

SUPREME COURT OF INDIA

M.C. Mehta

Vs

Union of India and Others

Ia No. 22 In W.P. (C) No. 4677 of 1985 With Ias. Nos. 1918 to 1923

(Y. K. Sabharwal (CJI) and C. K. Thakker, JJ)

24.03.2006

JUDGMENT

Y. K. Sabharwal (CJI).

In terms of the decision of this Court dated 16-2-2006[M.C. Mehta v. Union of India = , public notices dated 26-2-2006 and 2-3-2006 were issued by the Municipal Corporation of Delhi (MCD) setting out the names of the roads where the sealing process of premises misused would commence in the first phase.

2. After a brief hearing on 20-3-2006 and as a result of the discussion in the said hearing, MCD has issued a further public notice on 22-3-2006 in continuation of the earlier public notices. The public notice issued on 22-3-2006 reads as under:

"Public Notice

In compliance with the judgment dated 16-2-2006¹ passed by the Hon'ble Supreme Court of India in IA No. 22 in W.P. (C) No. 4677 of 1985, etc. In the matter of M.C. Mehta v. Union of India and in continuation of the public notices dated 26-2-2006 and 2-3-2006, the following clarification is being issued for information of the general public:

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

(2) It is further clarified that sealing action would be taken irrespective of the degree and extent of misuse in respect of a building situated on a road having width of 80 ft and above, mentioned in the earlier public notices. Clarification in relation to mixed land use would be issued after the next date of hearing, which is fixed for 24-3-2006.

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

3. In respect of the aforementioned first category, it is stated by Mr. Harish Salve, learned counsel appearing for MCD that it would be applicable to all roads already notified on 26-2-2006 and 2-3-2006. It is submitted that the roads were again not named because the same had already been mentioned in the earlier public notices.

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 Lai, 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.

5. In terms of our directions dated 16-2-2006 (supra), the process of sealing is required to commence w.e.f 29-3-2006. Learned counsel for MCD, however points out that on some roads in some areas, partial commercial user has been allowed. It is stated that in respect of some roads on notified stretches, mixed land use to the extent of 25% of the permissible ground floor or 50 sq. m whichever is less has been allowed as per the regulations; in respect of some other roads, commercial user of ground floor with upper floor residential user has been allowed. However, the note handed over to us in the Court on behalf of MCD does not specify the roads and the areas. Be that as it may, for the present, we direct that MCD should point out and file details of such roads before the Monitoring Committee which may permit MCD not to seal the premises in such areas, for the present, subject to further orders that may be passed by the Court.

6. Our attention has also been drawn to the proviso to Section 14 of the Delhi Development Act, 1957. Section 14 reads as under:

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

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

7. Mr. Salve states that there may be some, though very few in number, cases where user may have been prior to September 1962 and such user may be protected under the proviso. For the present, we direct that if an occupant of some premises claims benefit of the proviso to Section 14 of the Act and files an affidavit with MCD, to be immediately forwarded to the Monitoring Committee by MCD, stating that since the user was prior to September 1962, he is entitled to protection of the proviso to Section 14 and also stating further that he has not obtained any sanction of building/premises for construction of a residential building and would suffer the consequences of perjury and contempt of court, if the affidavit is found to be false, the Monitoring Committee on consideration of such affidavit may direct MCD for the present not to seal such premises and, accordingly, MCD will not seal the premises of the above nature.

8. Certain applications have been filed seeking extension of time to stop the misuser. It has been submitted on behalf of the applicants by Mr. Soli J. Sorabjee, Mr. Mukul Rohatgi, Mr. Rajiv Dutta and Mr. Sandeep Sethi, learned Senior Counsel, that the Court may grant them reasonable time so that alternate arrangement of the premises may be made where the trade may be shifted. An application (IA No. 1920) in respect of a premises in Safdarjung Enclave has been filed seeking time up to 30-4-2006 and giving an undertaking to the Court that on or before 30-4-2006, the misuser will be stopped. That the applicant states that he has already obtained alternate accommodation which is under renovation. IA No. 1920 is allowed and the applicant is granted time to stop the misuser by 30-4-2006.

9. LA. Nos. 1921, 1922 and 1923 have been filed by three associations whereas I.As. 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 (supra), 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.

10. MCD shall issue a public notice notifying the officers in different zones before whom such affidavits can be filed. The affidavits so filed seeking extension shall be forwarded by MCD to the Monitoring Committee. The public notice shall also be placed on the website by tomorrow, 25-3-

2006.

11. The premises in respect of which the affidavits are not filed, the process of sealing shall commence as already directed w.e.f. 29-3-2006 insofar as the first phase is concerned. The sealing shall continue notwithstanding any order passed by any court. Delhi Police is directed to extend full support to MCD for carrying on the operation of sealing.

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

13. IAs Nos. 1918-19, 1921, 1922 and 1923 are disposed of accordingly.

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