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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6680/2018, CM Nos.25413-14/2018 & 25961/2018**

DR KAUSHAL KANT MISHRA Petitioner

Through : Mr. Gopal Sankaranarayanan,
Mr. Manish Verma and
Mr. S. Bhardwaj, Advs.

versus

UNION OF INDIA & ORS Respondents

Through : Mr. Ripu Daman Bhardwaj,
CGSC with Mr. T.P. Singh
and Mr. Neeraj Kumar,
Advs. for R-1,2&4.

Mr. Pinaki Misra, Sr. Adv.
with Mr. Manoj Kumar Das
and Mr. Shailesh Kumar
Singh, Advs. for R-3/NBCC.
Mr. Ramesh Singh, St.
Counsel with Mr. Sanjay
Dewan, Adv. for GNCTD.

Mr. Kush Sharma and
Mr. N. Luthra, Advs. for
DPCC with Mr. Dinesh
Jindal, LO, DPCC.

+ **W.P.(C) 6821/2018**

SURENDER SINGH Petitioner

Through : Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through : Mr. Ripu Daman Bhardwaj,
CGSC with Mr. T.P. Singh
and Mr. Niraj Kumar, Advs.
for R-1&2.

Mr. Pinaki Misra, Sr. Adv.
with Mr. Manoj Kumar Das
and Mr. Shailesh Kumar
Singh, Advs. for R-3.
Mr. Kush Sharma, Adv. with
Mr. Dinesh Jindal, LO,
DPCC.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **04.07.2018**

CM No.25961/2018 in W.P.(C) 6680/2018 (by petitioners for amendment of the writ petition)

1. Issue notice to the non-applicants/respondents.
2. Mr. Ripu Daman Bhardwaj, Advocate accepts notice on behalf of respondent nos.1,2 and 4; Mr. Manoj Kumar Das, Advocate accepts notice on behalf of respondent no.3; Mr. Kush Sharma, Advocate accepts notice on behalf of respondent no.5 and Mr. Ramesh Singh, Standing Counsel accepts notice for Government of NCT of Delhi.
3. Having regard to the nature of the application whereby amendment of the writ petition has been sought, counsels have been orally heard.
4. The applicant has sought impleadment of the Tree Officer as respondent no.6 in the present matter. As a result, the petitioner

seeks leave to incorporate a challenge to the various permissions granted by the Tree Officer for felling trees in Delhi and for this purpose, has sought to incorporate additional grounds as well as additional prayers seeking quashing of the permissions granted by the Tree Officer.

5. There is no legal impediment to the grant of the prayer made by the applicant. The proposed impleadment and amendments to the writ petition are necessary for complete and effective adjudication of the issues pressed by the writ petitioner.

6. In view thereof, the petitioner is permitted to implead the Tree Officer as respondent no.6 and also to incorporate the factual averments, the additional grounds and the prayer in the writ petition.

7. The amended writ petition filed by the petitioner is taken on record.

8. This application is allowed.

W.P.(C)Nos.6680/2018 & 6821/2018

1. In our view, the Delhi Development Authority, who has been assigned the functioning of planning in the city of Delhi under the provisions of Delhi Development Act, 1957, is a necessary as well as a proper party for the purposes of complete and effective adjudication of the writ petition. We therefore, direct impleadment of the Delhi Development Authority as party respondent no.7 in the matter.

2. We also direct impleadment of Delhi Jal Board and New Delhi Municipal Council as party respondent nos.8 and 9 respectively in this writ petition.
3. The petitioner shall file an amended memo of parties within three days from today.
4. Mr. Ramesh Singh, Standing Counsel accepts notice on behalf of the newly added respondent no.6 - Tree Officer.
5. Notice on behalf of the respondent no.7 - DDA is accepted by Mr. Ajay Verma, Id. Sr. Standing Counsel, who happens to be present in court. Let a copy of the writ petition be furnished to Mr. Ajay Verma, Sr. Standing Counsel.
6. Subject to the petitioner taking steps within two days, issue notice to the newly added Delhi Jal Board – respondent no.8 and New Delhi Municipal Council – respondent no.9 through standing counsels. Notice issued shall inform the respondents that counter affidavits shall be filed within 10 days of receipt of notice.
7. Time is sought to file counter affidavits. Let the same be filed within 10 days from today.
8. In its counter affidavit, the Government of NCT of Delhi shall place all material before this court as to how equivalence is drawn between one fully grown tree and a sapling.

9. There is another critical aspect of the matter. Afforestation envisages planting of saplings which naturally have to be nurtured. The Union of India and Delhi Development Authority shall explain the source of water wherefrom these trees would be nurtured and watered.

10. The Delhi Development Authority shall explain in its counter affidavit as to how after full development of the area based on population projection in terms of the buildings; roads; laying of sewage line and water pipes, making provisions for water and electricity; solid waste generated and its management; sewage generated and managed, the plan for the same area is revised/amended retrospectively with drastic changes in density.

11. The DDA shall also explain as to how the user of a residential area (Kidwai Nagar), is changed to commercial.

12. The respondents shall place before this court in a tabulation the following :

(i) The respondents shall specifically inform this court about the available circulation in the nature of pavements and roads and the population for which they were intended to cater when originally constructed. The respondents shall state on affidavit the number of vehicles using the road at present as against the number of vehicles expected to access the “*redeveloped*” area/construction or leave therefrom.

- (ii) The Union of India, the Delhi Development Authority and the NBCC shall on affidavit inform this court about the existing constructions/demolished construction and the proposed constructions as well as the change of user. The affidavit shall inform this court about the area of the respective usages. Specific details of the nature of the construction in terms of area; room distribution (bedrooms; living area; drawing room; kitchen; guest room; store; pantry; study room; *pooja* room, garage or attached parking space etc.) shall be specifically stated.
- (iii) Details of schemes for “*redevelopment*” or conversion of existing plots/areas into residential and/or commercial purpose anywhere in Delhi which was under implementation or are under consideration.
- (iv) The population density projection based whereon the original development was effected and the change in the population density upon implementation of the changes, both in terms of number of family units and number of individuals.
- (v) The infrastructure including circulation as pavements and roads; open spaces; common services; water and electricity supplies available in the existing colonies. The respondents shall set down against the above the projected needs of the proposed “*redevelopment*” and the sources wherefrom these

would be supplied. The changes in all of the above be set down.

- (vi) The liquid waste or sewage generated by the existing colonies and the projected increase after the so called “*redevelopment*” is completed and occupied and the manner and place where it would be disposed of. The DJB shall state the changes to its systems being carried out.
- (vii) The solid waste generated by the existing colonies and the quantification of the solid waste which would be generated after the development was effected and occupied as well as the manner in which the same would be collected and disposed of.

13. Each of the respondents shall answer such of the issues as relate to exercise of jurisdiction and powers by them. For instance, DJB shall respond to the issues of water, sewage; NDMC regarding the roads, garbage sewage, etc.

14. The DDA has undertake massive construction activity of flats all over Delhi. We are not sure that these flats stand utilised for the purpose they were intended. Residential flats stand constructed in every part of the Delhi by DDA. The Commonwealth Games Village (CWG) is a huge complex of flats constructed by the DDA. Let the DDA disclose specifically the following in a tabulation :

- (i) Name of the project (*say Jasola, CWG, Narela, etc.*)
- (ii) Nature of construction (*say flats LIG, MIG, HIG or other*)

- (iii) Category wise details of flats disposed of and available.
- (iv) Purpose for which constructed.
- (v) Whether change in the manner of allotment.
- (vi) Number of un-allotted properties.
- (vii) Number of vacant properties.

15. The DDA shall, on affidavit, inform this court about the land and area under its control lying unutilized.

16. The affidavits shall be filed positively within 10 days from today. Rejoinders thereto, if any, be filed before the next date of hearing.

17. The submissions pressed by the petitioner point out that the very definition of the expression “*development*” and “*redevelopment*” require an in depth consideration.

18. The environmental impact of action or non-action of the respondents in Delhi is not only proverbial but has been the subject matter of adverse comments by the Supreme Court of India and this court in a series of judgements. Amongst others, reference may usefully be made to the pronouncement of the Supreme Court in *M.C. Mehta v. Union of India, (1992) 3 SCC 256* wherein as back as on the 15th May, 1992, the court made the following critical observations :

“2. We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it

becomes a health hazard for the residents of the area. We are constrained to record that Delhi Development Authority, Municipal Corporation of Delhi, Central Pollution Control Board and Delhi Pollution Control Committee have been wholly re-miss in the performance of their statutory duties and have failed to protect the environments and control air-pollution in the Union Territory of Delhi. Utter disregard to environment has placed Delhi in an unenviable position of being the world's third grubbiest, most polluted and unhealthy city as per a study conducted by the World Health Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution-free environments."

(Emphasis by us)

19. On 5th April, 2002 in *M.C. Mehta v. Union of India, (2002) 4 SCC 356*, a three-Judge Bench of the Supreme Court noted its order dated 23rd September, 1986 and observed thus:

*"1. Articles 39 (e), 47 and 48A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment. It was by reason of the **lack of effort on the part of the enforcement agencies, notwithstanding adequate laws being in place, that this Court has been concerned with the state of air pollution in the capital of this country. Lack of concern or effort on the part of various governmental agencies had resulted in spiralling pollution levels.** The quality of air was steadily decreasing and no effective steps were being taken by the administration in this behalf.*

2. *It was by reason of the failure to discharge its constitutional obligations, and with a view to protect the health of the present and future generations, that this Court, for the first time, on 23rd September, 1986, directed the Delhi Administration to file an affidavit specifying steps taken by it is for controlling pollution emission of smoke, noise, etc. from vehicles plying in Delhi.*

3. *The concern of this Court in passing various orders since 1986 has only been one, namely, to protect the health of the people of Delhi. It is only with this objective in mind that directions had been issued in an effort to persuade the governmental authorities to take such steps as would reduce the air pollution...*

(Emphasis by us)

20. A Division bench of this Court, as back as on the 6th of February, 2004, in ***Ramjas Foundation v. Union of India, (2004) 110 DLT 10 (DB)*** was conscious of the ordeal of Delhi in view of the roaring population. Speaking through *B.C. Patel, CJ*, this court noted thus:

*“36. How the city suffers, is pointed out in *Jai Narain v. UOI, 1996 (1) SCC 9* and particularly in para 11 (that was a case with regard to construction of STP). It is also pointed out by the Apex Court, in the “said case, about the increase in population. The population of Delhi was about 17 lakhs in 1961. It reached approximately 94 lakhs as per 1991 census. In fact, 4 lakhs people are added to the population of Delhi every year out of which about 3 lakhs are migrants. If city is not developed, the people are likely to face many problems such as the air pollution on account*

of vehicular traffic, erection of industries without any planning and not providing proper treatment plant. It is in view of the haphazard planning which effects the quality of environment and that cannot be permitted. Every citizen has a right to fresh air and to live in pollution free environment. Work must be carried out by development authorities so as to see that it is a planned city. The areas are planned as per development Act, Master/Zonal Plan. When our economy is in competition with the world market it should not be forgotten that to attract foreign investment to the maximum extent is most important aspect. In the present highly competitive system if the development is not permitted and facilities are lacking then public at large will suffer. There is need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. The courts have to weigh the public interest vis-a-vis the private interest while exercising power under Article 226 of the Constitution of India - indeed in exercise of their discretionary power. ...”

21. On the 7th of May, 2004, in ***M.C. Mehta v. Union of India, (2004) 6 SCC 588***, after considering the *Guidelines for Master Plan for Delhi, 2021* issued by the Ministry, which highlighted the concerns which required resolution as well as the policy initiatives required to deal with the issued prevalent in Delhi, the Supreme Court made the following strong observations:

“15. ... The guidelines noticed that a major issue confronting the planned development of Delhi is the apparent and frequent violation of the planning and development and control norms. It states that there is a

growing variation between the plan for Delhi and city on the ground and, therefore, it is essential that the master-plan policies should be implementable in an effective manner and vigorously enforced. The existing legal framework for enforcement of the master-plan provisions including unauthorised construction and encroachment on public land also needs examination so as to initiate proposals for its strengthening where necessary. ...”

(Emphasis by us)

22. Not very long thereafter, again on the 29th September, 2006 in *M.C. Mehta v. Union of India, (2006) 7 SCC 456*, Y.K. Sabharwal, CJI, speaking for a bench of three-Judges held as follows:

“The city of Delhi is an example of a classical case, which, for the last number of years, has been a witness of flagrant violations of municipal laws, town planning laws and norms, Master Plan and environmental laws. It is borne out from various orders and judgments passed by this Court and the Delhi High Court, whether in a case of shifting of hazardous and polluting industries or providing cleaner fuel (CNG) or encroachment of public land and streets or massive unauthorised construction and misuser of properties. It is a common knowledge that these illegal activities are also one of the main sources of corruption.”

(Emphasis by us)

23. Decades have passed since filing of the first petition in *MC Mehta* in 1985. However, it seems that the situation could not be salvaged. The respondents continue to act in blatant disregard to

the continuous directions issued by this court, the Supreme Court of India and the National Green Tribunal. As recently as on 15th December, 2017 in *M.C. Mehta v. Union of India, (2018) 2 SCC 144*, the Supreme Court speaking through *Madan B. Lokur, J.*, opens its judgment with the following words :

“Invaders have pillaged Delhi for hundreds of years, but for the last couple of decades it is being ravaged by its own citizens and officials governing the capital city – we refer to unauthorized constructions and misuse of residential premises for industrial and other commercial purposes. This Court has focussed on these illegal activities in several decisions and has issued directions from time to time to try and bring some sanity to urban living but to little or no effect.”

(Emphasis by us)

25. Despite the above observations, alarming levels of air pollution in Delhi have been reached; the traffic congestion on the Delhi roads is proverbial; there is no land for dumping solid wastes in Delhi and sewage system is antiquated and unable to bear even the existing load and water and electricity supply in short supplies is common knowledge. Yet the respondents appear to be bent upon putting unwarranted pressure on the existing system, more so on the centre of Delhi. Instead of decongesting the city, or even maintaining status quo regarding the pressure on available facilities, double storey quarters have been demolished with the

object of replacing with multi-storeyed towers with a proposal to put large areas therein to commercial use completely changing the footfall in those areas as well as the pressure on all public services.

26. Such so called “*redevelopment*” is being effected even in immediate proximity of some of the largest hospitals in Delhi which *prima facie* puts tremendous pressure on access of emergency public facilities as ambulances to the hospitals and grossly imperil the availability of emergency medical facilities to the patients. Looking from any angle, this matter brooks no delay at all. The impact on the environment and the city would be completely irreversible. The issues need to be addressed at the earliest.

27. Till further hearing in the matter, the respondent no.6 - Tree Officer is prohibited from granting any permission for cutting or felling of trees without leave of this court. The respondents shall also stand prohibited from cutting down or removal of any tree pursuant to permissions which have been granted by the Tree Officer – respondent no.6 without leave of the court.

28. We are informed by Mr. Ramesh Singh, Id. counsel that Government of NCT of Delhi has already intervened in the matter and is taking steps for review and recall of the permissions granted by the Tree Officer.

29. Given the importance of the matter, we are of the view that the presence of experts, who have been concerned with the several

issues required to be considered, is imperative. We therefore, appoint Mr. M.C. Mehta and Ms. Isher Judge Ahluwalia, environmentalists as well as Mr. Gautam Bhan (*Mob.:* 9953951219; *e-mail :* *gautam.bhan@gmail.com*), expert in urban planning as *amici curiae* in the present matter.

30. Let a complete paper book be furnished by ld. counsel for the petitioner to the *amici curiae* within two days from today.

31. The Registry shall furnish a copy of the order dated 25th June, 2018 as well as the present order to the *amici curiae* forthwith.

32. The issues pressed by the petitioner in W.P.(C)No.6821/2018 are the subject matter of the writ petition being W.P.(C)No.6680/2018. On request of ld. counsel for the petitioner, W.P.(C)No.6821/2018 is treated as an impleadment application in WP(C)No.6680/2018.

33. The Registry is directed to de-register the writ petition being W.P.(C)No.6821/2018 and register the same as an impleadment application in WP(C)No.6680/2018.

34. List on 26th July, 2018.

CM No...../2018 (*WP(C)No.6821/2018 be registered as this application*)

1. Issue notice to the petitioners.
2. Ld. counsels appearing for the petitioners accepts notice.

3. Having regard to the nature of the application, the counsels are orally heard.

4. The applicant Mr. Surender Singh is permitted to be impleaded as co-petitioner no.2. Let amended memo of parties be filed within three days.

5. The application is disposed of.

Dasti under signatures of the Court Master.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 04, 2018

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