

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/ APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO.4677 OF 1985

M.C. MEHTA

..PETITIONER

VERSUS

UNION OF INDIA & ORS.

..RESPONDENT(S)

WITH

WRIT PETITION (CIVIL) NO.266 OF 2006

WRIT PETITION (CIVIL) NO.263 OF 2006

WRIT PETITION (CIVIL) NO.264 OF 2006

WRIT PETITION (CIVIL) NO.450 OF 2006

WRIT PETITION (CIVIL) NO.464 OF 2006

WRIT PETITION (CIVIL) NO.470 OF 2006

WRIT PETITION (CIVIL) NO.569 OF 2006

WRIT PETITION (CIVIL) NO.563 OF 2006

WRIT PETITION (CIVIL) NO.610 OF 2006

WRIT PETITION (CIVIL) NO.212 OF 2008

WRIT PETITION (CIVIL) NO.229 OF 2008 WRIT PETITION

(CIVIL) NO.144 OF 2009

AND

SPECIAL LEAVE PETITION (C) NO.33454 OF 2018**J U D G M E N T****ARUN MISHRA, J.****IN RE: ISSUE RELATING TO JURISDICTION OF THE MONITORING COMMITTEE**

1. We are dealing with the authority of the “Monitoring Committee to seal the residential premises on the private land” particularly when they are not being used for the “commercial purpose”. Whether the Monitoring Committee could have sealed these residential premises is the only question which we are examining in this order.

2. Report No.149 dated 2.4.2019 submitted by the Monitoring Committee concerning specific unauthorized constructions allegedly carried out in the Vasant Kunj and Rajokari area. These constructions were not on public land. The respective persons owned the land, and the Committee had submitted that a letter was received from the SDM, Mehrauli on 22.2.2019 regarding unauthorized construction in Vasant Kunj, Delhi.

3. A reply was filed on behalf of the residents that various residential premises were sealed where constructions were made long back. There was no authority with the Monitoring Committee to seal purely residential premises. It was pointed out that their structure was in consonance with the Master Plan (MPD-2021) within Low Density Residential Area (LDRA) modified vide Notification No.S.O.1199 (E) dated 10.5.2013 and Notification No.S.O.1744 (E) dated 18.6.2013. Reliance was placed on the various bylaws/statutory provisions. It was submitted that the Monitoring Committee was not authorized to take

action, and the residential premises should be de-sealed. It was also pointed out that compounding has been made in some cases. The structure should not be demolished, given the provisions of the applicable acts, by-laws, and policy. It has to be regularized for which prayer was pending before concerned authorities.

4. It was further contended that it is a residential area, farmhouses were notified as Low-Density Residential Areas, and the premises were used as residential premises. They are in accord with MPD-2021. "Mehrauli" is an urbanized village. The Monitoring Committee was not empowered to seal the premises used for residential purposes. It was permissible to raise the construction for the use of a residence as provided under Clause 4.4.3 G of MPD-2021. Reliance has also been placed on NDRA Policy.

5. We have heard Shri Ranjit Kumar, Ms. Anitha Shenoy and Shri A.D.N. Rao, learned Amicus Curiae, Shri Rakesh Khanna, Shri Siddharth Luthra, Shri Mukul Rohatgi, Shri R.C. Mishra, Shri Nalin Kohli, Shri Wasim A. Qadri, Shri Sanjiv Sen, learned senior counsel, Shri Tushar Mehta, learned Solicitor General, Ms. Aishwarya Bhati, learned Addl. Solicitor General, Shri D.N. Goburdhan, Shri Naveen Kumar, Ms. Karuna Nundy, learned counsel and other learned counsel appearing for the parties.

6. Shri Ranjit Kumar, learned Amicus Curiae with his usual vigour urged that Writ Petition (C) No.4677 of 1985 was filed in this Court regarding environment in Delhi, shifting of heavy industries, noxious industries, stopping of all mining in Aravali hills in and around Delhi including demolition of colonies built on forest land, misuse of premises (misuse includes unauthorized construction), *i.e.*, construction without sanction, lack of civic amenities and the need for their upgradation, etc. This Court appointed the Monitoring Committee in the year 2006. Various orders have been referred to submit that the Monitoring Committee is entitled

to inspect premises in which any illegal construction has been made. This Court restored its power on 6.12.2017. A Special Task Force was set up to ensure that the order of the court and applicable bylaws were implemented. LDRA Policy in derogation of the MPD-2021 is notified on 7.2.2007.

7. Learned Amicus attracted the attention of this Court to orders dated 24.4.2018, 8.5.2018, 15.5.2018, 18.5.2018, 24.5.2018, and various other orders and certain reports, which we will refer later. He has pointed out that the Special Task Force was constituted on 25.4.2018. The Monitoring Committee has the power to seal unauthorized construction, and regularization thereof cannot be allowed. He has attracted the attention of this Court to the O.M. dated 23.5.2018 issued by the Government of India containing an action plan for monitoring of all construction activities in Delhi and fixing responsibility in case of violations of MPD-2021 for unauthorized encroachments and other illegal construction activities.

8. Learned Amicus Curiae also argued that the Monitoring Committee is authorized to see construction with sanction plan or construction contrary to sanction plan. Alternatively, it was submitted by the learned Amicus that in case this Court comes to the conclusion that the Monitoring Committee was not entrusted with the power concerning residential premises when they were not being used for “commercial purpose” as the power of sealing was exercised (as per Report No.149) bonafidely on the request made by the SDM and any order, which may be passed and ordered to be prospective in operation.

9. Ms. Ashwariya Bhati, learned Additional Solicitor General appearing on behalf of the Ministry of Housing and Environment submitted that the Monitoring Committee is entitled to inspect the premises where

encroachments are there on public land. Attention has been invited to this Court's order dated 3.1.2012, which was recalled vide judgment and order dated 15.12.2017. This Court on 15.12.2017 ordered the Monitoring Committee to continue to work as it was doing before 3.1.2012. This Court constituted the Monitoring Committee on 23.4.2006 for the limited purpose of addressing the use of "residential premises for commercial purpose". Despite the limited mandate to the Monitoring Committee, it illegally sealed other premises. A Special Task Force has been constituted as per order dated 24.4.2018 to remove the encroachments on public roads, public streets, and pedestrian street, and it was for the Monitoring Committee to suggest to the Special Task Force the areas where immediate action was required to be taken concerning aforesaid aspect. The Special Task Force was constituted under section 5(3) of the Delhi Development Act, 1957.

Thus, it is a statutory body. It has the task of overseeing the implementation of the applicable laws regarding illegal constructions, encroachment on public land, public parks, parking places, roads, pavements, etc. Special Task Force is taking adequate action as and when a violation is reported.

10. Shri D.N. Goburdhan, learned counsel appearing on behalf of the Government of NCT of Delhi, has raised the following arguments:

a. That the Delhi Municipal Corporation Act, 1957 (for short, "the DMC Act") is a complete code by itself. The Delhi Municipal Corporation is a statutory body which cannot be deprived of its functions. He has also attracted the attention of this Court to the Building Regulations and to sections 334 and 335 of the DMC Act relating to sanctions, additions, alterations, and its power to take action in appropriate cases. He submitted that the DMC Act is a complete code by itself as it provides how the sealing is to be done, when it is to be enforced, and in case of its failure, the remedy is provided under section 490. Statutory

appeals are provided under the DMC Act to the Appellate Tribunal and the Administrator. A complete regulatory mechanism is provided for the sealing operation of properties. Thus, it cannot be deprived to exercise its powers conferred by the Monitoring Committee under the DMC Act.

b. This Court appointed the Monitoring Committee on 16.2.2006 only to prevent misuse of residential premises for commercial use and not with respect to residential premises used for residential purposes. Once the Monitoring Committee does the sealing, no statutory appeal lies before the Appellate Tribunal constituted under section 347(A) and 347(B) of the Act. The Statutory Appeals were transferred to the Monitoring Committee, which ordered the sealing of the premises. The principle of natural justice was thus thrown to winds. The order appointing the Monitoring Committee was for limited purpose and power was passed under Article 142 of the Constitution. The order too deserves to be recalled in view of the decisions of this Court in *A.R Antulay vs. R.S. Nayak & Anr.* (1988) 2 SCC 602, *Bonkya vs. State of Maharashtra* (1995) 6 SCC 447, *Prem Chand Garg v. Executing Commissioner U.P.*, AIR 1963 SC 996 and *SCBA vs. Union of India* (1998) 4 SCC 409.

c. That the executive, legislative and judicial functions of the statutory bodies are demarcated under the Constitution, and statutory provisions cannot be taken away by the Monitoring Committee. Reliance is placed on *Arif Hameed v. State of J & K*, (1989) Supp. [2] SCC 364.

d. The legislature has conferred statutory power to seal or demolish on the Municipal Corporation, and Monitoring Committee cannot exercise its power in total abrogation to the powers of the statutory bodies.

11. Shri Rakesh Khanna, learned senior counsel appearing on behalf of the LAC's Federation of Delhi, submitted that this Court on 15.12.2017 passed judgment and order with respect to sealing of the residential premises used for commercial purposes in Delhi. The Monitoring Committee has exercised power unauthorizedly. The orders were passed in order to stop the unauthorized commercial use of the land earmarked for residential purposes, as provided in the Zonal Plan. The Monitoring Committee without power sealed the premises, which were in the commercial area for commercial use. He has attracted our attention to certain provisions of the Master Plan. Concerning the aforesaid aspects, we do not propose to deal with it in the instant order. We propose to deal only with the limited question whether the Monitoring Committee is empowered by this Court to seal the residential premises. We leave the question of commercial plots raised by Shri Khanna to be dealt with separately.

12. Shri Khanna further argued that the Monitoring Committee had no power to seal purely residential premises. He has attracted our attention to this Court's order by which it was constituted, and various other judgments and orders passed in this regard. He has argued that the Monitoring Committee kept quiet, pursuant to the query made by this Court on 7.5.2019 as to whether in past, before Report No.149 was submitted, the Monitoring Committee sealed the residential premises which were not being used for commercial purposes. No past instance was given by the Monitoring Committee regarding sealing of residential premises used for residential purposes, particularly when it was not made on public land. He has also argued with respect to LDRA Policy and as to permissible regularization.

13. Shri Nalin Kohli, learned senior counsel has taken this Court through various orders passed by this Court and the Report of the Monitoring Committee to submit that this Court appointed the Monitoring Committee for the limited purpose of checking commercial misuse

of the residential properties. At no point in time, this Court authorized the Monitoring Committee to seal the residential premises used for the residential purposes that too situated on private land. Thus, the action of sealing such houses is unwarranted and illegal.

14. Shri Naveen Kumar, learned counsel, has invited our attention to the order dated 7.5.2019. This Court sought the Monitoring Committee to specify with respect to its power conferred by the court and secondly, any prior example where the Monitoring Committee sealed such premises. The Monitoring Committee referred to the orders dated 23.11.2006, 12.2.2007, 9.3.2007, and 10.4.2007 to justify its action. It was argued that the orders relied upon by the Committee are not at all relevant for sealing of such premises. The Monitoring Committee was appointed only to prevent commercial misuse of the residential properties. The subsequent orders indicate that it was authorized to deal with the encroachment and unauthorized colonies on public land.

15. On behalf of the incumbents whose property has been sealed as per the report No.149, similar submissions have been raised. The Monitoring Committee was given limited powers, which was divested on 30.4.2012. Later vide order dated 6.12.2017, the Monitoring Committee was restored with the power it exercised earlier. A Special Task Force had been constituted on 25.4.2018 pursuant to the order passed by this Court.

16. Ms. Karuna Nundy, learned counsel, argued that under Article 300-A of the Constitution, a person cannot be deprived of its property otherwise than the due procedure of law, is supported by series of judgments of this Court. When the Monitoring Committee is not empowered to deal with such residential premises, it could not have acted. The detailed procedure is provided under the DMC Act along with the Appellate Tribunal under sections 347A and 347B of the DMC Act. The Monitoring Committee, unless specifically authorized by

this Court, could not violate the procedure under the DMC Act. Reliance has been placed by the learned counsel on the various decisions to be referred to later.

(i) Particularly when the Monitoring Committee is not empowered to take any such action, no appeal lies against the action of the Monitoring Committee. Only it hears a representation. Not even the High Court can interfere in the functioning of the Monitoring Committee.

(ii) Even with respect to the encroachment on public roads, public streets, and pedestrian streets, the Special Task Force is authorized to take action. Thus, the Monitoring Committee's power after the constitution of Special Task Force is further restricted, and it is for the Monitoring Committee to suggest to the Special Task Force with respect to the encroachment on the public land, roads, and public places.

(iii) The range of remedies available to the owner of the property in the residential premises' occupation cannot be deprived of by the Monitoring Committee. The provisions regarding demolition and stoppage of buildings and works in certain cases are contained in section 343 of the DMC Act, section 345 deals with power of the Commissioner to require alteration of the work; section 347A provides for an appeal before the Appellate Tribunal, section 347B deals with appeals against certain orders and notices issued under the Act and section 347E deals with the bar of jurisdiction of courts. Once the statutory right is conferred, it cannot be dealt with by the Monitoring Committee until and unless it is authorized.

DISCUSSION :

17. The Monitoring Committee was appointed and empowered by this Court to take action within the powers conferred. In the teeth of various statutes, it would act strictly within the four corners of the powers conferred on it by this Court.

18. When we consider the various orders passed by this Court from time to time, before the constitution of the Monitoring Committee, we find that this Court at no point in time has empowered the Monitoring Committee to take action with respect to residential premises not used for commercial purpose. This Court initially passed an order on 7.5.2004 and constituted the Monitoring Committee comprising of (i) Chief Secretary of Delhi, (ii) Commissioner of Police, Delhi, (iii) Commissioner, Municipal Corporation of Delhi and (iv) Vice-Chairman of Delhi Development Authority. It was ordered that Monitoring Committee would be responsible for the stoppage of illegal industrial activities. The order dated 7.5.2004 is extracted hereunder:

“Hon’ble Mr. Justice Y.K. Sabharwal pronounced the judgment of the Court issuing directions in terms of the signed judgment.

A Monitoring Committee comprising (i) Chief Secretary of Delhi (ii) Commissioner of Police, Delhi (iii) Commissioner, Municipal Corporation of Delhi and, (iv) Vice-Chairman of Delhi Development Authority has been appointed. This Committee would be responsible for stoppage of illegal industrial activity. It would, however, be open to the aforesaid members of the Monitoring Committee to appoint responsible officers subordinate to them to oversee and ensure compliance of the directions contained in the judgment.

The first Progress Report by the Committee shall be filed by 31st August, 2004 and thereafter it shall be filed at least once in a period of every two months.”

19. (i) The Monitoring Committee was constituted by this Court vide judgment and order dated 16.2.2006 in *M.C. Mehta v. Union of India & Ors*, (2006) 3 SCC 399. Following is the relevant portion:

“1. In respect of large number of immovable properties throughout Delhi, flagrant violations of various laws including municipal laws, master plan and other plans besides environmental laws have been engaging the attention of this Court for number of years. With a view to secure the implementation of laws and protect fundamental rights of the citizens, various orders were passed from time to time.

2. This Court has a constitutional duty to protect the fundamental rights of Indian citizens. What happens when violators and/or abettors of the violations are those, who have been entrusted by law with a duty to protect these rights? The task becomes difficult and also requires urgent intervention by court so that the rule of law is preserved and people may not lose faith in it, finding violations at the hands of supposed implementers. The problem is not of the absence of law, but of its implementation.

3. Considering such large-scale flagrant violations, this Court had to prioritise as to which violations may be taken up first and then issue appropriate directions. In this view, at first instance, directions were issued in respect of shifting of hazardous and noxious industries out of Delhi. Directions were also issued for shifting of heavy and large industries as also some extensive industries. For shifting polluting industries had to be given topmost priority. Later, directions were issued for shifting of other extensive industries considering the continued unauthorised use contrary to master plan and zonal plan, by those industries as well as some other industries continuing in residential/non-conforming areas.

5. With regard to commercial use of premises in residential areas, it has been more than three years i.e. 30-9-2002 when the order was made directing respondents to file reply. In fact, the question of misuse of residential premises for commercial purposes was taken up even earlier as is apparent from the orders dated 31-7-2001 and 20-2-2002. By order dated 31-7-2001 passed in News Item AQFMY v. Central Pollution Control Board¹ the Court directed that:

“MCD will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential usage is permitted.”

¹ W.P. No.725 of 1994 dated 31-7-2001

6. Again on 20-2-2002, the order dated 31-7-2001 was reiterated in the following terms:

“MCD is also directed to file within four weeks from today an affidavit indicating as to what it intends to do for stopping the misuse of the buildings in the residential areas which are being used for commercial purposes as has been directed by this Court’s order dated 31-7-2001. If no affidavit is filed, the explanation in respect thereof should be given to the Court by the Municipal Commissioner.”

11. By the impugned judgment dated 31-5-2002, disposing of the aforementioned writ petition and other connected matters, a Full Bench of the High Court came to the conclusion that neither under the DMC Act nor under the Delhi Development Act, was there any power to seal property for its misuse, inter alia, holding that the power of sealing of premises is drastic as by reason of such sealing, a person could become homeless, thus, affecting his human or fundamental rights and that the power of sealing in relation to misuse has been intentionally excluded from the provisions of the two Acts. Later, some other matters were also decided by the High Court following the Full Bench decision. Those judgments are also under challenge.”

(emphasis supplied)

Following questions were framed by this Court for consideration:

“13. The questions to be determined are:

A. Whether MCD under the DMC Act has power to seal the premises in case of its misuser?

B. Whether DDA, under the Delhi Development Act, has also similar power of sealing or not?

C. Directions to be issued in respect of residential properties used illegally for commercial purposes.

14. In these matters, we are considering only the issue of misuser. We are not considering the issue of unauthorised constructions.”

(emphasis supplied)

(ii) It is apparent that the only question for consideration of this Court was the misuse of the residential premises for illegal or commercial purposes. In paragraph 14 (quoted above), this Court made it clear that it did not consider the issue of unauthorized constructions. This

Court considered the plight of the residential areas in para 33 of the judgment, where it noted large-scale conversion of residential premises for commercial use, thus:

“33. Keeping future needs in view, experts prepare master plans. Perusal of the Delhi Master Plans, 1962 and 2001 shows what were plan projections. At the time of planning, the experts in the field of town planning take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, need of household industries, etc. Provision for household industries in residential areas does not mean converting residential houses into commercial shops. It only means permitting activities of household industry in a part of a residential property. It does not mean that residential properties can be used for commercial and trading activities and sale and purchase of goods. Master plan contemplates shops in district centres, community centres, local shopping centres, etc. and not in residential areas. Be that as it may, for the present, we are not considering the cases of small shops opened in residential houses for catering to day-to-day basic needs, but are considering large-scale conversion, in flagrant violation of laws, of residential premises for commercial use.”

(emphasis supplied)

(iii) The court further considered that none has the right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorized, thus:

“35. In the impugned judgment, while dealing with the provisions of the layout plan, it was observed that the provisions for user “are only regulatory in nature”. While dealing with the user, the High Court observed that “the power, whereby and whereunder the basic human rights or the fundamental rights conferred upon a person is taken away, must be specifically conferred by a statute”. The provisions of user may be regulatory but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory provisions on massive scale can result in plans becoming merely scraps of paper. That is the ground reality in the capital of the country. None has any right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorised.

Further, the words “unless the context otherwise requires” in Section 331 of the DMC Act are of no consequence for determining the point in issue as the context herein does not provide otherwise for the present purposes. It does not provide that the power of sealing under Section 345-A cannot be exercised in case of misuser. In view of the clear language of Section 345-A, we are also unable to sustain the view of the High Court that action under Section 345-A can be taken only when there exists order of demolition under Section 343 or an order under sub-section (1) of Section 344. The conclusion of the High Court that action under Section 345-A can be taken only when there exists an order of demolition under Section 343, or on passing of an order under sub-section (1) of Section 344, and in no other contingency cannot be accepted in view of the clear provision of Section 345-A that action can be taken even before or after an order is made under those provisions.”

(emphasis supplied)

- (iv) The court eventually issued directions in respect of other residential properties used illegally for commercial purposes, thus:

“47. In special leave petitions and Civil Appeals Nos.608-11 of 2003 challenge is to the judgments of the High Court disposing of writ petitions in terms of law laid down by the Full Bench.

50. In respect of CA No.608 of 2003, MCD issued to the respondents, a show-cause notice dated 1-8-2000 under Section 345-A read with Sections 347, 343 and 344 of the DMC Act stating that Property No. 39, Ring Road, Lajpat Nagar III was being misused in the name and style of “Jagdish Store”. In reply dated 15-9-2000, it was, inter alia, stated that MCD itself has been allowing non-residential activities in residential areas under a special scheme, without, however, giving any details or filing any document in support thereof. Further, we asked the learned counsel for the respondents to place on record the plan for the construction of the building which may have been sanctioned so as to ascertain whether the sanction was for construction of the residential property or commercial property. The plan has not been filed. The reasons are not far to seek. One of the simple methods for ascertaining that there is misuser or not, is to examine the sanctioned plan.

51. At this stage, it would be useful to notice letter dated 28-8-2000 sent by the Ministry of Urban Development to the Commissioner, MCD, Vice-Chairman, DDA and other authorities conveying the deep concern of Parliament Consultative Committee over the rising menace of unauthorised construction, suspected connivance of the staff of the different authorities in

the matter and requesting the authorities to take strong and prompt action and suggesting ten measures for strict enforcement. The letter reads as under:

"Annexure R-1

No. J-13036/3/96-DDIIB

Government of India

Ministry of Urban Development and Poverty Alleviation, Nirman Bhawan, New
Delhi.

Dated: 28-8-2000

To,

1. Shri P.S. Bhatnagar,
Chief Secretary,
Government of National Capital Territory of Delhi, Delhi.

2. Shri P.K. Ghosh,
Vice-Chairman,
Delhi Development Authority, Vikas
Sadan, INA, New Delhi.

3. Shri S.P. Aggarwal,
Commissioner, Municipal Corporation of Delhi, Town
Hall, Delhi.

4. Shri B.P. Misra,
Chairperson,
New Delhi Municipal Committee, Palika
Kendra, New Delhi.

5. The Development Commissioner,
Government of National Capital Territory of Delhi, Town
Hall, New Delhi.

*Subject: Unauthorised encroachment and illegal constructions in
Delhi*

Sir,

I am directed to say that the menace of illegal encroachment/unauthorised construction in Delhi has been considered by the Government of India at its highest level and it has been decided to eliminate this menace with a firm hand. You are, therefore, requested to take strong and prompt action against all illegal constructions/unauthorised encroachments and also against misuses of land in violation of the provisions of the master plan of Delhi. The following measures are particularly required to be enforced strictly:

(i) All illegal constructions should be demolished, not cosmetically but in toto.

(ii) The cost of demolition should be recovered from the illegal builders within 15 days of demolition. In

case of non-payment within 15 days, the amount due should be recovered as arrears of land revenue.

(iii) In all cases of illegal constructions, prosecution should invariably be launched against builders under the Delhi Municipal Corporation Act, the Delhi Development Act, the New Delhi Municipal Council Act, etc. and the cases followed vigorously with the police authorities/courts.

(iv) Wherever the property is on lease, action should be taken under the terms and conditions of lease agreement and re-entry effected within the shortest permissible period under such lease agreement. After re-entry, physical possession of the property should be taken by invoking the provisions of the Public Premises Eviction Act and damages collected immediately. The rates of damages/misuse charges should be the same as per the formula followed by the L&DO and approved by the Ministry of Urban Development.

(v) In case of DDA flats, where constructions have come up beyond the condonable limits, cancellation of allotment should be carried out in addition to the demolition of the additional construction. Orders in respect of condonable and non-condonable items are being issued separately.

(vi) In cases, where after demolition, reconstruction is done, personal responsibility of the officer-in-charge should be fixed and departmental action taken against him.

(vii) In cases where illegal constructions have taken place on rural agricultural lands, action under the provisions of the Delhi Land Reforms Act, 1954, should also be taken and such lands should be taken over as per provisions of the Delhi Land Reforms Act. Action in this respect should be taken as soon as the plots are cut by the colonisers and construction done in the shape of boundary walls, etc. In other words, construction should be nipped in the bud. If it comes up, it should be demolished immediately. Action in this respect should also be taken by the local agencies concerned/DDA as per the bye-laws pertaining to layout/service plans, etc.

(viii) In all cases where party obtains stay/status quo orders, prompt action to get the stay order vacated should be taken and higher court moved, wherever necessary.

(ix) All Senior Field Officers should be asked to carry out physical inspection of the area under their charge and the Supervising Officer should also make surprise checks to ensure that the subordinate staff takes immediate action to check/demolish unauthorised

construction. Deterrent action should also be taken against the subordinate staff such as Building Inspectors, Junior Engineers, Assistant Engineers, etc. who do not take prompt action.

(x) Field Officers should be asked to maintain field diaries and submit them to the Supervisory Officer regularly.

2. It is also requested that a monthly report should be sent to the Ministry of Urban Development by the 5th of each succeeding month.

3. In this connection, it may be noted that both Parliament and the Parliament Consultative Committee have expressed deep concern, through questions and interpolations, over the rising menace of unauthorised constructions in Delhi and the suspected connivance of the staff of the different authorities in the matter. A flying squad has been constituted in the Ministry and if, as a result of findings of this squad, it is found that the subordinate staff has not done its duty or not carried out the aforesaid instructions, strict action against the subordinate/supervisory staff would be taken by the Government.

Yours faithfully,

Sd./-

(Dr. Nivedita P. Haran)

Joint Secretary to the Government of

India Copy for information and necessary action to: 1. Deputy CVO, Ministry of UD&PA, Nirman Bhawan, New Delhi.

2. L&DO, Ministry of UD&PA, Nirman Bhawan, New Delhi.

3. DG(W), CPWD, Nirman Bhawan, New Delhi.

Sd/-

(N.L. Upadhyay)

53. Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of lawabiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief the orders made in the last so many years but it seems the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the

plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens. We have noticed above the complaints of some of the residents in respect of such illegalities. For the last number of years even the High Court has been expressing similar anguish in the orders made in large number of cases. We may briefly notice some of those orders.”

(emphasis supplied)

- (v) The court focused on the misuse of the property and further observed in para 61 regarding misuse thus:

“**61.** Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementations of the orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such large-scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.”

- (vi) Ultimately, the court has passed the following order while appointing the Monitoring Committee:

“**69.** Having held that the Commissioner of MCD has power under the DMC Act to seal premises in case of its misuser, we issue the following directions for taking immediate steps to seal residential premises being used for commercial purpose:

1. MCD shall within 10 days give wide publicity in the leading newspapers directing major violators on main roads (some instances of such violators and roads have been noted hereinbefore) to stop misuser on their own, within the period of 30 days.

2. It shall be the responsibility of the owner/occupier to file within 30 days an affidavit with the Commissioner of MCD stating that the misuser has been stopped.

3. In case misuser is not stopped, sealing of the premises shall commence after 30 days, from the date of public notice, first taking up the violations on roads which are 80 ft wide and more. All authorities are directed to render full assistance and cooperation. After expiry of 30 days from the date of public notice, electricity and water supply shall be disconnected.

4. Details of the roads and the violations shall also be placed on the website by MCD and copies also sent to Resident Welfare Associations of the area which should be involved in the process of sealing of misuser. The Commissioner of MCD shall file an affidavit, within two weeks, in terms of directions contained in this judgment, whereafter directions for constitution of the monitoring committee would be issued. The sealing would be effected by the officers authorised by the Commissioner of MCD in consultation with the monitoring committee.

5. The appropriate directions for action, if any, against the officers responsible for the misuse and for payment of compensation by them and by violators would be issued after the misuser is stopped.

6. None will tamper with the seals. Any tampering with seal will be sternly dealt with. Tampering with seal will include opening another entrance for use of premises.

7. It would be open to the owner/occupier to approach the Commissioner for removal of the seal on giving undertaking that the premises would be put to only authorised use.

8. Particulars of cases where violators may have obtained orders of stay will be filed in this Court by MCD.

9. MCD shall file monthly status report as to action taken by 15th of each month commencing from 10-4-2006.

10. In case misuser is not stopped in the premises involved in the civil appeals and special leave petitions, subject to what is stated in this judgment, MCD will take immediate steps to seal those premises soon after expiry of 30 days."

(emphasis supplied)

It is clear from the above-mentioned order dated 16.2.2006 in *M.C. Mehta v. Union of India* (supra) that this Court noted unauthorized construction but appointed the Monitoring

Committee to put a restraint on the misuse of the residential premises for the unauthorized/commercial purpose. Pursuant to the order dated 16.2.2006, the Monitoring Committee was formed on 24.3.2006.

20. The court again emphasized that its order should be carried out in letter and spirit in the case of *M.C. Mehta v. Union of India* reported in (2006)

3 SCC 429 passed on 24.3.2006 thus:

“4. In order to oversee 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 MCD. Accordingly, we appoint a Monitoring Committee comprising of Mr K.J. Rao, Former Advisor to the Election Commissioner, Mr Bhure Lal, Chairman, EPCA and Major General (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.

9. IAs Nos.1921, 1922 and 1923 have been filed by three associations whereas IAs Nos.1918-19 have been filed by an individual business house. The applicant of IA 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 applicant associations or their members but to others too, time to stop the misuser up to 30-6-2006 subject to every individual claiming such benefit filing affidavit stating that (1) on or before 30-6-2006, 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 30-6-2006 would subject him/her to the 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 MCD on or before 28-3-2006.”

(emphasis supplied) This Court

directed to prevent misuse of the property in accordance with the previous order to mean that residential premises/ area should not be used for commercial purposes. A large number of reports of the Monitoring Committee carried 'Caption' "**REPORT OF THE MONITORING COMMITTEE, SEALING OF THE COMMERCIAL ESTABLISHMENTS IN RESIDENTIAL PREMISES**".

21. In Report No.8, the Monitoring Committee reported liquor shops in convenient/local shopping centers located in residential areas and other professional activities. This Court passed an order on 18.10.2006 regarding

Report No.8 thus:

"I.A.No.1983:

In view of the order passed in I.A.No.1980 above, this application stands disposed of.

Report No.8 of the Monitoring Committee:

We have perused the 8th report of the Monitoring Committee dated 17th October, 2006.

The recommendation contained in para 1 of the report, except last three lines, are accepted. The said three lines read as under:

"In addition, it is presumed by the Monitoring Committee that small shops will also be allowed in A & B category of colonies as per the Hon'ble Court's order dated 29.09.2006."

The learned Solicitor General, on instructions, states that the Government is not contemplating to allow small shops in colonies of category A & B. In this view of the stand, the aforequoted recommendation is not accepted.

In respect of para 4 of the report relating to the sealing of liquor shops in convenient/local shopping centres located in residential areas, we find no ground to direct sealing of liquor shops. The convenient/local shopping centres are in the commercial areas earmarked in residential areas and there does not appear to be any legal impediment for the liquor trade to be conducted from the said commercial areas. However, the liquor trade cannot be permitted to be carried on in mixed land use since the first floor onwards are expected to be used for residential purposes only and thus liquor trade in such residential

areas cannot be allowed to be continued. This part of recommendation in para 4 of the report is accepted.

Regarding recommendations 5 and 6 regarding professional activities and the basement are concerned, learned Solicitor General states that since the matter is under consideration of the Government, for the present, the sealing in respect thereof may not be continued. Learned counsel further states that it will take about six weeks to decide these matters. Further, it may be noted that in para 21(v)(e) of our order dated 29th September, 2006, for illustrative purpose, only four professions were mentioned but it is clear that other professions are not excluded. The term 'professionals' has been made inclusive by use of the word 'including'. In view of the above, for the present, sealing need not continue in respect of the activities mentioned in para 5 and 6 of the report of the Monitoring Committee.

The recommendation in regard to desealing, contained in para 7 of the report, is also accepted.

The Municipal Corporation of Delhi is directed to file its report/response, within four weeks, in regard to what is stated by the Monitoring Committee in para 8, namely, large number of building basement, lower basement, ground floor + four floors having come up in blatant violation of the Building Bye Laws.

In view of the time having been extended as above, the matter, instead of November, 2006, be now listed in February, 2007.

The Monitoring Committee is directed to supply copy of each of its report to learned Solicitor General and learned counsel for the Municipal Corporation of Delhi."

(emphasis supplied)

It is apparent from the report that it was with respect to misuse of the residential premises for commercial purpose and unauthorized constructions on public land.

22. On 15.11.2006, this Court exempted ration shops and cycle repair shops running in residential premises from sealing. Report No.12 was considered with respect to the misuse of residential premises for commercial purposes.
23. This Court passed further order on 23.11.2006, which was also with respect to misuse of the premises. Undertakings were filed to the effect that they have stopped

commercial activities in the residential premises. The relevant portion of the order dated 23.11.2006 is extracted hereunder:

“Subject to what we note hereinafter, persons who have either earlier or now have stopped commercial activity in terms of the undertakings/ affidavits filed but are covered by the two notifications above-noted, having regard to the peculiar facts and circumstances, are temporarily relieved of the undertakings and placed at par with other covered by Direction No.3 of the order dated 29th September, 2006. The conditions stipulated in the said Direction No.3 would be applicable to such traders/ professionals. The present order is in continuation of the orders passed on 29th September, 2006, 18th October, 2006, 6th November, 2006 and 15th November, 2006.

However, thirty four establishments mentioned in Annexure ‘A’ will not be entitled to above concession. The Monitoring Committee can verify ad if they have not ceased commercial activity, the premises shall be sealed and it be ensured that commercial activity is not carried on by them.

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In Paragraph (4), it has been noticed that, on a surprise check, some buildings were noticed on which certain sofas were put on each floor to give it a residential look even through no one appears to be living in it and the impression was that though building was sanctioned only for residential purposes and no commercial activity was going on but fresh commercial activity may commence. According to the Municipal Corporation of Delhi, as noted therein, where commercial activity has not yet commenced, building can be booked for violation of building plans. Directions are sought that Municipal Corporation of Delhi be asked to issue public notice that no commercial activity/ fresh commercial activity shall be allowed without first getting the building plans approved and on registration and payment of conversion and parking charges. Example of one such stretch of road is mentioned in Paragraph (4) from Mool Chand Hospital crossing to Ashram Chowk. It is to be made clear that no fresh commercial activity in building sanctioned for residential purposes can be allowed and on violation being noticed, it would be the personal liability of the Deputy Commission of the concerned zone to take appropriate action. It will also be the personal liability of the concerned Station House Officer to inform the concerned officers in the Municipal Corporation of Delhi. If, despite that, the commercial activity is noticed, these officers shall have to be held personally liable for the consequences. Simply booking a building for violation of building plans on paper has proved to be totally ineffective. There are

thousands of buildings which have been booked by the Municipal Corporation of Delhi in the last number of years but on paper only without any action. The Municipal Corporation of Delhi, as suggested in Paragraph (4), shall issue public notice in consultation with the Monitoring Committee.”

It is apparent from the order that the report and the order pertained to misuse of the residential premises for commercial purposes.

- 24.** The order dated 12.2.2007 was in relation to the stopping of the sealing by the Monitoring Committee at the instance of the Municipal Corporation of Delhi and the Delhi Development Authority until further orders. It was to be operative only concerning those premises covered under the MPD-2021 and not for those which were not covered by the Master Plan.

Following order was passed on 12.2.2007:

“...In view of this arrangement, the interim order stopping sealing by the Monitoring Committee with the assistance of MCD and DDA shall remain operative until further orders. This order shall be operative only in respect of those premises which are covered by the Master Plan, 2021 and not for those which are not covered by the Master Plan.”

- 25.** The order dated 9.3.2007 was passed to comply with the order dated 12.2.2007. Following order was passed by this Court on 9.3.2007:

“We have perused the Report No.31 of the Monitoring Committee. It needs no reiteration that our order dated 12.2.2007 shall be carried out to its logical end. Needless to say all authorities concerned shall ensure compliance of our order.”

It is apparent from the order dated 9.3.2007 that the order is in consonance with the said report, and the report clarifies that it was for commercial activities and mixed land use. The Monitoring Committee itself sought permission for continuation of sealing of the portion of the commercial establishment in the residential areas, which were not covered by MPD-2021. Thus, the confusion sought to be created based on MPD2021 is absolutely

unjustified. The order dated 10.4.2007 is an interim order stopping sealing by the Monitoring Committee. This Court did not authorize the Monitoring Committee to seal the residential properties being used for residential purposes. The order is of no relevance to decide the question of the authority of the Monitoring Committee.

26. On IA No.22, this Court in its order dated 10.4.2007 considered Report No.34, contents of which are placed by following orders:

“We are shocked to find that in spite of our earlier orders, there has been a total sense of non-cooperation exhibited by the M.C.D. and the police officials. The report of the Monitoring Committee shows that on 03.04.2007, 04.04.2007 and 09.04.2007, the police authorities did not cooperate in the matter of sealing of the unauthorized premises.

Let the Commissioner of Delhi Police and the concerned area Police Officers appear in person on 11.04.2007 before this Court and file affidavits indicating as to under what circumstances the orders of this Court were not carried out and there was non cooperation in the matter of sealing. Similar shall be the position so far as the Commissioner, M.C.D. is concerned.

The matter shall be listed tomorrow, i.e. 11.04.2007 for this purpose only.

These cases shall be listed on 07.05.2007. Before that date, learned solicitor General shall indicate the time schedule during which the various infrastructural deficiencies pointed out by leaned Amicus-Curiae are expected to be taken care of. It needs no reiteration that areas which are not covered by the Master Plan are not exempted from sealing operations. Only those areas and constructions which are prima facie covered by the Master Plan, shall be left out of sealing operations.

Report No.34 of the Monitoring Committee shall be kept in a sealed cover.

Copies of the Monitoring Committee's said Report shall be given only to the learned counsel for M.C.D., Delhi Police and learned Solicitor General.

The Charts submitted by Learned A.C. be kept on record. If any person, who has interest in the litigation wants to have a say in the matter, that can only be routed through learned AmicusCuriae. The necessary information and materials be given to learned Amicus-Curiae.

The response of the DDA shall also be filed which shall be taken on record.”

Report No.34 was not regarding premises used purely for residential purposes.

27. This Court passed an order on 3.1.2012, which is extracted hereunder:

“After hearing Shri Ranjit Kumar, learned amicus on Report No.85 and related issues and considering the submissions made by other learned counsel, we deem it proper to hear the main matter involving challenge to the validity of the law enacted by Parliament and the notifications issued by the Central Government.

List the case on 13.3.2012. It is expected that on that day no request will be made for adjournment.

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 regularising 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 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 or regularisation and if necessary, submit report to this Court.

Any person desirous of getting a copy of any report of the Monitoring Committee may make an application to the Monitoring committee and the required report be furnished to the applicant within a period of ten days on payment of usual charges.

It is also made clear that any party shall be free to file an appropriate application before the Monitoring Committee for its consideration and appropriate order.

IA Nos.2518-2521

Shri M.N. Krishnamani, learned senior counsel appearing for the applicants state that in view of the developments which have taken place after the last order of the Court, the applications have become infructuous and the same may be disposed of as such.

In view of the statement of learned senior counsel, IA Nos.2518-2521 are disposed of as infructuous. We hope and trust that the order passed by the Monitoring Committee will be implemented at the earliest.”

(emphasis supplied) It was

ordered that the Monitoring Committee shall do no further sealing of the premises, which are under its scrutiny. No construction, temporary or permanent, shall be raised, which is the subject matter of the scrutiny of the Monitoring Committee. No order shall be passed by the Government or any authority regularizing such construction or sanction the user's change.

28. The order dated 30.04.2013 was passed regarding the misuse/nonconforming use of the residential premises thus:

“3. 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, "M.C. Mehta vs. Union of India, (2006) 3 SCC 399". It was, inter alia, held that the MCD had power to seal the premises for nonconforming user in terms of Section 345 A of the MCD Act, and various directions were issued. 4. 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.”

Further, this Court observed with respect to authority or scope of the Monitoring Committee and the purpose for which the Monitoring Committee was appointed thus:

“8. (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 the nonconforming 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. ...”

29. On 6.12.2017, this Court reserved its orders on IA Nos.93010 and 93007 of 2017, which were decided on 15.12.2017. In the order dated 6.12.2007, this Court considered the matter with respect to unauthorized colonies, which came up as per reports dated 12.4.2016 and 30.10.2017. It was observed in the order that the power of the Monitoring Committee be restored. While the order was reserved on the aforesaid date on IA No.93010 and 93007 of 2017, the relevant portion is extracted:

“1. Invaders have pillaged Delhi for hundreds of years, but for the last couple of decades it is being ravaged by its own citizens and officials governing the capital city – we refer to unauthorized constructions and misuse of residential premises for industrial and other commercial purposes. This Court has focussed on these illegal activities in several decisions and has issued directions from time to time to try and bring some sanity to urban living but to little or no effect. The applications before us, the chronology of events and the historical developments leading up to these applications has given cause to reflect and decide on some of these issues keeping our constitutional obligations in mind.

3. M.C. Mehta, an environmental activist, had already moved this Court with an application to find a remedy for the air pollution in Delhi in a pending writ petition. Although he sought several reliefs, this Court first concentrated on use of residential areas for industrial purposes and later, the misuse of residential premises for other commercial activities. For the present, we are concerned with the misuse of residential premises for other commercial activities. These issues first arose when preliminary orders were passed by this Court on his application on 30th September, 2002 and 19th August, 2003. Thereafter, this Court addressed the issue of residential areas being used for industrial purposes by a judgment and order dated 7th May, 2004 in M.C. Mehta v. Union of India.²

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10. Having passed orders on 7th May, 2004 relating to unauthorized industrial activity in Delhi and being compelled to set up a Monitoring Committee, this Court focused its attention on yet another problem facing the citizens of Delhi, namely, that of misuse of residential premises for commercial purposes. In the decision dated 16th February, 2006 in M.C.

² (2004) 6 SCC 588

Mehta, this Court noted in paragraph 53 of the Report that it cannot remain a mute spectator when violations of the law affect the environment and the healthy living of those who abide by the law. It was stated, and the pain and anguish of this Court is quite apparent: “Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean

that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief the orders made in the last so many years but it seems the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens.”
[Emphasis supplied by us].

11. This Court observed that if the laws are not enforced and orders of the Courts to implement the laws are ignored, the result can only be total lawlessness. In the decision rendered on 16th February, 2006 this Court noted, quite explicitly and not in a veiled manner, that blatant misuse of properties in Delhi for commercial purposes on such a large-scale could not take place without the connivance of the officers and that it was therefore necessary to take action to check corruption, nepotism and total apathy towards the rights of citizens – and we may add, chaos and disaster. This Court noted that there must be some accountability not only of those violating the law but also of those errant officers who turn a blind eye to the misuse of residential premises for commercial purposes. It was observed in paragraph 61 of the Report as follows:

“Despite passing of the laws and repeated orders of the [Delhi] High Court and this Court, the enforcement of the laws and the implementations of the orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the

laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such largescale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.” [Emphasis supplied by us].

12. In view of the above, this Court directed the Delhi Municipal Corporation (for short the MCD) to give wide publicity in leading newspapers of the requirement that those misusing their residential premises for commercial purposes should cease the misuse on their own. It was also directed that 30 days after the issuance of the public notices, and if the misuse is not stopped, the process of sealing the premises would start. The period of 30 days expired on or about 29th March, 2006.

13. Unfortunately, issuance of the public notices had no impact either on those violating the law or on those expected to implement the rule of law. Perhaps, as observed by this Court, the reason was connivance, corruption, nepotism and total apathy towards the rights of the citizens of Delhi - who are today facing the brunt of the decades of illegalities having been committed

14. Faced with this situation, in its decision of 24th March, 2006 in *M.C. Mehta v. Union of India*³ this Court observed that the MCD had issued appropriate notices but, to oversee the implementation of the law regarding residential premises used for commercial (nonindustrial) purposes, it would be appropriate

³ W.P.(C) No.4677 of 1985

to seal offending premises. Therefore, rather than leave any discretion to the officers of the MCD (for obvious reasons) a Monitoring Committee was appointed consisting of Mr. K.J. Rao, Former Advisor to the Election Commissioner, Mr. Bhure Lal, Chairman, EPCA and Major General (Retd.) Som Jhingan. All necessary facilities to the members of the Monitoring Committee were directed to be provided by the MCD including facility of transport, secretarial services, honorarium etc.

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29. On 30th April, 2013 this Court passed a significant judgment and order in *M.C. Mehta v. Union of India*.⁴ This decision related to the challenge to the Act and subsequent legislations extending the provisions of the Act. A few directions were issued but two of them need particular mention: (i) All the writ petitions challenging the Delhi Laws (Special Provisions) Act, 2006 (and subsequent legislations virtually extending the provisions of the Act) and I.As. connected therewith were transferred to the Delhi High Court with a request to hear the matters at an early date, preferably within one year from the date of receipt of the entire records and papers. (ii) The order passed by this Court on 3rd January, 2012 in *M.C. Mehta v. Union of India*⁵ to the following effect would continue:

“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 the subjectmatter of scrutiny of the Monitoring Committee and no order shall be passed by the Government or any authority regularising such construction or sanction the change of user.”

34. It seems to us that the applicants are keen to utilise the premises in question for residential purposes, as stated in their application. There is no apparent intention to utilise the premises in question for commercial purposes or for any purpose not permitted by law. That being the position, it would hardly serve any purpose if the applicants are required to formally file an appeal before the Appellate Tribunal which is apparently already dealing with a very large number of appeals. It would, therefore, be in the fitness of things to de-seal the premises in question for residential purposes subject to certain conditions.

⁴ (2013) 16 SCC 336

⁵ (2012) 11 SCC 759

Directions

35. In our opinion, as far as Infinity Knowledge Systems is concerned the following conditions would meet the ends of justice and also provide a safeguard against possible misuse of residential premises for commercial (nonindustrial) purposes:

(1) The applicants will file an affidavit before the Monitoring Committee stating that they will use the premises in question only for residential purposes and for no other purpose whatsoever. The applicants will identify the persons for whose residential use the premises in question are sought to be desealed. Any change will be notified to the Monitoring Committee.

(2) The affidavit filed by the applicants will state the name, address and other particulars of the person who will be responsible for any misuse of the premises in question, that is, for use of the premises in question for any purpose other than residential.

(3) The person identified as the person responsible in terms of condition No.2 above will also file an affidavit clearly stating therein that he or she will ensure that the premises in question are used only for residential purposes and that in the event the premises in question are used for any purpose other than residential, the deponent would be liable for contempt of this Court.

(4) The applicants will file with the Monitoring Committee proof of payment of conversion charges to the statutory authority.

(5) The affidavits will be filed before the Monitoring Committee who may impose such other further conditions as may be appropriate.

36. In the event the Monitoring Committee is satisfied that the premises in question ought to be de-sealed, it may require the concerned statutory authority to de-seal the premises in question. If the Monitoring Committee is not satisfied that the premises in question ought to be desealed, the applicants will be at liberty to approach this Court for appropriate orders. We make it clear that in view of Report No. 46 dated 12th November, 2007 this Order will not be applicable to all other commercial activities that have been sealed in the premises in question.

37. We make it clear that henceforth it will not be necessary for any person whose residential premises have been sealed for misuse for any commercial (other than industrial) purposes at the instance of the Monitoring Committee to file an

appeal before the appropriate statutory Appellate Tribunal. Instead, that person can directly approach the Monitoring Committee for relief after depositing an amount of Rs.1,00,000/- with the Monitoring Committee which will keep an account of the amounts received by it. Any person who has already filed an appeal before the appropriate statutory Appellate Tribunal but would prefer approaching the Monitoring Committee may withdraw the appeal and approach the Monitoring Committee for relief on the above terms and conditions and on deposit of Rs.1,00,000/- as costs with the Monitoring Committee, provided that the premises were sealed at the instance of the Monitoring Committee. Any challenge to the decision of the Monitoring Committee will lie to this Court only. We are constrained and compelled to make this order given the history of the case and the more than serious observations of this Court of an apparent nexus between some entities and the observations regarding corruption and nepotism.

38. We make it clear that this order will inure to the benefit of only those who are using residential premises for commercial purposes (nonindustrial) or for any other non-residential purpose and whose premises were sealed at the instance of the Monitoring Committee. This order will not at all inure for the benefit of anybody using residential premises for any industrial activity of any sort or nature whatsoever.

39. With regard to the writ petitions that have been transferred to the Delhi High Court which challenge the Act and subsequent legislations, we find from a perusal of the website of the Delhi High Court that these petitions have not yet been heard, for one reason or another. We do not find any fault with the Delhi High Court. The intention of this Court in transferring the writ petitions to the Delhi High Court was for their expeditious disposal preferably within one year. Almost four years have gone by in this exercise but without any decision. Therefore, given the gravity of the situation as revealed from the Reports of the Monitoring Committee, we think it appropriate that this Court ought to hear the writ petitions on an expeditious basis and, accordingly, withdraw the writ petitions that were transferred to the Delhi High Court to this Court. The Registry will place these writ petitions on receipt from the Delhi High Court for directions on 12th January, 2018.”

The order clarifies that the Monitoring Committee was to look into the misuse of residential premises for commercial purposes (non-industrial) or any non-residential purpose.

30. There is yet another order dated 24.4.2018 passed by this Court, thus:

“We have heard learned *amicus curiae* as well as learned Additional Solicitor General (Mr. Nadkarni) appearing for the Union of India, learned Additional Solicitor General (Mr. Maninder Singh) appearing for the DDA and learned counsel for Government of Delhi and other bodies.

Mr. K.C. Naik, Member Secretary and Officiating Chairman of the Central Ground Water Board is present. He has been requested to give us the status of ground water level in 20 points in Delhi from the year 2000 onwards every five years including for the year 2017/2018 so that we are in a position to understand whether there has been a depletion of ground water and in which area and to what extent. This may be done in the form of a chart as well as in the form of a Plan/graph/map.

It has been brought to our notice by learned *amicus curiae* that an order was passed by this Court on 27th August, 2007 which is quoted in Report No.114 to the effect that construction is being carried out in unauthorized colonies. This has been possible because the building and other bye-laws do not apply to these unauthorized colonies. Consequently, unauthorized colonies are placed in a better position than authorized colonies. It has been recorded by this Court in the order dated 27th August, 2007 that unauthorized colonies cannot be placed in a better position than authorized colonies.

In view of this situation, we direct that there should not be any further construction in unauthorized colonies including on public land beyond the existing building and other bye-laws. Consequently, all building and construction activity in the unauthorized colonies including on public land is stopped with immediate effect beyond the existing building and other byelaws applicable to authorized colonies. The concerned authorities will ensure compliance.

It has been submitted by learned Additional Solicitor General (Mr. Nadkarni) that a Task Force is contemplated that will ensure that the orders of this Court and the applicable byelaws are implemented and encroachments, etc. as well as unauthorized constructions are removed.

The Task Force as suggested by learned Additional Solicitor General (Mr. Nadkarni) may be constituted with immediate effect.

As a first step, the Task Force should remove encroachments on public roads, public streets and pedestrian streets, as mentioned in the immediate action submitted by Mr. Nadkarni in a Revised Note dated 18th April, 2018. The needful should be done within a period of two weeks from today.

We make it clear that the Monitoring Committee may suggest to the Task Force the areas where immediate action is required to be taken.

It is stated by learned Additional Solicitor General (Mr. Maninder Singh) that about 27.02 acres of public land has been taken over by the Delhi Development Authority since 1st April, 2018. The details of this have not been mentioned. An affidavit should be filed giving full details of the 27.02 acres of public land that has been taken over by the Delhi Development Authority from unauthorized encroachments.

List the matter on 15th May, 2018.”

(emphasis supplied)

31. In compliance with the directions issued by this Court on 24.4.2018 for the constitution of the Special Task Force, an Office Memorandum dated 25.4.2018 was issued, which was not with respect to the conferral of powers on the Monitoring Committee, but of the Special Task Force. The relevant portion is extracted hereunder:

“In compliance of the directions of the Hon’ble Supreme Court dated 24.4.2018 given in the case of *M.C. Mehta v. Union of India & Ors.* (WP (Civil) 4677/1985), the following Action Plan was submitted in the hearing held on 15.5.2018 as intention and commitment to check all ongoing/ future unauthorized constructions, examination of specific complaints of unauthorized constructions in the part and to take action thereon and to weed out malpractices and corruption in the functioning of developmental and municipal bodies under over the overall supervision and coordination of the Special Task Force (STF) constituted vide OM dated 25-4-2018.

1. Plan of Action to ensure that no further illegal construction/ irregularity takes place in future

i) On the basis of territorial jurisdiction of the statutory authorities/ local bodies like Delhi Development Authority, New Delhi Municipal Council, South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation a Grid of officers has been prepared. This Grid would include the names, telephone numbers and emails of the concerned Executive Engineer / Equivalent Officer of respective zones of the various statutory authorities/ local bodies, who shall be held accountable for all future irregular and unauthorized constructions/ violations of the MPD-2021, the DMC Act, 1957 and the Building Bye-Laws. The List of Officers included in the in the Grid is **annexed** which shall be uploaded on web-site being

created separately for information of the general public and will be regularly updated by the concerned statutory authority from time to time, if any one gets transferred or changed.”

32. It is apparent that the Monitoring Committee was authorized to take care of the unauthorized colonies, and the Special Task Force was directed to remove the encroachments from the public roads and public streets. This Court considered Report No.114 and thereby had passed certain orders. Report No.114 of 2018 is related to unauthorized constructions and commercial activities in 1797 unauthorized colonies. Thus, the order of this Court was confined to the unauthorized colonies and commercial activities mentioned in the report as to encroachment on the public land.

33. The order dated 8.5.2018 is with respect to the groundwater level, not pertaining to the matter in question. The order dated 15.5.2018 is with respect to the Central Government to hear and decide the objections as to Master Plan and the Special Task Force constituted under the DDA Act 1957 was ordered to continue with their duties and responsibilities and action plan submitted by the Attorney General was to be implemented by the Special Task Force, not by the Monitoring Committee.

34. In the order dated 24.5.2018, this Court issued the directions to the statutory authorities to take appropriate action. With respect to illegal and unauthorized structures, no direction was issued to the Monitoring

Committee. Following observations were made:

“14. We may mention that it has been recorded that Delhi is being ravaged by unauthorized encroachments and illegal constructions with impunity and none of the civic authorities including the Delhi Development Authority was sincerely carrying out its statutory duties. It is painful to require the issuance of directions to statutory authorities to carry out their mandatory functions in accordance with the law enacted by Parliament. Unfortunately, the situation in Delhi warranted such a direction due to the apathy of the civic authorities.”

35. This Court considered Report No.127 on 24.8.2018 related to the encroachment on the “public land” with respect to the construction at Burari, Vishwas Nagar (EDMC), Kishangarh, South Zone (SDMC), the encroachment of DDA land at Karkardooma Metro Station (EDMC) and Bhatti Mines area of SDMC.

36. The order dated 7.9.2018 has also been referred to in which following facts have been noted.:

“2. Functioning of the Monitoring Committee

It is stated that the Monitoring Committee is doing its best to comply with the orders passed by this Court and to ensure that there are no encroachments or unauthorized constructions or misuse of property in Delhi, but the Monitoring Committee is not getting adequate support from the executing agencies namely MCD, NDMC, DDA, and the Police. Therefore, there are existing constraints with the result that the Monitoring Committee has not been able to fully comply with the orders passed by this Court.

We request the Monitoring Committee to continue with its onerous task and we expect the statutory bodies (mentioned above) as well as the Police to render all necessary assistance to the Monitoring Committee in carrying out its task. If there are any specific complaints, these should be brought to the notice of this Court as has been done in the past.

Needless to say that any complaint made by the Monitoring Committee brought to the notice of this Court will be taken up with all due seriousness.”

This Court has specifically noted in the aforesaid paragraph that the Monitoring Committee is doing its best to remove the encroachments/ unauthorized constructions or misuse of the property, but that is related to the encroachments on the public land and unauthorized colonies, and at no point of time this Court has authorized the Monitoring Committee to take action concerning residential premises which were standing on the private land and were not being misused. The aforesaid observations are not with respect to the Committee's authorization but have to be read in the context of the purpose for which the Monitoring Committee had been appointed.

The power of the Monitoring Committee could not be said to be widened by the aforesaid observations made in the order. This Court specifically dealt with in several orders the questions relating to power and the purpose for which the Monitoring Committee had been appointed.

37. The learned Amicus invited the attention to the order dated 12.10.2018, in which this Court simply observed that the Monitoring Committee should carry out its activities and responsibilities. The order is quoted hereunder:

“The office report indicates that No Objection Certificate from Shri Ajay Kumar Singh has not yet been obtained. The alleged contemnor should file the No Objection Certificate in the Registry.

The additional affidavit be filed in this regard before the next date of hearing.

List the matter on 30th October, 2018.

It is made clear that the pendency of these proceedings should not deter the Monitoring Committee or any other authority from carrying out its activities and responsibilities.

The alleged contemnor should remain present in Court on the next date of hearing.”

(emphasis supplied)

38. In the order dated 5.12.2018, the court pointed out with respect to the large number of complaints received by the Special Task Force and removal of encroachments from the public land, thus:

“1. Mr. Tarun Kapoor, the Vice Chairman of the DDA and the Chairman of the Special Task Force (STF) is present in the Court today.

The learned ASG, on taking instructions from him, says that while it is correct that regular reports have not been filed in terms of the orders passed by this Court, fortnightly report will henceforth be filed without fail by the STF.

It is further stated that the STF has received a very large number of complaints exceeding 7000 and it has become quite difficult to deal with all these complaints. So far about 3,400 complaints have been dealt with.

In view of the large number of complaints, efforts are being made to recruit additional staff. It is stated by Mr. Kapoor that additional staff will be recruited within 15 days or so or in any case before 31.12.2018.

We expect the STF to expeditiously deal with all these complaints and take appropriate action wherever necessary. This may be done in a time bound manner.

We may note that the fact that the STF has received more than 7000 complaints indicates the magnitude of the problem of encroachments and unauthorized construction in Delhi.

2. A consolidated report of the actions taken on the recommendations of the Special Task Force has been shown to us today.

On perusal of the report, we find that the total area cleared from encroachment by the STF under permanent structures is as high as 10,71,838 sq mts. The area under temporary structures that has been cleared from encroachment is 16,99,858 sq mts. In addition, about 3,202 sq mts of roads / streets / footpaths have been cleared on both sides. This confirms the severe problems being faced by Delhi due to unauthorized construction and encroachments and the magnitude of the problem.

3. In view of the huge amount of land that has been retrieved by the Municipal Corporations under the directions of the STF, it is necessary to preserve and protect the lands so that there is no encroachment upon it once again.

Since the Commissioners of the Municipal Corporations are part of the STF, we would require the STF to look into the matter with due seriousness and protect and preserve the land that has been taken possession/retrieved from the unauthorized encroachments. Needless to say, this also includes the roads/streets/footpaths that have been cleared by the STF with the assistance of the Municipal Corporations.”

39. Learned Amicus relied upon order dated 14.1.2019. The relevant portion is extracted hereunder:

“...The Monitoring Committee, along with the Deputy Commissioner, Nazafgarh Zone, SDMC, inspected the area behind Sector 7 Dwarka Sub-city on 30.10.2018 and noticed major unauthorised constructions in the amalgamated plots wherein huge showrooms, restaurants, Gyms etc. were found to be in operation. The Deputy Commissioner, Nazafgarh Zone, SDMC, were immediately directed to issue show cause notice to all the violators in respect of unauthorised constructions and misuse.

Let the SDMC explain as to why they have not taken any action under the provisions of DMC Act for unauthorised constructions and as to why the responsibility of taking action has to be fastened only to Revenue Department, District Magistrate and SDM. The needful be done within three weeks from today.

Let the Revenue Department also explain its stand on the action taken on the unauthorised constructions pursuant to the observations made by the Committee and the directions issued in respect of the plots vested in Sector 7 at Dwarka Sub-city.”

It is apparent that in the order dated 14.1.2019, this Court has noted that construction of showrooms, restaurants, gyms that was for the “commercial purpose” and notice was issued in respect of “unauthorized constructions and misuse of the residential area”.

40. Learned Amicus referred to the order dated 31.7.2001 passed in Writ Petition (C) No.27 of 1994. The relevant portion is extracted hereunder:

“52.The perusal of the affidavits further shows that the parties concerned have not even touched the tip of the iceberg as far as demolition of unauthorised constructions is concerned. The number of unauthorised constructions which are said to have been demolished are a small fraction of what is required to be done. It is quote evident that there is now no fear of the law catching up at least with those persons who do not believe in adhering to following the rules and regulations laid down with respect to construction of property. Unauthorised encroachment and illegal construction even as per the affidavits are increasing. It is dangerous trend if the people do not have either respect for or fear of law primarily due to non-enforcement of the law. It is something which causes us some concern and it would be appropriate if serious thought is given to this aspect at the higher quarters.....

53. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problems of existing unauthorised constructions and misusers and on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens.....

61.Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the orders are utterly lacking. If the law

are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption....”

41. In the order reported in (2004) 6 SCC 588 in this case, this Court considered the question of regularization of illegal industrial activities in the context of a violation of Master Plan and industrial activities in residential non-conforming areas of Delhi. Requisite directions were issued for closure or relocation of industrial units non-conforming with the ecological balance considering the right of a hygienic, clean and safe environment. The decision is not relevant with respect to the power and authority of the Monitoring Committee to act.
42. It is pertinent to mention here that earlier this Court in the same matter passed an order reported in (2013) 16 SCC 336 whereby sent all the matters from Supreme Court to the High Court. Since in the High Court, the progress was slow, later on, vide order dated 15.12.2017, this Court called all the matters back to this Court.
43. No doubt about it that matter of encroachment is a matter of concern, but the Monitoring Committee can act within the four corners of powers conferred upon it and purpose for which the court appointed the Monitoring Committee. It cannot exceed its powers and take any action beyond its authorization by the court.
44. We have gone through the various reports referred to by the learned Amicus Curiae and other learned counsel concerning sealing. They reflect the following position:

REPORT NO.1

45. Report No.1 dated 13.4.2006 submitted by the Monitoring Committee, is captioned under Para 1, which is extracted hereunder:

“PRELIMINARY REPORT OF THE MONITORING COMMITTEE FOR SEALING OF COMMERCIAL ESTABLISHMENTS IN RESIDENTIAL PREMISES

1. The Hon’ble Supreme Court of India vide its order dated 24th March 2006 had appointed a Monitoring Committee comprising of Sh.K.J. Rao, Former Advisor to Election Commission, Sh. Bhure Lal, Chairman, E.P.C.A. and Maj. General (Retd.) Som Jhingon, Kirti Chakra, VSM to monitor the sealing of commercial establishments in residential premises in Delhi. The Municipal Corporation of Delhi (MCD) had informed the members of their appointment as Members of the Monitoring Committee on 28th/30th March, 2006. Sh. Bhure Lal & Sh. K.J. Rao took charge of office on 29th March 2006 and had a meeting with the officers of the Municipal Corporation of Delhi and Senior Advocates of MCD.”

REPORT NO.2

46. In Report No.2 dated 6.5.2006 submitted by the Monitoring Committee, is captioned as under:

“REPORT NO.2 OF THE MONITORING COMMITTEE FOR SEALING OF COMMERCIAL ESTABLISHMENTS IN RESIDENTIAL PREMISES”

The Report is with respect to the sealing of commercial establishments in residential premises. Certain suggestions were made with respect to roads measuring 80 ft. wide and above, mixed land use and payment of conversion charges, zonal plans, parking, vacant commercial units built by Delhi Development Authority, and Banquet halls. Following is the Executive

Summary of the Report:

“EXECUTIVE SUMMARY

20. Taking into consideration the above factual position, the Monitoring Committee recommends the Hon’ble Supreme Court kindly to consider to direct:

- a. The MCD to recover from the beneficiaries, where mixed land use has been allowed, the conversion and parking charges together with interest thereon from the date of the notification allowing mixed land use of the premises besides revising the conversion charged fixed by the MCD in 1992.
- b. The MCD to ensure that Front Setbacks are surrendered by the beneficiaries of mixed land use streets, as laid down in Clause 8(4) of the Master Plan 2001.
- c. The MCD to complete the sealing operations in respect of identified roads having width of 80 ft & above and to take up thereafter the sealing operations in respect of roads having width of 60 ft. & above after giving a Public Notice, as has been done in the case of roads of 80 ft width and above.
- d. The Ministry of Urban Development – Govt. of India to approve and notify the draft Zonal Plans already prepared and pending with the DDA in respect of the remaining nine zones wherein mixed land use roads have already been identified for which not more than 15 days time is required. Simultaneously the work regarding the survey and preparation of Draft Zonal Plans in accordance with the Master Plan 221 may continue.
- e. The Ministry of Urban Development – Govt. of India to modify its Notification dated 28th March 2006 based on the suggestions given by the Committee in paras 17, 18 & 19 above.
- f. Govt. of NCT of Delhi and all the local bodies to ensure the implementation of the parking policy.”

REPORT NO.3

47. Report No.3 dated 23.5.2006 is again for sealing the “commercial establishments in the residential premises”. It has the reference with respect to the commercial establishments carrying out commercial activities at their premises. It also has a reference to the Delhi Laws

(Special Provisions) Act, 2006. Some explanations are also in the report concerning the de-sealing of commercial establishments.

REPORT NO.4

48. Report No.4 dated 24.5.2006 is again CAPTION as Report No.1. The report is concerning the “commercial establishments” as mentioned in Para 2 such as automobile showrooms, Automobile workshops, Branded showrooms, call centers, coaching institutes, business offices, building materials, go-downs, tent houses, guest houses, jewellery shops, restaurants and iron and steel shops. The report has a mention of “small shops”, which deals with private activities in “residential areas” such as Vegetable/ fruits/ flowers, bakery items, kirana, stationery, cybercafé, barber shop, chemist shops, etc. The report further states about “prohibited commercial activities in residential areas,” such as banquet halls, storage, go-downs, junk shops, liquor shops, printing, dyeing, and varnishing, etc.

49. Bistro Village is situated at Hauz Khas. In para 17, it is mentioned that it is an urban village where permitted land use for the area is residential, and no commercial activity within the village can be permitted. It was observed that a major part of the village is full of commercial activities, even though no commercial activity was permitted in Hauz Khaz village, which is a residential area. The report also mentions commercial activities in unauthorized colonies like Madhu Vihar, where area earmarked for a Community Centre, Health Centre, and other community facilities has encroached. The report was relating to “commercial use in the residential premises”. It was also mentioned that there is an encroachment of the monument on public land.

REPORT NO.5

50. Report No.5 dated 20.9.2006 CAPTION as Report No.1, following facts have been mentioned:

“9. Commercial Activity in Unauthorised Colonies on Encroached Public Land – Madhu Vihar: In Its Report No. 4, the Monitoring Committee reported to the Hon’ble Supreme Court regarding commercial establishments on encroached public land in many unauthorized colonies pending regularization. Examples of Madhu Vihar and New Ashok Nagar were given in the said Report. The photographs enclosed as Annexure ‘E’ with the said Report clearly show the extent of commercial activities on the encroached public land even on the roads of 80’ and above in Madhu Vihar. The Monitoring Committee visited Madhu Vihar on 19th September 2006 and noticed that in the entire colony commercial activities have almost been stopped and hectic activities going on for conversion of those places as residential houses. The entire commercial area has again been photographed. The photographs now taken on 19th September 2006 are enclosed. Development Notification, dated 7th September, 2006, the Government of NCT of Delhi had notified such streets/stretchches (Number not Indicated) by way of a Notification No.149, dated 15th September, 2006. It had further been stated that the Government of India and the Government of NCT of Delhi have enacted the notifications under the powers conferred to them under the DDA Act and that they are valid and constitutional. The Commissioner MCD concluded that “what amounted to mis-user prior to the above Notifications cannot be termed as mis-user at the present point of time to the extent provided for in the Notifications. The Hon'ble Supreme court of India has directed the MCD to take sealing action In case of mis-user. Thus, to the extent mis-user continues after the above Notifications, the same will be sealed as per the directions of the Hon’ble Supreme Court”. A copy of the Note of the Commissioner, MCD is enclosed herewith and marked as **Annexure ‘C’.**

6. As the Notification No.149, dated 15th September, 2006 referred to in the Note of the Commissioner, MCD had not been received by the Monitoring Committee till 11 A.M. on 18th September, 2006, a letter was sent to the MCD for a copy of the same. The Commissioner MCD informed the Monitoring Committee to say that they had received only the first eight pages of the Notification and that the full text of the Notification would be available only by the evening of 18th September, 2006. A copy of the Notification, dated 15th September, 2006, has finally been received by the Monitoring Committee at 6 P.M. on 19th September, 2006.

7. The Monitoring Committee would submit to the Hon’ble Supreme Court that the rationale and the stand taken by the MCD on sealing operations Vide its Note, dated 16th

September, 2006 is different from the stand earlier taken by it on the 15th September, 2006, in the meeting of the Monitoring Committee with the Commissioner and other officers of the MCD, which is somewhat surprising. The Monitoring Committee further submits that as per the sealing programmes received from the MCD, the sealing operations are being done by the MCD as per the stand taken by it in its Note, dated 16th September, 2006. Accordingly, sealing operations are being done in areas/roads which herewith and collectively marked as **Annexure 'D'**. A comparison of these two sets of photographs show the extent of change of face of the commercial area. The Monitoring Committee brings it to the notice of the Hon'ble Court that any building having commercial activity on any encroachment of 'public property' is not eligible for regularization. Para 1.1 (b) of the Revised Guidelines for regularization of unauthorized colonies as framed by the Govt. of NCT Delhi provides that colonies /parts of 'colonies which pose hindrances in the provision of infrastructure facilities would not be considered for regularization. As already mentioned in its Report No. 4 the Monitoring Committee had brought to the kind notice of the Hon'ble Supreme Court that as per the zonal plan entire encroached area is meant for development as Community Center, Medical Center and Public Utility facilities. Further para 1.1(d) of the said guidelines provides that no regularization will be done in respect of the buildings used for commercial purposes except for petty shops upto 50 sqm. DDA has not taken cognizance of these violations on encroached public land. In view of the foregoing, the Monitoring committee reiterates its recommendations to the Hon'ble Supreme Court to direct the DDA to take immediate action, in a phased manner, to demolish all such buildings having commercial activities on encroached public land in all colonies in Delhi."

REPORT NO.6

51. In Report No.6 dated 22.9.2006 by the Monitoring Committee, the following facts have been mentioned:

"3. The Monitoring Committee, in addition, would like to bring it to the kind notice of the Hon'ble Court that despite clear instructions from the Monitoring Committee to carry out the sealings colony-wise instead of road-to-road basis, in respect of prohibited activities in residential areas, the MCD had issued contrary orders to the Sealing Teams of various zones to carry out the sealings in parts in various colonies in the zone without completing the work in a particular colony at a time. The reasons

and the rationale for this changed action not in consonance with the directions of the Monitoring Committee are not known.”

REPORT NO.7

52. In Report No.7 dated 27.9.2006 the CAPTION remains the same as Report No.1, the following facts have been mentioned:

“1. The Monitoring Committee has, in its Report No.4 recommended the perception of a small shop, in which 19 commercial activities have been mentioned. The Monitoring Committee has inadvertently omitted the following activities which may kindly be considered for inclusion in the said list:

- a. Cable TV/ DTH operations;
- b. Hosiery/ Readymade Garments/ Cloth Shops;
- c. ATM;

1.1 The Monitoring Committee further recommends that the Hon’ble Court may kindly consider to fix a date before which the owners of the small shops should get themselves registered after depositing the conversion charges and getting the Building Plans revised.

2. Similarly, the Hon’ble Court may kindly consider to fix a date before which owners of the shops under mixed land use/ commercial use get themselves registered after depositing the conversion charges and getting the Building Plans revised.”

REPORT NO.8

53. In Report No.8 dated 17.10.2006, the ‘CAPTION’ remains the same as Report No.1. The report states meeting with the Commissioner of Police,

Delhi, and sealing programme in unauthorized colonies.

REPORT NO.16

54. Report No.16 dated 23.11.2006 is regarding the sealing of “CTC Plaza” at Kilokhri, Ring Road. It is a “branded showroom” of diamond jewellery, sarees, costumes, readymade garments, etc. It has been used for commercial activity.

REPORT NO.31

55. In Report No.31 dated 2.3.2007 'CAPTION' is the same as Report No.1, the following facts have been mentioned by the Monitoring Committee:

"2. The Monitoring Committee brings it to the kind notice of the Hon'ble Supreme Court that following establishments are not covered by the Master Plan 2021:

- (a) Commercial activities on encroached public land;
- (b) Commercial activities on floors other than ground floor in notified Mixed Land Use Roads/ Pedestrian Roads;
- (c) Prohibited commercial activities in residential and Mixedland use areas mentioned in para 15.6.2 of Master Plan Delhi-2021;
- (d) Commercial activities in basements in residential areas;
- (e) Commercial establishments on roads other than the 2183roads notified as Mixed Land Use or Commercial or Pedestrian roads by Notifications dated 7th September and 15th September 2006 for which no protection is extended (however 90 days time has been provided in the Master Plan-2021 for survey and to notify additional roads further to 2183 roads);
- (f) Specific Commercial establishments / properties mentioned in the judgment dated 16th February 2006 of the Hon'ble Supreme Court (While disposing of the Civil Appeals, Interlocutory Applications (other than IA 22) and Special Leave Petitions in the matter, the Hon'ble Supreme Court has, in its Judgement dated 16th February, 2006, directed that in case misuser is not stopped in the premises involved in the Civil Appeals and Special Leave Petitions, subject to what had been stated in the Judgement, the MCD would take immediate steps to seal those premises soon after expiry of 30 days). The MCD has been requested to furnish a list of such properties which have to be sealed in terms of this order). Specific properties mentioned in the Report No.4 dated 14th September 2006 of the Monitoring Committee (commercial establishments on encroached public land meant for public utility services), as per directions of the Hon'ble Supreme Court in its order dated 29th September 2006."

REPORT NO.34

56.

Report No.34 dated 9.4.2017 'CAPTION' is as Report No.1. Non-

availability of the police force was required to carry out sealing operation in the Report.

REPORT NO.38

57. In Report No.38 dated 21.7.2007, the 'CAPTION' is as Report No.1. The report is with respect to the "Mixed-Use Regulations" and "Special Area Regulations" as per the MPD-2021. Regulation No.16.2 of the MPD-2021 was referred to in the report. It was also pointed out that there should be "one shop on one plot in the residential areas". The detail of the registration was given for small shops, professionals, commercial and other activities in the residential areas. Concerning conversion charges for mixed land use, certain suggestions were made. The report also contains the detail of the encroachment made on the public land. The report also contains in detail the provisions of the MPD-2021 and regarding "regularization of unauthorized colonies" on "encroached public land" of "Gram Sabha", acquired land, "DDA land", "MCD land", "Forest land", etc. It was pointed out that total encroachments on public land is "26,830 Bigha 17 Biswas". "Unauthorized colonies which have come up on the public land" were having "commercial activities" also.

REPORT NO.43

58. Report No.43 dated 5.10.2007 'CAPTION' is the same as in Report No.1. It is apparent from the entire Report No.43 that it was concerning payment of conversion charges for small shops, "mixed use" and "commercial activities" registered. The report further states regarding godowns in rural areas and "encroachment" of Raj Vidya Kender upon the "public land".

REPORT NO.46

59. Report No.46 dated 12.11.2007 was filed concerning IAs regarding sealing of premises of the ICICI 'Bank' Limited at New Friends Colony, various "business schools and institutions,

physiotherapy and wellness centers/hotels at the Kailash Colony” area where “residential premises have been used for the commercial activities”.

REPORT NO.47

60. Report No.47 dated 5.12.2007 was submitted concerning various IAs filed in this Court with respect to sealed premises of Small Shops Traders Welfare Association. The Monitoring Committee observed concerning Vidhata Estates Private Limited that it was running “commercial activities in building.” The Monitoring Committee observed as under:

“In view of the foregoing, the Monitoring Committee submits that the applicant, who is running commercial activities in a building on a part of the plot abutting a non-notified road, with unauthorized constructions and having no legal access to the notified road, is not entitled to any relief in the matter.”

(emphasis supplied)

61. Some hotels, guest houses, other commercial premises, business schools, etc. were also mentioned. “None of the items” is for “purely residential premises”. The Monitoring Committee further observed:

“The MCD has already been informed by the Monitoring Committee that industrial units in residential areas do not fall under its purview and the same may be sealed or de-sealed as per the directions of the Monitoring Committee constituted by the Hon’ble Supreme Court for the purpose.”

REPORT NO.75

62. Report No.75 dated 1.1.2020 is concerning the “commercial activities” and unauthorized construction by “Reebok Showroom”, “Hotel” West End Inn, Central Plaza, NH 8, and “Rangapuri” Extension.

63. Concerning ensuring the implementation of the Master Plan of Delhi, 2021 (MPD-2021), in its true spirit, all “commercial activities in residential premises” are identified

and removed. Following facets have been mentioned by the Monitoring Committee in its

Report:

“2. SPECIAL SUBMISSION OF THE MONITORING COMMITTEE

The Monitoring Committee submits that the Committee has been appointed by the Hon’ble Supreme Court to ensure implementation of its orders in the matter after taking into consideration large scale commercialization of residential premises. By various orders, the Hon’ble Supreme Court laid down the guidelines and also ensured that the Government brought out the Master Plan of Delhi, 2021. The Monitoring Committee has tried to ensure the implementation of MPD-2021 in its true spirit by ensuring that all commercial activities in residential premises are identified and removed. Some important facets are:

1. Admissibility of only one small shop on a plot in residential premises
2. Re-survey of classified roads. Many roads which do not qualify to be notified either as MLU/ Commercial Road even as per the MCD survey, have not been de-notified despite the assurance given by the MCED to the Hon’ble Supreme Court and several reminders by the Monitoring Committee. In one case a single property in A & B Colony (A-4 Sarvodaya Enclave) has been clubbed with E&F Colony and notified as commercial road in blatant violation of the MPD-2021, by an amendment to the Notification dated 15th Sept 2006).
3. Commercialization in Rural & Urban Villages.
4. Encroachment of public land by the traders.
5. Non sealing of commercial activities in non-permissible premises like D-1, D-1A & D-18, Green Park Min Market, Jahaz Mahal (Mehrauli) Shiva Market in a DDA Pak in Rohini Zone etc.
6. Parking & free circulation on commercial roads.
7. Breaking of seals in more than 70 reported cases in just two Zones of MCD, in which action has not been initiated for contempt of court proceedings.”

REPORT NO.85

64. In Report No.85 dated 4.4.2011, ‘CAPTION’ is the same as in Report No.1. A complaint was made by the Monitoring Committee as to the order of the Lt. Governor of Delhi for “de-sealing” some of the establishments under “commercial/ mixed land use” in violation of

orders of this Court. The details of “construction on public land” by Dr. Lal Path Labs, 54, Hanuman Road, and encroachment on public land, unauthorized construction, and misuse of “shops/flats in Khan Market” area was concerned.

REPORT NO.103

65. In Report No.103 dated 12.4.2016, it was pointed out that pursuant to remitting the cases by this Court to the Delhi High Court, various difficulties in the implementation of the order were pointed out. The details were given with respect to the hearing of the cases by the Delhi High Court and progress on disposal of appeals before the Tribunals. The details of desealing of properties in the unauthorized colony, village & abadi area (including urban villages constructed on public land) were given. The details were given about the refusal of the Standing Committee of the erstwhile MCD to de-notify 140 Roads in Shahdara North, Rohini, Central, South, and

West Zones resurveyed. Violations of the orders dated 3.1.2012 and 30.4.2013 by various commercial establishments were pointed out and other facts regarding interference of Lt. Governor of Delhi in the sealing matter of Dr. Lal Path Labs Pvt. Ltd. etc. and unauthorized construction on

Government and public land were given thus:

“The Monitoring Committee would submit to the Hon’ble Court that the Municipal Authorities, NDMC and DDA are lax in the performance of their duty with respect to unauthorised construction and encroachment on public/ govt. land. The public at large is violating the laid down orders i.e. Building Bye Laws and Master Plan etc. The fear factor with respect to the punitive action by the Authorities is totally missing from the public mind thereby creating a chaotic situation on the ground in whole of Delhi. The officers concerned are not performing there assigned duties. The DDA has not been able to safe guard/ protect its land and there is rampant encroachment. The DDA must as a policy make a boundary wall to protect the land from any type of encroachment and also carry out regular inspection of their land holdings.”

REPORT NO.104

66. Report No.104 dated 30.10.2017 deals with the “conversion charges” regarding “mixed use land”, de-notification of 140 roads, “unauthorized construction” on “public and Government land” and “unauthorized colonies were being constructed by way of encroachments in the Government land”. The Report further states regarding violations by commercial establishments like Delhi Cloth Mills and other institutions where “commercial shops” were built and regarding Ambassador “Hotel” etc.

REPORT NO.106

67. In Report No.106 dated 10.1.2018 submitted by the Monitoring Committee, public land use was acquired where unauthorized structures were raised. The Monitoring Committee has mentioned the following facts:

“The Monitoring Committee has finalized its plan to carry out the assigned task of sealing the unauthorized structures, eradicate misuse and remove encroachment on DDA/ Government land and making the public aware of the seriousness of their crime for any illegal act in this process. Retrieval of DDA land and Forest land is the priority task set by the Monitoring Committee.”

REPORT NO.111

68. In Report No.111 dated 7.2.2018 concerning E-5A, Hauz Khaz Market, New Delhi, it was submitted that the same falls under Shops-cumResidential use, not as a Local Shopping Centre. The Report was regarding “use of basement for professional activities in residential premises”. It further dealt with the “encroachments on the public land” and submits that the “commercial activities are not permitted in the converted shops cum residence”.

REPORT NO.112

69. Report No.112 dated 9.2.2018 of the Monitoring Committee is concerning large scale “commercial activities in the residential premises” at

Shahdara, South Zone.

REPORT NO.114

70. Report No.114 dated 3.4.2018 is concerning the construction of unauthorized colonies on Gram Sabha land, acquired land, DDA land, and MCD land. It was submitted that no regularization could be done in respect of residential premises used for non-residential purposes.

REPORT NO.118

71. Report No.118 dated 7.5.2018 concerns the “Khan Market” where “verandahs were encroached and amalgamated in the shops” causing hardship to the visitors in the market. The report further states regarding encroachment of DDA land at Sanjay Market, Mangolpur Kalan in Rohini

Zone and misuse of premises for commercial activities

REPORT NO.119

72. Report No.119 dated 24.5.2018 is regarding the slow progress of the “sealing operations” in Lajpat Nagar-IV and Amar Colony-Refugee Colony, where large scale “encroachments” were made by owners/ occupants on the “Government land”.

REPORT NO.120

73. Report No.120 dated 11.6.2018, again referred to this Court’s order dated 29.9.2006 regarding “conversion of residential user into commercial” user except with the leave of this Court.

It was observed that the Government's obligation was to ensure compliance of the order of this Court, and the Special Task Force and the Monitoring Committee were directed to continue with its duties and responsibilities.

REPORT NO.121

74. Report No.121 dated 13.6.2018 was concerning “non-cooperation” of the local bodies with the Sealing Officer, where after inspection, it was found that certain “rooftops” were being used as “pubs” and “dance floors” after clubbing the plots illegally.

REPORT NO.124

75. In Report No.124 dated 4.7.2018 again, a complaint was made relating to “non-cooperation” of authorities in the sealing process as the Master Plan (MPD-2021) was under consideration.

REPORT NO.125

76. Report No.125 dated 31.7.2018 is concerning the constitution of the Special Task Force. It was pointed out that there was “non-cooperation” by the “Special Task Force”. Details were mentioned about sealing action at Amar Colony, Lajpat Nagar, where the “tenements” built by the Government for residential purposes only were allotted to refugees in various colonies in Delhi on a lease basis. Most of them were used for “commercial activities by raising unauthorized construction” on the Government and common land.

Details about the roads were also given.

REPORT NO.127

77. Report No.127 dated 20.8.2018 was again concerning illegal/ unauthorized construction. With respect to "Burari Area" (North MCD) the report was submitted that the area was vandalized and huge unauthorized construction has come up. Concerning "Vishwas Nagar" (EDMC), report was relating to "residential premises being used as Go-downs" and storing places for "prohibited industries,". In Kishangarh area at South Zone, large scale unauthorized construction was reported on DDA land by way of encroachment. Similarly, the encroachment on DDA land at Karkardooma Metro Station was pointed out. At Bhatti Mines area of SDMC, "encroachment of Revenue/Forest land" was pointed out.

REPORT NO.128

78. In Report No.128 dated 5.9.2018 suggestions were made regarding permanent de-sealing norms. Dubious deviations regarding misuse of unauthorized constructions were pointed out. "Unauthorized constructions" were being raised in unauthorized colonies on the "public land". Details were given about "encroachment on the DDA land".

REPORT NO.129

79. In Report No.129 dated 18.9.2018 report was furnished regarding illegal dairy running at Gokulpur, which was sealed but the seal was tampered.

REPORT NO.131

80. Report No.131 dated 8.10.2018 is related to the "contempt notice" issued by this Court to one of the Members of Parliament.

REPORT NO.134

81. Report No.134 was submitted concerning the "Motels/ Farm Houses" who have constructed "pandals, shamianas, sheds," etc. in their plots. Order dated 12.10.2018 of this Court was also stated which is extracted hereunder:

".....As an interim measure, we direct that the basement of the premises in question shall remain sealed until further orders. Mr. Mukul Rohatgi, learned senior counsel appearing on behalf of the applicant says that no pandal will be constructed on the premises in question. In view of this undertaking, the seal on the premises may be opened. The Monitoring Committee as well as the South Delhi Municipal Corporation should give their report within ten days.

The applicant may respond to these reports within four days thereafter."

82. Certain violations of MPD-2021 were also pointed out to be complied with by the concerned authorities.

REPORT NO.144

83. Report No.144 dated 11.12.2018 is in respect of the "cases pending" before the "High Court of Delhi" regarding property situated at 22A, Janpath. The report was submitted regarding "change of the land" used for "residential purposes as commercial" and the residential premises were used to run a chemist shop. Similarly, other cases were also pointed out. Regarding the 20 Point Programme (TPP) certain "allotments" of plots were made for the "residential purpose" but they were being used for the "commercial activities". Showrooms, Restaurants, Gyms, etc. were reported to be in operation on those plots. The report further states with respect to Singla Sweets (commercial) at Madhu Vihar and Vanasthali Public School, which were constructed on public and acquired land.

84. The order dated 7.5.2019 was pointed out time and again by the learned counsel for the parties. On 7.5.219 this Court directed the

Monitoring Committee as under:

“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.

*** *** ***

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.”

This Court directed the Monitoring Committee to give its considered opinion specifically as to whether at any point in time in the past, it sealed any residential premises, which were not misused for commercial purposes. The Monitoring Committee kept silent on this aspect and did not cite even a single such instance. Four orders referred to by the Monitoring Committee neither deal with the question of the power of the Monitoring Committee, nor they are relevant to the point in question.

85. It is apparent from the various orders passed by this Court from time to time and from the various reports of the Monitoring Committee that it was never authorized by this Court to take action against the residential premises that were not being used for commercial purposes. It was appointed only to check the misuser of the residential properties for commercial purposes. After that, this Court directed that the Monitoring Committee should also look into the matter of “encroachment on the public land” and “unauthorized colonies” that have come up on the public land and were wholly unauthorized without sanction. At no point in time, this Court had empowered the Monitoring Committee to act vis-à-vis to the purely residential premises.

86. The power of sealing of property carries civil consequences. A person can be deprived of the property by following a procedure in accordance with law. The Monitoring Committee is not authorized to take action concerning the residential premises situated on the private land. If there is unauthorized construction or in case of deviation, the requisite provisions are under the DMC Act, such as sections 343, 345, 347(A), 347(B). The mode of action and

adjudication under the Act is provided including appellate provisions and that of the Tribunal. It would not be appropriate to the Monitoring Committee to usurp statutory powers and act beyond authority conferred upon it by the Court. The Monitoring Committee could not have sealed the residential premises, which were not misused for the commercial purpose as done vide Report No.149, nor it could have directed the demolition of those residential properties.

87. Article 300A of the Constitution provides that nobody can be deprived of the property and right of residence otherwise in the manner prescribed by law. When the statute prescribes a mode, the property's deprivation cannot be done in other modes since this Court did not authorize the Committee to take action in the matter. An action could have been taken in no other manner except in accordance with the procedure prescribed by law as laid down in the decisions referred to at the Bar thus:

(a) *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77, wherein this

Court observed:

“59.In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one’s right of property as envisaged under Article 300-A of the Constitution.”

(b) *K.T. Plantation Pvt. Ltd v. State of Karnataka* (2011) 9 SCC 1 in which it was opined:

“168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression “property” in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.

169. This Court in *State of W.B. v. Vishnunarayan and Associates (P) Ltd.*⁶, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act,

⁶ (2002) 4 SCC 134

1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights."

(emphasis supplied)

(c) In *T. Vijayalakshmi v. Town Planning Member*, (2006) 8 SCC 502, the

Court observed:

"13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

* * *

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away."

(emphasis supplied)

(d) In the matter of *State of U.P. v. Manohar* (2005) 2 SCC 126, this Court observed:

"7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the

Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

“300-A. *Persons not to be deprived of property save by authority of law.*—No person shall be deprived of his property save by authority of law.”

8. This is a case where we find utter lack of legal authority for deprivation of the respondent’s property by the appellants who are State authorities. ...”

(e) In *Delhi Airtech Services (P) Ltd. & Anr. v. State of U.P. & Anr.* (2011) 9

SCC 354, this Court held:

“**83.** The expression “law” which figures both in Article 21 and Article 300-A must be given the same meaning. In both the cases the law would mean a validly enacted law. In order to be valid law it must be just, fair and reasonable having regard to the requirement of Articles 14 and 21 as explained in *Maneka Gandhi*. This is especially so, as “law” in both the Articles 21 and 300-A is meant to prevent deprivation of rights. Insofar as Article 21 is concerned, it is a fundamental right whereas in Article 300-A it is a constitutional right which has been given a status of a basic human right.”

(f) It was further argued that planning laws are expropriatory and should be strictly construed, and any ambiguity is to be construed in favour of the property owner as laid down in *Delhi Airtech Services (P) Ltd.v. & Anr. v. State of U.P. & Anr.* (supra) thus:

“**129.** Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See Maxwell on The Interpretation of Statutes, 12th Edn. by P. St. J. Langan.)

130. This Court in *Devinder Singh*⁷ held that the Land Acquisition Act is an expropriatory legislation and followed the case of

⁷ (2008) 1 SCC 728

Hindustan Petroleum Corpn. v. Darius Shapur Chenai⁸. Therefore, it should be construed strictly. The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary.”

(emphasis supplied) (g) In

Ramchandra Ravindra Waghmare v. Indore Municipal Corporation,

(2017) 1 SCC 667, it was opined:

“**67.** It was also submitted that town planning and municipal institutes are regulating and restricting the use of private property under the aforesaid Acts. They are “expropriatory legislation”. Thus they are liable to be construed strictly as laid down in *Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*”⁹”

(h) In *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke &*

Chemicals Ltd. & Ors., (2007) 8 SCC 705, it was held:

“ **57.** The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See *Balram Kumawat v. Union of India*¹⁰; *Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd.*¹¹ and *Union of India v. West Coast Paper Mills Ltd.*¹¹) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction.”

(i) In *State of Gujarat v. Shantilal Mangaldas & Ors.*, (1969) 1 SCC 509, it was held:

⁸ (2005) 7 SCC 627

⁹ *Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. & Ors.*(2007) 8 SCC 705.

¹⁰ (2003) 7 SCC 628 ¹¹

(2004) 1 SCC 391

¹¹ (2004) 2 SCC 747

“55. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all:”

(emphasis supplied) (j) In

Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC

111, it was opined:

“40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.” (emphasis supplied)

(k) In *Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher*

(2013) 5 SCC 627 it was held:

“43. This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade’s interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution.”

(emphasis supplied)

88. It is quite apparent that particularly when the Monitoring Committee is not empowered to take action, the incumbents could not have been deprived of the due process

of protection in accordance with law. As against the action of the Monitoring Committee, no appeal lies elsewhere. Even High Court is not authorized to entertain any matter and scrutinize its action, such is the drastic step taken by this Court by way of an exceptional measure in public interest, and it is confined to the misuse of residential property for commercial purpose and encroachments and unauthorized construction on the public land, roads.

89. After going through the report of the Monitoring Committee and other reports which have been relied upon by the Amicus Curiae, there is no scintilla of doubt that the Monitoring Committee in the past at any point of time did not seal any residential premises being used for residential purposes, situated on the private land nor it could have ordered demolition. The 'caption' of the various reports of Monitoring Committee i.e. "PRELIMINARY REPORT OF THE MONITORING COMMITTEE FOR SEALING OF COMMERCIAL ESTABLISHMENTS IN RESIDENTIAL PREMISES" makes it absolutely clear that Monitoring Committee did not entertain any doubt about the purpose for which it was constituted. Apart from that, it was authorized by subsequent orders to act with respect to unauthorized construction on the public land and roads that too, which violated the MPD2021.

90. Learned Amicus Curiae raised the alternative submission that the Monitoring Committee acted bonafidely at the instance of the letter written by the Sub Divisional Magistrate. We are of the opinion that the Monitoring Committee could not have acted based on any such letter. It was not permissible for the Monitoring Committee to act in the matter. May be that it acted under some confusion created by the letter. Be that as it may. We do not want to go further into the matter of bona fide. However, it is apparent that its action was beyond the purpose for which it had been appointed.

91. We are not going into the merits of the other submissions, whether the premises are authorized or unauthorized, can be regularized or not, compounding can be done, or whether there is any deviation made. The report of the Monitoring Committee and findings recorded by it are of no use as it had no such authority to go into the various questions. This Court did not appoint the Monitoring Committee concerning each and every residential building on private land not misused for commercial purposes and to deal with the same. In the present matter, this Court itself is monitoring the matter for a limited public purpose. It has not taken away the powers of statutory authorities under the Act concerning other matters except specified in the order.

92. Since we have considered only the ambit of powers of the Monitoring Committee, we have not touched with the submissions which were not relevant to decide, as raised by Mr. Govardhan.

93. We quash Report No.149 and other reports submitted subsequently in connection with Report No.149 and entire action of sealing pursuant thereto. We also quash notices issued directing demolition where the matter was being heard by this Court and the Monitoring Committee had no power to look into the matter and to take any action. Let the property sealed as per Report No.149 be de-sealed, and possession be restored to the owners forthwith. Let this order be complied with within three days. However, we clarify that this order does not at all mean to belittle the yeomen service done by the Monitoring Committee for protection of Delhi. We also place on record our deep appreciation for the selfless service done by Shri Ranjit Kumar, Amicus Curiae, for the last 24 years, with unflinching hard work and dedication along with his team of other Amicus in the matter.

.....J.
[ARUN MISHRA]

.....J.
[B.R. GAVAI]

.....J.
[KRISHNA MURARI]

NEW DELHI;
AUGUST 14, 2020.