

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

I.A. Nos.203615 & 218080 of 2024

and

I.A. No.210981 of 2025

in

Writ Petition (C) No.4677 of 1985

M.C. Mehta

...Petitioner

Versus

Union of India & Ors.

...Respondents

ORDER

1. The applicant is concerned with plot bearing No.106 and the building thereon situated in New Rajinder Nagar Market (LSC), New Delhi, admeasuring approximately 89 sq. yards. The petitioner by this I.A. prays for de-sealing the ‘commercial premises’ at plot No.106 relying on the common order dated 18.12.2023 passed by a Judicial Committee appointed by this Court in W.P.(C) No.4677 of 1985. The very same order has been challenged by the Municipal Corporation of Delhi (MCD) in I.A. No.32418 of 2024. We are in the present I.A. concerned only with the claim filed by the individual for de-sealing of his premises.

2. Before we go into the nitty gritty of the claim raised in the I.A., we have to briefly notice the history of the litigation. As has been submitted by the MCD, over a period of time number of markets/neighbourhood shopping areas were developed by the Land and Development Office (L&DO), the Delhi Development Authority (DDA) & the MCD with participation of private developers. Based on the Master Plan for Delhi, 1962 (MPD'1962), the shopping facilities and the shop-cum-residences were shown in the zonal development plans wherein layout plans were approved for different residential colonies by the MCD. Based on the Building Bye-Laws, 1959 as amended in 1964, the occupiers of the shop-cum-residences put the residential area also to commercial use upon which show cause notices were issued against the unauthorised conversions. W.P.(C) No.4677 of 1985, a Public Interest Litigation (PIL) was filed before this Court complaining of the stifling environment within Delhi, seeking multiple prayers to better effectuate the decongestion, like shifting of heavy and noxious industries, stopping mining activities in Aravali Hills in and around Delhi, demolition of

colonies built on forest land as also misuse of premises and unauthorized constructions.

3. In the said Writ Petition, this Court on 07.05.2004, appointed a Monitoring Committee comprising of Chief Secretary of Delhi, the Commissioner of Police, Delhi, Commissioner of MCD and Vice-Chairman, DDA for stoppage of illegal industrial activities. Later by order dated 24.03.2006, a three Member Monitoring Committee comprising of the Former Advisor to the Election Commission, Chairman of EPCA and a Major General (Retd.) was appointed to oversee the implementation of law; especially to proceed against offensive premises, built or converted unauthorisedly. The Monitoring Committee appointed in 2006 was divested of its powers in 2012 and later it was restored in 2017. In the meanwhile, at one point in 2012, the matters were also transferred to the High Court which order was also recalled in the year 2017, for the slow progress made in the High Court, on which date the Monitoring Committee's powers were also restored. The Monitoring Committee proceeded under the authority

granted by this Court and sealed residential premises on leased/free hold land when the same was challenged before this Court.

4. This Court by order dated 14.08.2020 categorically found that the Monitoring Committee was appointed only to prevent misuse of residential premises by conversion to commercial use and not with respect to residential premise used as such. The order specifically noticed the constitution of a Special Task Force (STF) by order dated 25.04.2018 passed by this Court and found that the Monitoring Committee at best could only make suggestions to the STF with respect to encroachment on the public land, roads and public places and not proceed peremptorily to seal the premises, which would in effect deprive the land owner/lessee from availing statutory remedies. Various reports of the Monitoring Committee were referred to and some extracted. The procedure of sealing, it was expressed, carries with it civil consequences and there was a procedure in place as per the Delhi Municipal Corporation Act, 1957¹

¹ For brevity 'the DMC Act'

providing for an appeal to the Tribunal constituted. It was found that the Monitoring Committee would not have the statutory powers conferred on the authorities under the enactment. The sealing of premises by the Monitoring Committee was set aside and the notices issued for demolition, on the reports of the Monitoring Committee, were also quashed.

5. This Court again by order dated 13.09.2022 appointed a Judicial Committee to consider the following aspects.

- “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.”

6. The Judicial Committee was conferred with the jurisdiction to hear the challenge to the orders/decisions on any of the above aspects passed by or on recommendations of the Monitoring Committees constituted by this Court by orders dated 07.05.2004 and 24.03.2006. The orders of the Judicial Committee with respect to de-sealing and rejection of the application as opined by this Court could be

challenged before this Court wherein it was also observed that this Court would adopt the SLP approach. The objection raised by the learned Amicus Curiae regarding certain applications filed by associations/federations was also noticed and it was observed that the remedy for individual cases cannot lie through the associations/federations, since the factual scenario would vary. All applications pending before this Court was hence referred to the Judicial Committee for consideration and passing orders and the associations/federations as also those seeking individual relief were directed to approach the Judicial Committee thereafter; except a challenge to the master plan, ordinances issued from time to time, the application concerning the marble markets and challenge to the constitution of the Monitoring Committee and the STF. We have to immediately notice that the order of the Judicial Committee challenged in the above I.A. refers to the markets/shopping centres 'en bloc' and does not deal with the individual case of the applicant.

7. We are hence of the opinion that the case of the applicant to enable de-sealing by virtue of the order passed by the Judicial Committee will have to be considered on the merits of the facts arising on the subject premises.

8. We have heard Mr. Kailash Vasdev, learned Senior Counsel, appearing for the applicant, learned Senior Counsel Mr. S. Guru Krishna Kumar, the Amicus Curiae and Mr. Sanjib Sen, learned Senior Counsel appearing for the MCD.

9. On behalf of the applicant, it was submitted based on the documents referred to from the I.A., compiled separately for our convenience, to assert that the subject premises was intended to be used commercially. Much reliance was also placed on the order of the Judicial Committee which holds that the properties in New Rajinder Nagar Market was intended to be used on a commercial basis. The learned Amicus Curiae and the learned Senior Counsel appearing for the MCD, however asserted that only the ground floor could be used as commercial space and even the applicant had applied for construction of residential accommodation on the

upper floors. Even after completion of the construction for residential use, the building has been combined with the adjacent plot, which is against the regulations, the master plan and the various circulars and notifications issued in this behalf. A number of such conversions from residential to commercial have been permitted, based on payment of conversion charges to ensure that the infrastructure requirements could be met from such amounts. There was no intention to enable the allottees of lands to have windfall benefits, since that would run against the concept of sustainable development. When residential spaces are converted as commercial, there would be more footfalls and there would be need to augment infrastructure; providing parking spaces and other facilities for common use of the public visiting the commercial spaces. It is also pointed out that there are unauthorised constructions made by the applicant which also has to be dealt with.

10. With respect to the order of the Judicial Committee which has considered the relevant provisions of the law juxtaposed with various office orders and dealt with the rival

contentions, it is more on a general manner and not on an individual basis. Insofar as New Rajinder Nagar Market is concerned, the association's application was before the Committee and the specific premises referred to are plot Nos.106 and 79, the first of which belongs to the applicant. Reliance was placed on a letter issued by the L & DO dated 19.11.1957 to one Dr. K.L Tuli, wherein it was specified that there was no objection to the sanction of the plan if the first floor is being used for commercial purpose and not for residential use. Reference was also made to lease deeds dated 16.05.1974 and 19.07.1975 pertaining to the Old and New Rajinder Nagar markets which speaks of erection of single storied building containing one business flat or double storied building with one or two business flats. The word 'business' was substituted for residential which clearly indicates that the use intended was commercial and not residential.

11. We are not persuaded to place any reliance on the letter issued to a third-party or to the supplementary lease deeds which are not specified as the one in the name of the two plots referred therein. We would, hence, go by the

arguments addressed before us with reference to the various documents, which though may not be a strictly SLP approach, will have to be resorted, to enable factual consideration. This is more so since the consideration by the Judicial Committee has virtually made ineffective the statutory remedies where a factual adjudication would have been possible.

12. This Court has also by Order dated 22.08.2024 looked at the order of the Judicial Committee dated 18.12.2023 and found *prima facie* that the Committee has not looked into individual cases of buildings/units. It has also been observed that it is necessary for the Committee to call upon the applicant to produce copies of the sanctioned plans in respect of individual buildings/units and copies of documents of allotments/ purchases. These are the documents which the Judicial Committee has not looked into, which was to be done on a case-to-case basis.

13. As has been noticed in the order of the Judicial Committee the influx of refugee migration to Delhi in the 1950s necessitated the formulation of a master plan for focused development, helmed by the local authority but with private participation. The subject plot was allotted to the

predecessor-in-interest of the applicant through a certificate of possession produced as Annexure A-29, the layout plan of which is produced as Annexure A-30. The letter of the L&DO dated 09.11.1957 with reference to one Dr. K.L. Tuli relied on by the Judicial Committee is produced as Annexure A-31. The contention of the applicant is that the subject plot was given in possession to the predecessors in interest as per Annexure A-29, specifically designating the property as a shop which squarely indicates the commercial purpose for which it is intended. Further, as specified in Annexure A-31 which is a similarly situated plot in the very same market, the first floor was permitted use as a commercial space. It is the further contention that the predecessor-in-interest of the applicant, in the year 1961, constructed the first floor of the premises as commercial, after obtaining necessary permission. Subsequently on 06.08.1987, a lease deed was issued in the name of the predecessor-in-interest of the applicant as per Annexure A-37 which also showed the nature of the property as commercial, after which the conveyance deed was issued in the name of the predecessor-

in-interest of the applicant, indicating, again, the plot to be commercial.

14. Contemplating sale of the lease hold rights, the predecessor-in-interest approached the L&DO for an inspection and the proforma drawn up for the said purpose Annexure A-40 also indicated it as commercial. The applicant himself was called upon to pay additional ground rent at commercial rates for the additional floors (first floor) which was paid on 27.12.1988 as evidenced at Annexure A-41 after which the permission for sale was obtained in 1989. The applicant came into possession of the premises vide sale deed dated 28.02.1989 and it was thereafter that an application was made to convert the property from leasehold to freehold. The input checklist for conversion, as prepared by the L&DO Annexure A-45 also indicated the property to be a shop and the charges paid by the applicant for conversion was also at commercial rates. There was no undertaking made by the applicant at any point of time nor by his predecessor-in-interest that the property would be

used only for residential purpose or no commercial purpose would be carried on in the upper floors.

15. Before we look at the documents, as referred to by the applicant, we have to specifically notice that the admitted position is that the ground floor of the property in question was given in possession on lease, and subsequently conveyed, to be used as a shop for commercial purpose. The question is only whether the upper floors can be constructed and used for commercial purpose. Annexure A-29, the certificate of possession, specifically speaks of house No. 32 in Block No.25 out of which Shop No.106 in Rajinder Nagar was given possession to the predecessor in interest. We cannot place any reliance on Annexure A-31 since there is nothing in the said document of 1957, indicating that the New Rajinder Nagar Market was intended as a fully commercial one. Nor is anything placed before us to indicate that the documents of such property was similar to the demise of possession in favour of the applicant's predecessor-in-interest. Further admittedly on the said date there was no additional construction sought for by the predecessor-in-

interest and what existed was the ground floor shop. Annexure A-34 is an office order issued by the L&DO in the year 1979 specifically dealing with shop-cum-residences and the user clause having been specified as shop-cum-residence which has no bearing on the issue.

16. Annexure A-37 is a lease deed dated 06.08.1987 in favour of Shri Hira Lal, the predecessor-in-interest of Shop No.106 of New Rajinder Nagar which does not speak of any first floor having been constructed as contended by the applicant, in the year 1961. On the very same day, Annexure A-38 deed of conveyance was also executed, which, in its Schedule I, specifically speaks of a single storied building which again puts to peril the contention of the applicant that there was a first floor constructed in the year 1961 and the same was also intended for commercial use.

17. Annexure A-39 is a notice of inspection issued to the predecessor-in-interest in the year 1988 when as contended by the applicant the leasehold rights in the premises was sought to be sold. Therein it has been specifically indicated that the existing building as per the previous plan sanctioned

under lease/construct by CPWD is only 570 sq. feet on the ground floor. True, under paragraph 10, the plans under L&DO were referred to which speaks of first floor coverage of 529 sq. feet, which as per the proforma prepared on inspection had not materialised at that point. There is nothing in Annexure A-41 grant of sale permission to indicate that the payments were made on commercial rates. The sale deed itself is relied on by the applicant, produced as Annexure A-43 which is dated 28.02.1989 by which the leasehold rights was transferred to the applicant. The specific recital in the said deed indicates a government-built Shop No.106, measuring 89 sq. yards situated in the *abadi* of New Rajinder Nagar, Shankar Road, New Delhi with the specified boundaries, the leasehold rights in which were intended to be conveyed. Hence, as on the date on which the sale was made to the applicant, Shop No.106 had only the ground floor, in the plot of 89 sq. yards area.

18. It is also pertinent that this Court by order dated 20.05.2025 directed the officers of the MCD to visit the premises and report on the compliances. It was also

specified that those who want relief of de-sealing must apply to this Court. This Court also observed that if such applications are made before Court, the same would be considered on its merits without being influenced by orders passed by the Judicial Committee. In this context, we cannot but notice the finding of the Judicial Committee with respect to a circular issued by the DDA dated 22.06.2025, which referred to a case filed by one Asha Pal Gulati in which the High Court of Delhi after examining the issue and keeping in view the circular issued by the L&DO in 1983 directed that with respect to the use of the top floors there would be no proceedings for misuse. We have not been informed, how the said circular would apply to the applicant herein, especially in the context of the communication issued by the DDA itself on 27.11.2018 produced as Annexure P/1 in I.A. No.32418 of 2024. In the said letter it has been specified that shop-cum-residence/shop-plot complex declared as LSC and CSC (Local Shopping Centre and Convenience Shopping Centre), wherein standard plan was used, the upper floor was intended to be residential. Whereas in shop-plot complex which were not made as per the standard plan,

the total plan was for commercial use. The conversion was allowed after payment of conversion charges in which circumstances the earlier clarification issued by the DDA was annulled especially noticing that there was no intention for the owners of the shop-cum-residential complexes to obtain windfall gains.

19. The above communication has to be juxtaposed with Annexure A49, Deed of Conveyance issued in the name of the applicant herein. It is true that in Annexure A47 and A48 referring to the execution of 'Conveyance Deed and Conversion from lease hold to free hold', it was specified that there was no undertaking given by the applicant that the premises will be used only for residential purposes. However, the absence of the undertaking cannot lead to the corollary that the permission was for commercial purposes especially when the plan appended to the Conveyance Deed as seen from I.A. No.203615 of 2024 speaks of "proposed shop-cum-residential building plan of plot No.106 situated at New Rajinder Nagar, New Delhi for Sh. Vinod Kumar Arora (the applicant)". The said plan indicates sanction of

residential apartments over the shop building and a basement for storage purposes. The sanction is for residential buildings with kitchen, bathroom, bedroom etc. Hence the plan approved for construction of the upper floors was clearly intended for residential purposes, as applied for by the applicant, putting again to peril, the contention that the predecessor-in-interest had constructed the first floor and put it to commercial use.

20. The learned Senior Counsel for the MCD further enlightened us on the different categories of markets across Delhi with reference to the Master Plans notified for Delhi. The first Master Plan for Delhi was MPD-1962, replaced by the 2nd Master Plan, MPD-2001 published on 01.08.1990 and then the 3rd Master Plan, MPD-2021 which came into effect on 07.02.2007. We have from the documents produced by the applicant himself, found that the applicant has obtained a sanctioned plan for construction only in the year 2005. The Master Plan for 2021 conceived the Community Centres (CC) as shopping and business centres while the Local Shopping Centre (LSC) and the Convenience Shopping Centre (CSC)

would cater to the day-to-day needs of the local population. Certain areas developed prior to 1962 like Lajpat Nagar, Rajouri Garden, Tilak Nagar, Kamla Nagar and others which existed prior to MPD-1962 had consolidation of commercial activities.

21. The LSCs were categorised into two categories, one meant exclusively for commercial use and the other for mixed use where commercial activity was allowed to be carried out on the ground floor and residential activity permitted on the upper floors. MPD-2021 designated some of the shop-cum-residential complexes which were earlier termed as 'shop-cum-residence' plots/shops as Local Shopping Centres and permitted commercial use of floors above the ground floor, subject to payment of conversion charges. The former category of LSCs wherein exclusively commercial activities were carried out, were thus called planned LSCs while those in which conversion of the 'residential' to 'commercial' was permitted were called designated LSCs. New Rajinder Nagar in which the applicant's plot is situated has been notified as a pre-1962 built up residential and rehabilitation colony. The

understanding of the applicant was also not otherwise since the sanctioned plan produced along with the IA, as applied for the applicant, clearly indicates the sanction of residential areas on the upper floors.

22. One of the distinguishing factors is that the planned LSCs, where commercial use was permitted, uniformly had a Floor Area Ratio (FAR) of 100 in all the Master Plans for Delhi. Insofar as the designated LSC's are concerned, FAR was always one that was permissible for residential plots which could go up to a maximum of 350 FAR. The Counter Affidavit filed on behalf of the MCD tabulates the FAR as per the sanction granted to the applicant which is 162.32 while the existing area is 217.08; bringing forth an additional of 69.22 sq. mtrs, in excess of that sanctioned for the area of the plot, which is 89 sq. yards. The permissible FAR upto 350 is computed as 3.50×74.40 sq. mtrs. which equals 260.40 sq. mtrs for the subject plot. This clearly indicates, according to the MCD, that the applicant's plot is situated in the shop-cum-residential LSC which by MPD-2021 is a designated LSC permitting conversion of the residential area to a commercial

area after payment of the conversion charges. The Counter Affidavit also speaks of FAR in excess of that sanctioned, inviting penalty charges for the purpose of regularisation. The Counter Affidavit also notices non-compoundable deviations on the 1st floor and 2nd floor on the back side.

23. On a broad overview of the documents produced by the applicant with respect to Shop no. 106 in New Rajinder Nagar Market, we find that the lease and the subsequent freehold rights granted permits only the ground floor to be used as commercial area. The applicant though contends that the 1st floor was built by his predecessor-in-interest and used as a commercial area, there is nothing produced to establish the same. On the contrary, the conveyance deed obtained by the applicant as produced by him in the IA, referred to by us, has been annexed with an approval for construction of upper floors in the year 2005, which approval is also for residential spaces on the upper floors. We find the New Rajinder Nagar Market to be a shop-cum-residence LSC as designated in the MPD-2021. The FAR of the building already constructed, with the upper floors further fortify the contention of the MCD that

over the shop residential spaces were constructed, since the FAR sanctioned exceeds that for commercial spaces. The upper floors though eligible for conversion, it can happen only with payment of the conversion charges. The additional FAR as built and existing in excess of that sanction will also have to be regularised by paying penalty charges and any non-compoundable constructions will have to be removed. In the above circumstances, we reject the I.A. filed by the applicant to de-seal the premises at Shop/Plot no. 106, New Rajinder Nagar Market and also reject the prayer for permitting the use of upper floors as commercial.

24. We have to notice from the Counter Affidavit, the violations which were found on inspection with notice to the applicant. However, we direct the MCD to issue a further notice for inspection which shall be jointly done and the violations intimated by a written order specifically pointing out the non-compoundable constructions. The order shall also indicate the conversion charges payable for the upper floors and the penalty charges for regularisation of excess FAR from that sanctioned. The applicant would be entitled to comply with the order passed removing the non-

compoundable constructions/ projections and depositing the conversion charges as also the penalty charges for regularisation of the excess FAR so as to carry out commercial activities in the upper floors.

25. With the above directions, the I.A. stands rejected.

..... CJI.
(B. R. GAVAI)

..... J.
(K. VINOD CHANDRAN)

New Delhi;
October 31, 2025.