

2023 LiveLaw (SC) 886

IN THE SUPREME COURT OF INDIA
SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.
Writ Petition(s)(Civil) No(s). 4677/1985; 13-09-2022
M.C. MEHTA versus UNION OF INDIA & ORS.

Environmental Law - Unauthorized and illegal commercial and industrial use of residential areas in Delhi - the Court appoints a Judicial Committee to address issues related to sealing, de-sealing, regularization, penalties, demolition, and encroachment. The Committee will have jurisdiction over challenges to the decisions of Monitoring Committees and Regulatory Committees.

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ORDER

IA NOS. 35420 AND 35421/2019 (APPLNS. FOR IMPLEADMENT AND DIRECTIONS ON B/O JAWAHAR NANDRAJOG)

Learned counsel for the applicant(s) seek to withdraw these application.

The applications are dismissed as withdrawn.

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The concerns in the present proceedings arise from rampant unauthorized and illegal use of residential areas for commercial and industrial purposes. The ground situation brought it to such an adverse level that this Court had little option but to step in directly into this area to ensure that the residential areas of Delhi city are not destroyed. It is towards this objective that a Monitoring Committee was appointed to end the unauthorized and illegal industrial activity in residential and nonconforming areas. The order dated 07.05.2004 appointed a Monitoring Committee for this purpose consisting of officers of different authorities.

This Court rightly found that what was happening could not have so happened without both passive and active role of the concerned officers and thus, in order to oversee the sealing of offending premises in terms of the letter and spirit of the directions issued by this Court, another Monitoring Committee was appointed comprising of Mr. K.J. Rao, former Advisor to the Election Commission, Mr. Bhure Lal, Chairman of EPCA and Major General (Retd.) Som Jhingan. An alternative remedy instead of going before the appellant

Tribunal was provided so that this Monitoring Committee could be approached directly and the decisions of the Monitoring Committee would lie only to this Court.

The litigation in this process has been going on but considering the legal concerns to be addressed by this Court, the pendency of the applications increased as sufficient time was not found to address the issues. The matter is largely factual as even after the applications are filed for de-sealing, the two authorities have expressed different concerns. The result is that this Court becomes the first judicial Court of fact finding over the report of the Committees, not an advisable scenario as we have found.

It is in these circumstances that on the last date of hearing on 24.08.2022, this Court explored the aspect of setting up of an independent judicial body to look into the concerns of the applicants to be presided over by retired Judges. We have opined that once the Judicial Committee so appointed directs de-sealing or rejects the same, the application would lie to this Court and we would be adopting the SLP approach. This would facilitate a quick disposal of almost 150 applications pending which continue to rise and it is extremely essential that people who are compliant get the remedy at the earliest.

Such a Judicial Committee is necessary to be empowered to analyze all aspects of the matter, i.e., what is the nature of allotment, whether there is any change of the policy of that allotment, what according to the norms prevalent is permissible and what are the nature of violation and in view thereof pass necessary orders. The power to direct compounding on payment of charges, if compliance is possible under existing norms, is also an aspect which must vest with the Committee.

In pursuance to the aforesaid observations, the learned Amicus Curiae has placed before us a note for purposes of constitution of the proposed Judicial Committee. We have perused the said note and thus are passing the directions hereinafter keeping in mind the said note and the various proceedings held from time to time -

We appoint a Judicial Committee of two hon'ble Judges: 1) Justice Pradeep Nandrajog, retired Chief Justice of the Bombay High Court and 2) Justice G.S. Sistani, retired Judge of the Delhi High Court who would take a call on all these applications keeping the aforesaid conspectus in mind.

The Judicial Committee will have jurisdiction to hear a challenge to these orders, decisions and recommendations of both the Monitoring Committees constituted by this Court vide orders dated 24.03.2006 and 07.05.2004 resulting in action by the Municipal Corporations and Regulatory Committees in respect thereof. The subject matters are as under:

- “i) Sealing and de-sealing of properties;
- ii) Regularization and/or levy of penalties or conversion charges;
- iii) Demolition of unauthorized construction; and
- (iv) Directing the removal of encroachment.”

Any person aggrieved by such an order decision or recommendation as already set out above after scrutiny by the Judicial Committee would have a remedy only by filing an application in the present proceedings.

In order to facilitate the disposal of these applications, all pending applications before this Court, challenging the orders passed by the Monitoring Committee in respect of these issues, shall stand referred to the Judicial Committee for consideration and passing orders. A list of these applications have been annexed to the note as Document

No. 1. The applications listed today also would stand transferred to the Committee and if some applications have been missed out, the applicants may approach the learned Amicus Curiae who would inform the Judicial Committee accordingly.

There are some reservations expressed by the Amicus Curiae about certain applications filed by associations/federations. We may note that the remedy for individual cases cannot lie by the associations/federations moving these applications as the factual scenario may vary.

However, if there is a single principle which has to be settled, then the application to that extent can be considered on behalf of these associations/federations by the Judicial committee and for individual relief, the members of the associations/federations will have to move the Committee thereafter.

We would note that there are certain set of applications which are not liable to be transferred which are as under:

- i) challenge to the Master Plan which is awaiting of the new Master Plan;
- ii) the “innovative” ordinances issued from time to time which continue to perpetuate what are *prima facie* illegalities;
- iii) applications concerning the marble markets which have already been directed to await the decision to the challenge to the Master Plan, and
- iv) challenge to the constitution of the Monitoring Committee and the special task force.

We may note that from the order dated 14.08.2020, the review applications have been filed which will take their own course.

We may also note in view of the submissions of the learned ASG based on the intimation received by her that insofar as the aspect of Master Plan is concerned, the cut-off dates have been provided as under:

- i) placing of MPD-2041 before the Authority- First week of December, 2022,
- ii) Modifications in MPD-2041 document as per decision of Authority, if any- last week of December, 2022, and
- iii) Letter to be sent to Ministry of Housing and Urban Development for final approval and notification of MPD-2041- 15th January, 2023.

Even though the dates given are tentative, we expect these dates to be strictly adhered to as the matter cannot remain in *limbo* for ad infinitum period of time. We are sure that final Master Plan would be published on or before 30.04.2023. The Committee will have all the necessary powers to perform the necessary functions but in order to further facilitate the performance of their tasks, we clarify that *inter alia* they would also have the following powers :

- i) To summon and enforce the attendance of any person and examine him;
 - (ii) To require the discovery and production of any documents, and
 - (iii) To requisition any public record or copy thereof from any office.

It will be open to the Committee to continue the proceedings for adjudication of the applications in accordance with law and after giving opportunity to the parties and needless to say that the Committee will endeavour to deal with the applications as expeditiously as feasible.

We may note that the proceedings before the Committee can be addressed by either the parties or their counsels and the Monitoring Committees will make their own arrangement to assist the Judicial Committee.

As to what is the prerequisite of approaching the Committee, we may only say that such of the persons who have deposited the charges with the Monitoring Committee would not be required to pay another set of charges but such of them who have not paid would be required to pay the charges with the Committee *pari materia* to what others have paid to the Committee. We are saying so at the moment because there are adequate funds available for working of the Judicial Committee as deposited with the Monitoring Committee which funds will be made available for the benefit of the Judicial Committee. The Judicial Committee will fix its own remuneration which can be drawn from the amount lying with the Monitoring Committee as also for any other expenses relatable to the sitting of the Judicial Committee.

Insofar as the making arrangements for the sitting, for infrastructure and personnel required for the working of the Judicial Committee are concerned, learned ASG submits that the Municipal Corporation of Delhi would make necessary arrangements at its costs.

We make it clear that insofar as the directions for de-sealing are concerned, the directions of the Judicial Committee shall be implemented forthwith even if there are reservations of the Monitoring Committee which can of course file its application, as would be the case, on rejection of the applications of the private parties by the Judicial Committee.

We hope this would simplify the process for consideration of the applications at an early date leaving only a narrow area of consideration by this Court.

All necessary arrangement should be made to facilitate the commencement of the proceedings before the Judicial Committee within a period of two weeks from today.

We at the end note the request made in application, IA No. 97703/2022 to the effect that the applicant is desirous of forthwith complying with whatever the authorities feel are the violations and remove the unauthorized construction itself as pointed out by them. The de-sealing of the third floor for demolition of the premises would be facilitated for the said purpose. The needful be done within seven days and on compliance of the conditions, necessary proceedings will be initiated before the Judicial Committee making it clear that such an exercise has to be time bound and cannot be an exercise over an indefinite period of time. We are given to understand that the exercise of demolition is to be completed within a period of time of four to eight weeks.

We make it clear that such of the persons who have moved the applications, no coercive action will be taken till the Judicial Committee applies its mind.

The Amicus Curiae will provide assistance to the Judicial Committee, as may be required.

List in the month of January, 2023.