

SUPREME COURT OF INDIA

M.C. Mehta

Vs.

Union of India

Writ Petn. (C) No. 4677 of 1985

(B. N. Kirpal and S. S. M. Quadri, JJ.)

28.04.2000

ORDER

1. This is an application where the main prayer is that the order of this Court dated 10th May, 1996 should be ordered to be implemented. By the said decision, reported as M. C. Mehta v. Union of India, (1996) 4 SCC 351 : (1996 AIR SCW 262 : AIR 1996 SC 3311), this Court, inter alia, directed that in respect of hazardous/noxious/heavy and large industries, there should be compliance with the Master Plan of Delhi which came into effect in 1990. With regard to the hazardous industry which was existing in Delhi, the said Master Plan required that the industry should shift within three years. As far as heavy and large industries were concerned, the Master Plan did not permit any new heavy or large industry to be set up and with regard to the existing heavy and large industrial units, it was stated that they shall shift to Delhi Metropolitan Area and the National Capital Region keeping in view of the National Capital Region Plan and National Industrial Policy of the Government of India. The land which was to be vacated by such units was to be utilised according to the provisions of the Master Plan.

2. In the aforesaid decision, it was directed that in accordance with the provisions of the Master Plan, the hazardous/noxious/heavy and large industries must shift after closing their units. This Court considered the proposal of the Delhi Development Authority (DDA) which had contemplated

some portion of land which would become vacant on the shifting/relocation of the industry being developed by the DDA, the balance being used by the owner for housing facilities and another percentage of land being used by the owner for residential or commercial use according to the Master Plan. This Court, however, after taking into consideration the report of the Land Allotment Committee as well as a report of Mr. Justice D. R. Khanna (Retd.), who was the Chairperson of the Land Use Advisory Committee, ordered that the land which would become available on account of shifting/relocation of hazardous/noxious/heavy and large industries should be used in the following manner :

Sl. No. Extent Percentage to be surrendered and dedicated to the DDA for development of green belts and other spaces Percentage to be developed by the owner for his own benefit in accordance with the user permitted under the Master Plan

1 2 3 4

- | | | | |
|----|---|------|---|
| 1. | Up to 2000 sq. mts. (including the first 2000sq. mts. of the larger plot) - | 100% | to be developed by the owner in accordance with the zoning regulations of the Master Plan |
| 2. | 0.2 ha to 5 ha | 57 | 43 |
| 3. | 5 ha to 10 ha | 65 | 35 |
| 4. | Over 10 ha | 68 | 32 |

The Court further observed as under at page 362 :

"We do not agree with the learned counsel for the industrialists that Floor Area Ratio (FAR) be permitted to them on the total area of the plot. We, however, direct that on the percentage of land as shown in column 4 of the owners at Serial Nos. 2, 3 and 4 shall be entitled to one and a half times of the permissible FAR under the Master Plan."

3. The grievance of Mr. M. C. Mehta is that though the industries have been closed a large number of them have not surrendered the excess land to the DDA. Notice was issued to the industries and affidavits have been filed.

4. On behalf of the industries, we have heard Mr. K. K. Venugopal, Senior Advocate and other senior counsel at length. The main contention which has been raised is that this Court never contemplated that the land would be surrendered free of cost. The submission was that under Section 15 of the Delhi Development Act, the said Authority has power to acquire the land for the purposes of the Act and when this Court had directed that the land should be surrendered, the implication clearly was that the DDA would have to acquire the land under Section 15 and pay compensation in respect thereof. Our attention was also drawn to Writ Petition (Civil) No. 108 of 1999 (M/s. Birla Textiles v. Union of India) filed under Article 32 of the Constitution of India and it was submitted that in that writ petition one of the contentions which was raised was that in respect of surrender of land compensation was payable, and the same had been referred to a Constitution Bench and was pending.

5. When this Court first passed the order on 10th May, 1996, it had before it the report of Mr. Justice D. R. Khanna and had the advantage of hearing several counsel over a period of six months as is evident from the order itself. It will be difficult to believe or accept that the Court was not aware of the provisions of the Delhi Development Authority Act which, inter alia, provides in Section 15 that the Authority could acquire the land for the purposes of the Act. The Court nevertheless directed the surplus land not to be acquired by the DDA but to be surrendered by the owners. With regard to the balance of land, it was to be retained by the owner. The Court directed that the FAR would stand increased to "one and a half times of the permissible FAR under the Master Plan". It is true that the Court did not direct any compensation to be paid in respect of the land which was required to be surrendered, but this element of compensation was clearly present in the mind of the Court when it increased the FAR and permitted the owner to build more than what was permissible under the Master Plan. It is not possible, therefore, to accept the contention that DDA is bound to acquire the land under Section 15 after paying compensation.

6. Be that as it may, there is nothing to indicate in the order nor has our attention been drawn to any affidavit that there was, at any point of time, a contention raised or a demand made that cash payment should be made for the land required to be surrendered or that the DDA should be asked to acquire the land under Section 15. Mr. C. L. Sanghi, learned senior counsel submits that in a matter like this where a public interest litigation is filed, the principles of res judicata does not strictly apply. Even if this be so, we would have expected the owners to have raised this contention if they had genuinely felt that there was a need for compensation to be awarded for the land which was to be surrendered. Perhaps they were happy to have an increased FAR which would have enabled them to construct more and would have offset the loss of land without payment of money. In fact, by the order dated 8th July, 1996, reported as (1996) 4 SCC 750 (at page 762) : (1996 AIR SCW 2732 at Pp. 2740-41 : AIR 1996 SC 2231 at P. 2237), it was observed as follows :

". In view of the huge increase of prices of land in Delhi, the reuse of the vacant land is bound to bring lots of money which can meet the cost of relocation.

7. Be that as it may, we do not think that it is appropriate at this juncture to permit the erstwhile owners of land to raise the contention that they should be paid compensation.

8. It has to be borne in mind that the Master Plan of 1990 made it obligatory on the hazardous industries to shift within three years. No time limit was stipulated with regard to the existing heavy and large industries, but the spirit clearly was that they should shift within a reasonable period of time. If the industries continued to use the land in violation of and in disregard of the Master Plan and then have had to lose some parcels of land, they have to blame themselves for it. It was contended before us by Mr. K. K. Venugopal that if the industry had shut before 1996, it would have been entitled to retain all the land, but because the closure has been effected as a result of the order of this Court, the owners have had to surrender part of the land free of cost. This is undoubtedly true but as we have observed above if the owners had cared to obey the law then, that, as is always the case, would have been more profitable.

9. The pendency of Writ Petition (C) No. 108 of 1999 does not, in our opinion, stand in the way of this Court dealing with this application and disposing of the contentions raised before us.

10. Coming to the prayers of Mr. M. C. Mehta, we hereby direct that within one month, all the industries which are required to surrender the land in terms of this Court's order dated 10th May, 1996 should voluntarily surrender the same to the Delhi Development Authority. If this is not done, the DDA will be duty bound to file application(s) for execution of this Court's order before the District Judge, Delhi and the District Judge, Delhi shall thereupon execute this Court's order dated 10th May, 1996 and report compliance within four weeks of the filing of the execution application(s). The execution application(s) should be filed by the DDA not later than eight weeks from today.

11. It has been brought to our notice that pursuant to the order dated 10th May, 1996, another order dated 4th December, 1996 reported as (1997) 11 SCC 327 has been passed whereby it has been ordered as follows :

"We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The existing hazardous industries having been closed, what remains is the plot, superstructure and the workmen. The occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case. We make it clear that Government permission and the consent from the Pollution Control Board/Committee, if required under law, shall have to be obtained. Even fresh electric connection

and water connection shall have to be applied for and obtained in the changed circumstances. We have no doubt when approached for necessary permission/licence/water/electric connections the authorities shall expedite in dealing with the applications."

12. It is quite evident that our direction with regard to the execution of the order dated 10th May, 1996 deals only with the questions of surrender of land. The latter order dated 4th December, 1996 the relevant part of which has been quoted hereinabove only states, with reference to the industries which did not want to relocate but intended to start new conforming industry/activity as to what has to be done by such occupants in order to start new industry/activity.

13. IAs relating to brick kilns are to be listed separately and this order is not to be given effect to qua them.

Order accordingly.