

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONMT.PETITION (C)No.222 OF 2012INWRIT PETITION(C)NO.4677 OF 1985

JAGHBIR SINGH & Ors.

.....PETITIONERS

VERSUS

P.K.TRIPATHI, CHIEF SECY.,GOVT.OF NCT OF
DELHI & Ors.

.....RESPONDENTS

J U D G M E N TJAGDISH SINGH KHEHAR, CJI

1. The fact of there being large scale unauthorised industrial activities in Delhi, in residential areas, prompted this Court to entertain a number of writ petitions filed in public interest. The first final order, in this behalf, came to be filed in M.C.Mehta vs. Union of India and others, (2004) 6 SCC 588. The operative part of the order passed by this Court is extracted hereunder:

"69. In conclusion, having regard to the aforesaid, we issue the following directions:

1. All industrial units that have come up in residential/non-conforming areas in Delhi on or after 1-8-1990 shall close down and stop operating as per the following schedule:

(a) Industrial units pertaining to extensive industries (`F' category) - within a period of four months.

(b) Industrial units pertaining to light and service industries (Categories `B' to `F') - within five months.

- (c) Impermissible household industries (Category 'A') - within six months.
- (d) 6000 industrial units on waiting list for allotment of industrial plots - within 18 months.

2. The Central Government is directed to finalise the list of permissible household industries falling in Category 'A' within a period of three months.
3. 6000 industrial units on waiting list shall be allotted industrial plots within one year.
4. The Delhi Government may announce a policy within six weeks giving such incentives as it may deem fit and proper to those industrial units which came to be established after 1-8-1990 and may close down on their own before the expiry of the time fixed in this order. The non-announcement of incentives by the Government shall not, however, delay the closure process.
5. The water and electricity connection of the industrial units found operating after the due date of closure shall be disconnected forthwith and in any case not later than a month of the date fixed for closure in Direction 1 above. If the industrial activity still continues, the premises shall be sealed within a period of not later than another one month.

The seal shall be removed and water and electricity connection restored only after filing of an undertaking by the industrial unit not to recommence any sort of industrial activity before an officer nominated for the purpose by the Delhi State.

6. The Central Government is directed to finalise within six months appropriate steps to be taken for making NCR region a success for industrial activity by removing the hurdles pointed out by the industry. The Governments of the adjoining States of U.P., Rajasthan and Haryana are directed to extend full cooperation.
7. The Municipal Corporation of Delhi shall consider within three months the aspect of withdrawal of exemption notification as suggested in the affidavit of its town planner filed on 28-10-2002.
8. We appoint 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 the Delhi Development Authority. 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 with the directions contained in the judgment.
9. The first progress report by the Committee shall be filed by 31-8-2004 and thereafter it shall be filed, at least once in a period of every two months."

2. A perusal of the above order reveals, that this Court passed the above closure order, by categorising industries into various

groups. The Delhi Government was directed to announce a policy within six weeks for giving incentives, as it may consider appropriate, to those industrial units which were set up after 01-08-1990, and were closed down, on their own, before the expiry of the period depicted in paragraph 69 (extracted above). Such of the industries, as were found to be operating even after the date postulated in the above order, were required to be stopped from carrying on their industrial activities, by disconnection of water and electricity connections. The premises were to be sealed after the expiry of the time allowed had expired. The seals affixed, in terms of the above order, could be removed, only after an undertaking was filed by way of an affidavit, that industrial activity would not be recommenced in the premises. It is not in dispute, that the entire process narrated above was followed in the case of the respondent-contemnor. And, that, the respondent-contemnor - Sanjay Gupta, filed an affidavit dated 30.10.2004 in compliance of the directions issued by this Court seeking desealing of the residential premises in his occupation, namely, 87/1, Village Barwala, Bawana Road, Delhi - 110 039. The text of the affidavit being relevant to the present controversy is being reproduced below:

"UNDERTAKING/INDEMNITY BOND

This undertaking/Indemnity Bond is executed on this 30th day of October, 2004 by Sh.Sanjay Gupta S/o Sh.M.L.Gupta R/o F-3/14, Model Town, Delhi-110009, in favour of DSIDC Ltd., N-36, Bombay Life Building, Connaught Circus, New Delhi.

Whereas I being the Proprietor of M/s S.S.Udyog, located at 87/1, Village Barwala, Bawana Road, Delhi-110039, applied for allotment of an Industrial Plot

vide application form No.8707 under Relocation Scheme of Industries and have been allotted an Industrial Plot bearing No.62, Pocket-P, Sector 1 of area measuring 250 sq./Mtr. at Bawana Industrial Complex, Delhi.

And whereas necessary Lease Deed in the form as prescribed by DSIDC Ltd. is to be executed by the allottee as & when called upon to do so which will take some time and possession of the Plot is to be handed over to the allottee in anticipation of execution of Lease Deed, therefore to indemnify DSIDC Ltd. against any losses/damages if referred the present indemnity Bond is executed to indemnify DSIDC Ltd. as below:

1. That I undertake to get the Lease Deed of above plot executed & registered in favour of the allottee in accordance with the provision of the scheme incorporated in the brochure and shall abide by all the terms brochure as well as all the charges/expenses for getting the Lease Deed executed & registered.
2. That I undertake to pay the difference of cost of plot, if any, as calculated by DSIDC upon completion of the project at the time of execution and registration of Lease Deed as earlier as demanded by DSIDC Ltd.
3. That I undertake to pay all the charges/taxes/expenses to DSIDC Ltd. in respect of the above Industrial Plot and also to pay ground rent to DSIDC Ltd. and/or concerned organisation at prevailing rates communicated by DSIDC Ltd.
4. That I undertake to completely shift the Industrial unit presently functioning/operating at 87/1, Village Barwala, Bawana Road, Delhi-110039, to the above allotted Industrial Plot immediately. I have already stopped operating the Industrial Unit of the existing address, which is in residential/non-confirming area w.e.f.31.5.2004.
5. That I undertake to hand over the possession of above plot/structure if raised to DSIDC Ltd., in case the full payment deposited with SBI/BOB/_____ vide challan No._____ is not credited in favour of DSIDC account by bank & authorize DSIDC Ltd. to cancel the allotment & resume the possession forthwith.

And I hereby agree in case of the breach of any of the above terms and conditions on my part, DSIDC Ltd. shall be entitled not only to cancel the allotment of the plot but also to resume the possession of the plot as well as structure raised there on and in case and losses/damages if suffered by DSIDC Ltd., the same shall be indemnified by me and DSIDC shall also authorised/empowered to recover the same from my personal

assets/properties.

In witness whereof, this indemnity Bond is executed on this 30th day of October, 2004."

(emphasis is ours)

3. Thereafter, this Court passed, on the same issue, a second order dated 16.02.2006. The above order recorded its conclusions in paragraph 69. However, it would be appropriate to extract paragraphs 68 and 69 of the order dated 16.02.2006, which are reproduced below:

"68. Rule of law is the essence of Democracy. It has to be preserved. Laws have to be enforced. In the case in hand, the implementation and enforcement of law to stop blatant misuse cannot be delayed further so as to await the so called proposed survey by MCD. The suggestions would only result in further postponement of action against illegalities. It may be noted that the MCD has filed zonewise/wardwise abstract of violations in terms of commercialisation as in November, 2005. According to MCD, the major violation has been determined in respect of those roads where commercialisation of the buildings is more than 50%. According to it, the major violations in 12 zones are spread on 229 roads. Roads on which there are major violations are, thus, known. In respect of these, there is no need for any survey or individual notice. Beginning must be made to stop misuser on main roads of width of 80 ft. or more. The names of these roads can be published in newspapers and adequate publicity given, granting violators some time to bring the user of the property in conformity with the permissible user, namely, for residential use if the plans have been sanctioned for construction of a residential house. In case owner/user fails to do so, how, in which manner and from which date, MCD will commence sealing operation shall be placed on record in the form of an affidavit of its Commissioner to be filed within two weeks. On consideration of this affidavit, we will issue further directions including constitution of a Monitoring Committee, if necessary. The issue of accountability of officers and also the exact manner of applicability of Polluter Pay Principle to owners and officers would be further taken up after misuser is stopped at least on main roads. Civil Appeal Nos.608/2003 above referred relates to Ring Road, Lajpat Nagar-II. The other cases relate to areas like

Green Park Extn., Green Park Main, Greater Kailash, New Friends Colony, Defence Colony, West Patel Nagar, etc. These areas are illustrative. The activities include Big Furnishing Stores, Galleries, Sale of Diamond and Gold Jewellery, sale of Car Parts etc.

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 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 the 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 10-04-2006.

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, the MCD will take immediate steps to seal those premises soon after expiry of 30 days."

(emphasis is ours)

4. The respondent-contemnor was expected to abide by the directions issued by this Court, as also, the factual position depicted in his affidavit dated 30.10.2004. The filing of a personal affidavit by the respondent-contemnor leaves no room for any doubt, that the respondent-contemnor was personally aware of the directions of this Court and his undertaking. It however turns out, that he chose to continue his industrial activities, immediately after the premises were desealed, after he submitted his affidavit dated 30.10.2004

5. During the course of hearing, learned counsel representing the respondent-contemnor submitted, that the respondent-contemnor was running three industrial units in the premises, and one of the said units came to be shifted immediately. That would have us believe, that the remaining units continued to function. The respondent-contemnor, affirmed the above position, when he entered

appearance, on our asking.

6. When the respondent-contemnor was questioned, it was his contention, that he was making all out efforts to search for alternative premises, and since alternative premises could not be found, he had no option but to continue his industrial activities of running a Dal Mill (pertaining to the activity of processing pulses). In this behalf, the excuse given by the respondent-contemnor was, that during the years under reference, there was a shortfall of pulses in the market, and therefore, he felt persuaded to continue the said industrial activity in public interest.

7. It is not necessary for us to highlight any further details, only that, the industrial activity being carried out by the respondent-contemnor in the same premises, came to the notice of the North Delhi Municipal Corporation, which issued a further notice, dated 13.03.2015, to the respondent-contemnor, under Section 345-A of the Delhi Municipal Corporation Act, 1957. The text of the above notice is reproduced below:

"Whereas the Hon'ble Supreme Court in the order dated 07.05.2004 has directed that all industrial units operating in non-confirming/residential areas of the Delhi in violation of Master Plan of Delhi have to be closed down/shifted.

And whereas pursuant to the aforesaid directions, the public/owners/occupiers, in general by way of publication of a Public Notice in the leading news papers were advised to stop the misuse, which are not covered within the ambit of Master Plan 2021 and bring the same within the ambit of law.

And Whereas, it has been brought to my notice that the premises is being misused for running a Dal Mill in residential/abadi of village Barwala without Municipal

License as required u/s 416-417 of the DMC Act and rules made there under, without consent of the DPCC, Fire Deptt. And in total violation of permissible use of the said property, against the Master Plan 2021/Zonal Plan.

Whereas upon your application, an industrial plot no.62, Pocket P, Sec.-1, Bawana DSIIDC was allotted to you and as per terms and condition of the allotment you were bound to close down the industrial unit/dal mill which was being operating from village Barwala, upon the allotment of industrial plot by DSIIDC in your favour.

Now, therefore, I, A.Nedunehezhiyan, Deputy Commissioner, North Delhi Municipal Corporation, Narela Zone, Delhi in exercise of the powers vested in me under Section 345-A of the Delhi Municipal Act, read with section 491 of the Act and rules made there under, after considering the reports placed before me, hereby direct you to stop the misuse and bring the premises within the permitted use as per Master Plan 2021 within 48 years and also file an affidavit reporting compliance in prescribed format, failing which the premises will be sealed without any further notice to you."

(emphasis is ours)

8. A perusal of the notice reveals, that this Court, by its order dated 07.05.2004, had directed all industrial units in non-confirming/residential areas of Delhi, in violation of the Master Plan of Delhi, to be closed down/shifted. The notice also records, that the above directive came to be published through public notices, as well as, in leading newspapers requiring all those who were not covered within the ambit of Master Plan 2021 to refrain from such misuse. The notice dated 13.03.2015 clearly records, that the respondent-contemnor was still using the premises for running a 'Dal Mill' in the residential/abadi area of village Barwala. Interestingly, the above notice records, that even though alternative industrial premises had been allotted to the respondent-contemnor, and in consonance with the terms and conditions of the fresh allotment letter also, he was required to

close down the industrial unit in the residential premises, yet he had not done so. It is necessary to record, that the lease deed, issued to the respondent-contemnor, in respect of the industrial plot allotted to him in 2006, is available on the record of this case as Annexure P-6. The respondent-contemnor acknowledges the said allotment.

9. Consequent upon the issuance of the notice dated 13.03.2015, the Sub-Divisional Magistrate, Narela, issued a sealing memo, dated 13.03.2015, by which the same premises - 87/1, Village Barwala, Bawana Road, Delhi - 110039, were again ordered to be sealed. The respondent-Sanjay Gupta moved a representation dated 16.03.2015 requesting the Sub-Divisional Magistrate, Narela, to de-seal the premises. It seems, that he was unsuccessful in obtaining any favourable order from the Sub-Divisional Magistrate, Narela. It is in the above background, that Writ Petition(C)No.3361/2015 was preferred by M/s S.S.Pulses Manufacturing Pvt.Ltd. namely, the unit run by the respondent-contemnor in the demised premises. In the said writ petition, the respondent-contemnor made the following prayers:

"PRAYER

In the facts and circumstances mentioned hereinabove, it is most humbly prayed that this Hon'ble Court may be pleased to:

- a) Issue a writ in the nature of mandamus or any other writ or order or direction directing the Respondent No.2 to de-seal the premises of the Petitioner situated at property bearing No.87/1, Village Barwala, Bawana Road, Delhi; and
- b) Pass any other order/orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of

the case."

10. By the time, the above writ petition was filed, the undertaking given by the respondent-contemnor to this Court, had been in operation for a period of more than a decade. But what is interesting is, that in the above writ petition, the petitioner did not disclose the factum of the directions passed by this Court (extracted above), as also, the affidavit filed by the respondent-contemnor on 30.10.2004.

11. Before the Delhi High Court, the respondent-contemnor preferred yet another affidavit of undertaking in April, 2015. The undertaking filed on the instant occasion is reproduced below:

"AFFIDAVIT OF UNDERTAKING

I, Sanjay Gupta, aged 48 years, S/o Late Sh.M.L.Gupta, R/o 197, 2nd Floor, Tagore Park, Near Model Town, Delhi - 110009, do hereby solemnly affirm and state on oath as under:

1. I say that I am the Director of the Petitioner Company in the above captioned case and am well versed with the facts and circumstances of the case and competent and authorized therefore to depose the present affidavit.
2. I undertake that the Petitioner Company shall not misuse the premises at property bearing No.87/1, Village Barwala, Bawana Road, Delhi in any manner whatsoever and shall use the same strictly in accordance with Master Plan-2021/Zonal Plan.
3. I undertake that the Petitioner Company shall itself bring to an end all its industrial operations at the abovesaid premises forthwith."

12. In the first instance, the respondent-contemnor was allowed interim relief, by the High Court of Delhi. However, the above writ petition was finally disposed of by the High Court on 06.05.2015 with the following short order:

"1. The substantive prayer made in the writ petition is as follows:

"...Issue a writ in the nature of mandamus or any other writ or order or direction directing the Respondent No.2 to de-seal the premises of the petitioner situated at property bearing no.87/1, Village Barwala, Bawana Road, Delhi..."

2. On the previous date, i.e., 08.04.2015, I had directed de-sealing of the subject premises, based on the plea advanced on behalf of the petitioner that the goods, which were lying in the said premises, were perishable in nature.

2.1 To be noted, the learned counsel had also stated that the petitioner was willing to have the subject premises conformed to the permissible use, and that, for this purpose, an undertaking of its director had been appended (see annexure P-8 at page 44 of the paperbook).

3. The undertaking dated 04.04.2015, which has been filed by one, Mr.Sanjay Gupta, director of the petitioner company, inter alia, states as follows:

"...2.I undertake that the Petitioner Company shall not misuse the premises at property bearing No.87/1, Village Barwala, Bawana Road, Delhi in any manner whatsoever and shall use the same strictly in accordance with Master Plan-2021/Zonal Plan.

3. I undertake that the Petitioner Company shall itself bring to an end all its industrial operations at the abovesaid premises forthwith..."

4. Learned counsel for respondent no.3 says that if the petitioner were to abide by the undertaking, the said respondent would have no objection to the subject premises being de-sealed.

5. Having regard to the undertaking given above, the prayer made in the writ petition is allowed. In case there is a violation of the undertaking, apart from any other action that may be taken against the petitioner, the director of the petitioner company, will also be liable to be proceeded by way of contempt.

6. The petition and the application are, accordingly, disposed of.

MAY 06, 2015

RAJIV SHAKDHER, J"

13. The fact, that the respondent-contemnor, consciously and deliberately disobeyed the directions issued by this Court, emerges

from the documents available on the record of the case, as have been referred to above. It is clear to us, that the respondent - Sanjay Gupta thought nothing of the directions issued by this Court, which he ought to have abided. We say so because, the personal affidavit filed by the respondent on 30.10.2004, leaves no room for any doubt, that the respondent-contemnor was personally aware of the directions of this Court, and his undertaking contained in the above affidavit. The respondent-contemnor, continued to violate the directions, and overlook the undertaking given to this Court in October, 2004, till he was again caught committing the breach in March, 2015, by the Sub-Divisional Magistrate, Narela. There can be no doubt, that the respondent - Sanjay Gupta, by his above acts of omission and commission, has committed contempt of this Court. We hold accordingly.

14. During the course of hearing, the respondent-contemnor was questioned by the Court. He asserted, that he had made a grave mistake, and requested, that he be pardoned. He also tendered an unqualified apology to the Court. Having considered the entire facts, we are satisfied, that parameters must be laid down for violation of the two orders passed by this Court (extracted hereinabove). Despite the affidavit filed by the concerned parties, assuring compliance, if they still breach this Court's orders, it is a matter of serious concern. Depending on the financial capacity of the industry concerned, it is proposed, that for having committed contempt, the concerned individual be imposed a sentence of ten days imprisonment coupled with fine at the rate of

Rs.10,000/- (Rupees ten thousand only) per month for the entire duration of the misuser; or alternatively a sentence of three months imprisonment coupled with a fine of Rs.1,000/- (Rupees one thousand only) per month for the entire duration of the misuser.

15. The respondent-contemnor was asked whether he could deposit the higher fine amount. The respondent-contemnor has chosen the higher fine.

16. The respondent-contemnor-Sanjay Gupta, is directed to surrender before the Station House Officer, Tilak Marg Police Station, New Delhi, on 01.08.2017, to suffer a sentence of ten days. The respondent-contemnor is also directed to deposit the fine amount (at the rate of Rs.10,000/- per month), on or before 01.08.2017, in the Registry of this Court, which will be forwarded by the Registry, to the Advocate-on-Record Welfare Trust. In case the fine amount is not deposited within the time indicated above, the respondent-contemnor shall suffer a sentence of three months, and pay a fine amount at the rate of Rs.1,000/- per month (which would likewise be applied, as indicated above)

17. The contempt petition stands disposed of, in the above terms.

.....CJI
(JAGDISH SINGH KHEHAR)

.....J.
(Dr.D.Y.CHANDRACHUD)

NEW DELHI;
JULY 10, 2017.

ITEM NO.3

COURT NO.1

SECTION PIL-W

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

CONMT.PET.(C) No.222/2012 In W.P.(C) No.4677/1985

JAGBHIR SINGH & ORS.

Petitioner(s)

VERSUS

P.K. TRIPATHI, CHIEF SECY., GOVT OF NCT OF DELHI
& ORS.

Respondent(s)

Date : 10-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr.Sanchar Anand, Adv.
 Mr.Devendra Singh, AOR

For Respondent(s) Mr.Dhruv Mehta, Sr.Adv.
(For RR No.6) Mr.Anupam Varma, Adv.
 Mr.Nikhil Sharma, Adv.
 Mr.Rahul Kinra, Adv.
 Mr.Vineet Kr.Singh, Adv.
 Mr.Abhay Kumar, AOR

For RR No.7 Mr.Arjun Singh Bhati, Adv.
 Ms.Liz Mathew, AOR

Mr.Chirag M. Shroff, Adv.
Ms.Neha Sangwan, Adv.
Ms.Sarika Soam, Adv.

Mr.Praveen Swarup, Adv.
Mr.Ameet Singh, Adv.
Ms.Sushama Verma, Adv.
Mr.Lokendra Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The respondent-contemnor-Sanjay Gupta, is directed to surrender before the Station House Officer, Tilak Marg Police Station, New Delhi, on 01.08.2017, to suffer a sentence of ten days. The respondent-contemnor is also directed to deposit the

fine amount (at the rate of Rs.10,000/- per month), on or before 01.08.2017, in the Registry of this Court, which will be forwarded by the Registry, to the Advocate-on-Record Welfare Trust. In case the fine amount is not deposited within the time indicated above, the respondent-contemnor shall suffer a sentence of three months, and pay a fine amount at the rate of Rs.1,000/- per month (which would likewise be applied, as indicated above)

The contempt petition stands disposed of, in the above terms.

(SATISH KUMAR YADAV)
AR-CUM-PS

(Signed reportable judgment is placed on the file)

(RENUKA SADANA)
ASST.REGISTRAR