. Verma, Adv.

Mr. B.V. Balram Das, Adv.

Mr. P.Parmeswaran, Adv.

Mr. B.K. Prasad, Adv.

-M.C.D.: Mr. Harish N. Salve, Sr.Adv.

Mr. Sanjiv Sen, Adv.

Mr. Praveen Swarup, Adv.

MoEF: Mr. Vikas Sharma, Adv.

Mrs. Anil Katiyar, Adv.

CPCB: Mr. Vijay Panjwani, Adv.

Delhi Admn.: Mr. Ashok Bhan, Adv.

Mrs. Kiran Bhardwaj, Adv.

Mrs. Anil Katiyar, Adv.

St.of UP: Mr. Kamlendra Mishra, Adv.

Mr. Rajeev Dubey, Adv.

DDA: Mr. Vishnu B. Saharya, Adv.

for M/s. Saharya & Co., Adv.

NCT of Delhi: Mr. D.N. Goburdhan, Adv.

Ms. Pinky Anand, Adv.

Ms. Geeta Luthra, Adv.

Ms. Sheil Sethi, Adv.

St.of Haryana: Mr. Ajay Siwach, Adv.

Mr. T.V. George, Adv.

UPON hearing counsel the Court made the following

O R D E R

In terms of the decision of this Court dated 16.2.2006,  
public notices dated  
26.2.2006 and 2.3.2006 were issued by Municipal Corporation of Delhi  
(MCD) setting

out the names of the roads where the sealing process of premises  
misused would

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commence in the first phase. After a brief hearing on 20th March, 2006 and as a result

of the discussion in the said hearing, the MCD has issued a further  
public notice on

22.3.2006 in continuation of the earlier public notices. The public noti  
ce issued on

22.3.2006 reads as under:

"PUBLIC NOTICE

In compliance of the judgment dated 16.2.2006 passed  
by

the Hon'ble Supreme Court of India in I.A.No.22 in W.P.(C)  
No.4677/1985 etc. In the matter of M.C. Mehta Vs. Union of India &  
Ors. and in continuation of the Public Notices dated 26.2.2006 and  
2.3.2006, the following clarification is being issued for information of  
general public:-

(1) In the first phase of sealing action shall be taken in respect of all  
those buildings, which are on roads where the extent of misuse  
(measured by the number of such misusing buildings on that road)  
exceeds fifty percent of the number of building on that road.

(2) It is further clarified that sealing action would be tak  
en  
a  
irrespective of the degree and extent of misuse in respect of  
building situated on road having width of 80 ft. and above,  
mentioned in earlier Public Notices, Clarification in relation to mixed  
land use, would be issued after the next date of hearing, wh  
ich is  
fixed for 24.3.2006.

(3) At this stage, small shops opened in residential houses  
for  
catering to day-today basic needs, would not be sealed.

In respect of the aforementioned first category, it is stated by Mr. Harish Salve, learned

counsel appearing for the MCD that it would be applicable to all roads already

notified on 26.2.2006 and 2.3.2006. It is submitted that the roads were again not

named because the same had already been mentioned in the earlier public notices.

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 Advisor to Election Commissioner, Mr. Bhure

Lal, Chairman, E.P.C.A. 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 services, honorarium etc.

In terms of our directions dated 16.2.2006, the process of sealing is required to commence w.e.f. 29.3.2006. Learned counsel for the MCD, however, points out that on some roads in some areas, partial commercial user has been allowed. It is stated that in respect of some roads on notified stretches, mixed land use to the extent of 25%

of the permissible ground floor or 50 sq.mtr. whichever is less has been allowed as per the regulations; in respect of some other roads, commercial user of ground floor with upper floor residential has been allowed. However, the note handed over to us in

Court on behalf of the MCD does not specify the roads and the areas. Be that as it

may, for the present, we direct that MCD should point out and file details of such

roads before the Monitoring Committee which may permit the MCD not to seal

premises in such areas, for the present, subject to further orders that may be passed by the Court.

Our attention has also been drawn to proviso the Section 14 of the Delhi

Development Act, 1957. Section 14 reads as under:

"Section 14: After the coming into operation of any of the plans in a Zone no person shall use or permit to be used any land or building in that Zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force."

Mr. Salve states that there may be some, though very few in number, cases where user may have been prior to September, 1962 and such user may be protected under the proviso. For the present, we direct that if an occupant of some premises claims benefit of proviso to Section 14 of the Act and files an affidavit with the MCD, to be

immediately forwarded to the Monitoring Committee by the MCD, stating that since

the user was prior to September, 1962, he is entitled to protection of proviso to Section 14 and also stating further that he has not obtained any sanction of building/premises for construction of a residential building and would suffer the consequences of perjury and contempt of court, if the affidavit is found to be false, the Monitoring

Committee on consideration of such affidavit may direct the MCD for the present not

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to seal such premises and, accordingly, the MCD will not seal the premises of the above nature.

Certain applications have been filed seeking extension of time to stop the misuser. It has been submitted on behalf of the applicants by Mr.Soli J. Sorabjee, Mr.Mukul Rohtagi, Mr.Rajiv Dutta and Mr.Sandeep Sethi, learned senior counsel, that the Court may grant them reasonable time so that alternate arrangement of the premises may be made where the trade may be shifted. An application (I.A.No.1920) in respect of a premises in Safdarjung Enclave has been filed seeking time upto 30th April, 2006 and giving an undertaking to the Court that on or before 30th April, 2006, the misuser will be stopped. That applicant states that he has already obtained alternate accommodation which is under renovation. I.A.No.1920 is allowed and the applicant is granted time to stop the misuser by 30th April, 2006.

I.A.Nos.1921, 1922 and 1923 have been filed by three associations whereas I.A.No.1918-1919 has been filed by an individual business house. The applicant of I.A.No.1919 has filed an affidavit giving an undertaking to this Court to stop the

misuser within the time granted by this Court. The applications filed on behalf of the associations state that in the event of this Court granting time, they would ensure that the benefit of time is given only to those who file individual affidavit and undertaking as per the directions of this Court. In the order dated 16.2.2006, the Court has

already pointed out the extent, nature and magnitude of the contravention of various

laws. Be that as it may, we grant not only to the applicants-associations or their

members but to others too time to stop the misuser upto 30th June, 2006 subject to

every individual claiming such benefit filing affidavit stating that (1) on or before

30th June, 2006, misuser shall be stopped and no further extension on any ground

whatsoever shall be asked for (2) 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. The

benefit will be available only to those who file the affidavit with the M.C.D. on or

before 28th March, 2006.

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The MCD shall issue a public notice notifying the officers in different zones

before whom such affidavits can be filed. The affidavits so filed seeking extension

shall be forwarded by MCD to the Monitoring Committee. The public notice shall

also be placed on website by tomorrow, the 25th March, 2006.

The premises in respect of which the affidavits are not filed, the process of

sealing shall commence as already directed w.e.f. 29th March, 2006 insofar as the first phase is concerned. 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.

The Delhi Development Authority is directed to file an affidavit seeking the details of the Zonal Plans issued and notified with particulars as also the notifications issued for mixed land use before the next date of hearing.

I.A.Nos.1918-1919, 1921, 1922, 1923 are disposed of accordingly.

List the matter in the first week of May, 2006.

(N. Annapurna)

Court Master

(V.P. Tyagi)

Court Master

Note: Copy of the order be given today itself.