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M.C. MEHTA

v.

UNION OF INDIA AND ORS.

FEBRUARY 16, 2006

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[Y.K. SABHARWAL, C.J. AND B.N. SRIKRISHNA AND
R.V. RAVEENDRAN, JJ.]

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Constitution of India—Articles 21 and 32—Blatant and large-scale misuse of residential premises for commercial use in Delhi—Lack of enforcement of building and land use laws and orders of Courts for their implementation—Held, rule of law is the essence of democracy—It has to be preserved—Laws have to be enforced—Supreme Court cannot remain a mute spectator when misuse affects the environment and healthy living of the citizens—Implementation of the law to stop blatant misuse of land cannot be delayed further—It has to be stopped in a phased manner beginning with major violators—Beginning has to be made to stop misuse on main roads of 80 feet width or more—Detailed directions issued—Rule of law—Role of Judiciary.

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Constitution of India—Articles 32 and 21—Town planning—Misuse of residential premises—Right of non-violator to compensation—Polluter pays principle—Blatant and large-scale misuse of residential premises for commercial purposes in Delhi with the connivance of Government Officials—Held, misuse has to be stopped—Violators and Government officers are accountable for the hardship, inconvenience and suffering caused to residents of the locality—It is necessary to identify and take appropriate action against officers responsible for violation of building and land use laws—Appropriate directions for payment of compensation by violators and such officers and exact manner of applicability of polluter pays principle would be issued after the misuse is stopped.

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Constitution of India—Part LX A—Delhi Municipal Corporation Act 1957—Section 349A—Power of Central Government to enact bye-laws for building regulations—held, Town planning is now part of Constitutional obligation and section 349A was inserted to give effect to that obligation—Town planning.

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Delhi Municipal Corporation Act—Section 312, 313, 336(2) and 347—

Land use—Planning laws laying down specific use of land—Held, use of land cannot be changed—Even Municipal Corporation of Delhi cannot accord sanction of erection of a commercial building if the notified land use is residential—Provision for user may be regulatory but they are mandatory and binding—None has any right, human or fundamental to violate the law with immunity and claim any right to use a building for a purpose other than one authorized—Town planning—Delhi Master Plans 1962 and 2001.

Delhi Municipal Corporation Act—Section 345A, 343 and 344—Misuse of premises—Power of Municipal Corporation of Delhi to seal—Held, MCD is empowered u/s 345A to exercise power of sealing in case of misuse of any premise—Sealing can be resorted to at any time before or after making an order of demolition u/s 343 or 344—View of Delhi High Court reversed on this point.

Delhi Municipal Corporation Act—Section 331 and 345A—Building bye-laws for the Union Territory of Delhi 1983—Bye-law nos. 2.17 and 2.85—Held, conversion of user of premises come within the purview of “to erect a building” so as to attract sealing provision of s. 345A.

Delhi Development Act 1957—Section 12, 31A and 36—Misuse of residential premises for commercial purposes—Power of DDA to seal—Held, the DDA has power to seal the premises for unauthorized development u/s 31A—It has no power of sealing in case of misuse—Misuse does not come within the ambit of development.

Large scale flagrant violation of various laws including municipal laws, master plan and other plans besides environmental laws throughout Delhi have been engaging the attention of this court for a no. of years. With a view to secure the implementation of laws and protect fundamental rights of the citizens, repeated orders were passed from time to time. The court had to prioritize as to which violations were to be taken up first and then issue appropriate directions. Directions were issued in respect of shifting of hazardous and extensive industries out of Delhi. Despite all these orders, more and more violations were taking place. In the present petition, the court has taken up the issue of large scale misuse of premises in residential areas for commercial use.

The question under consideration also is about the powers of MCD and DDA to direct demolition and/or sealing of the properties being misused.

Earlier a writ petition was filed by residents of a residential colony,

A Green Park Extension, in Delhi High Court, alleging misuse of residential premises for commercial purposes and total inaction on the part of the authorities in stopping such misuse. A full bench of the High Court came to the conclusion that neither under the Delhi Municipal Corporation Act nor under the DDAct, there was any power to seal property for its misuse, *inter alia*, holding that the power of sealing of premises is drastic as by reason of such sealing, a person could become homeless, thus, affecting his human or fundamental rights and that power of sealing in relation to misuse has been intentionally excluded from the provisions of the two Acts. This judgment is also under challenge before the court.

C Disposing of the petition, the court

HELD: 1.1. This court has a constitutional duty to protect the fundamental rights of Indian citizens. When violators and/or abettors of the violations are those, who have been entrusted by law with a duty of protect these rights, the task becomes difficult and also requires urgent intervention by court so that the rule of law is preserved and people may not lose faith in it finding violations at the hands of supposed implementers. The problem is not of the absence of law, but of its implementation.

[271-A-B]

E 2.1. It is not in dispute that large numbers of residential premises are being misused for commercial purpose. The question is - can the MCD stop such misuser by putting a seal on misused property? For dealing with the question of power of MCD to seal the premises in case of misuser, it is necessary to examine few provisions of the DMC Act. [274-D-E]

F 2.2. Chapter XVI of the DMC Act deals with building regulations and comprises Sections 330A to 349A. The definition of the words 'to erect a building' is very pertinent for deciding the present question. Clauses (c), (h) and (j) of Section 331 bring in the concept of user of a building for the purpose of definition of the expression 'to erect a building'. Under clause (h), if any building not originally constructed for use as a stall, shop, warehouse etc. is converted for use as such, it would fall within the expression 'to erect a building'. In respect of an area where the notified/specified land use is residential sanction for erection of a commercial building cannot be accorded, as is apparent from sub-section (2) of Section 336. Section 347 contains a specific prohibition for change of the use of any land or building. A bare perusal of building bye - laws shows how relevant is the user, commercial or residential, and the large impact of

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occupation load on various facilities including water, sanitation and drainage. [275-E-F; 277-A-B; 282-A; 283-C] A

2.3. Keeping future needs in view, experts prepare Master Plans. Perusal of the Delhi Master Plan, 1962 and 2001 shows what were plan projections. At the time of planning, the experts in the field of town planning, take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses to be built and where the commercial buildings to be located, need of household industries etc. Provision for household industries in residential areas does not mean converting residential houses into commercial shops. It only means permitting activities of household industry in a part of a residential property. Neither layout plan, nor the building plan, can be sanctioned by MCD except in the manner and for the purpose provided in the master Plan. If in the master plan, the land use is residential, MCD cannot sanction the plan for any purpose other than residential. The provision of user may be regulatory but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory provisions on massive scale can result in plans becoming merely scraps of papers. That is the ground reality in the capital of the country. None has any right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorized. [283-D-E; H; 284-A-C] B C D E

2.4. The provision of sealing as contained in Section 345A of the DMC Act was inserted by Act 42 of 1984 with effect from 10th December, 1985. One of the objects for the amendments, as stated in the Statement of Objects and Reasons, is to contain massive conversion of residential constructions into commercial complexes. A plain reading of section 345A shows that sealing can be resorted to at any time, before or after making an order of demolition under Section 343 or under Section 344 in respect of such erection being carried on or completed, for the purpose of carrying out the provisions of the Act. In view of the clear language of Section 345A, This Court is unable to sustain the view of the High Court that action under Section 345A can be taken only when there exists order of demolition under Section 343 or an order under sub-section (1) of Section 344. It is clear from a conjoint reading of the definition of the expression 'to erect a building' in Section 331 and Section 345A that conversion of user would come within the purview of the expression 'to erect a building'. In this respect useful reference can also be made to Building Bye - Laws F G H

A for the Union Territory of Delhi, 1983, in particular Bye-Law Nos. 2.17 and 2.85, defining the expressions 'Conversion' and 'To Erect' respectively. Having regard to these definitions if a Building/structure not originally constructed for use as a shop, is put to use as a shop, such conversion of use would come within the ambit of the expression 'to re-erect' and, consequently, within the ambit of the definition of the expression 'to erect a building'. In view of the aforesaid, reversing the impugned judgment of the High Court, it is held that under Section 345A of the DMC Act, the Commissioner of MCD is empowered to exercise power of sealing in case of misuser of any premises.

[278-C; 279-B; 284-D-G; 285-C-D]

C 3. Section 31A of Delhi Development Act 1957 empowers DDA to seal unauthorised development. If the misuser of the premises would come within the ambit of unauthorised development, DDA would have power to seal the premises. On the other hand, if misuser does not come within the ambit of 'unauthorised development', the power of sealing would be lacking. The scheme under the DD Act clearly seems to be that during development it is the responsibility of DDA to demolish and seal any premises if there is contravention. After the handing over of the area to the local authority under Section 36, the power of demolition and/or sealing is conferred on that authority. That local authority may be MCD or cantonment or any other authority depending upon the developed area falling in the local limits of one or the other. The Act does not contemplate that both DDA and the competent authority would have concurrent power even after the local authority has assumed responsibility as provided in Section 36. Unlike Section 331, there is no provision in the Delhi Development Act to confer on the authority the power of sealing in case of misuse. Misuse does not come within the ambit of development.

[287-E-F; 288-D-G; 289-A-C]

G 4.1. Now, reverting back to the task of implementation, despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuse cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it.

[295-D-E]

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4.2. Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, *prima facie*, such large scale misuse, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuse. [298-F-H; 299-A-B]

4.3. 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. According to MCD, the major violation has been determined in respect of those roads where commercialization 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 misuse 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 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, further directions would be issued including constitution of a Monitoring Committee, if necessary. The issue of accountability of officers and also the exact manner of applicability of Polluter Pays Principle to owners and officers would be further taken up

A after misuse is stopped at least on main roads. [300-H; 301-A-D]

M.C. Mehta v. Union of India, [2004] 6 SCC 588; *News Item AQFMY v. Central Pollution Control Board*, Writ Petition No. 725 of 1994, Order dated 31st July, 2001; *Ahuja Property Developers (P) Ltd. v. M.C.D.*, (1990) 42 Delhi Law Times 474; *DDA v. Rajinder Mittal*, (1991) 20 DRJ 65; *ANZ Grindlays Bank v. The Commissioner, M.C.D. and Ors.*, (1995) 34 DRJ 492 and *Anil Kumar Khurana v. MCD*, (1996) 36 DRJ 558, referred to.

CIVIL ORIGINAL JURISDICTION : Interlocutory Application No. 22

IN

C Writ Petition (Civil) No. 4677 of 1985.

(Under Article 32 of the Constitution of India)

WITH

D IA Nos. 1816 & 1860 in WP (C) No. 4677/1985, C.A.Nos. 5413 & 8694 of 2002, SLP(C) Nos. 23145, 23220, 23896, 23934 of 2002, 7128/2004, 23139/2002 & C.A. Nos. 608-611/2003.

E B. Dutta, A.S.G., Ranjit Kumar, (A.C.) Ashwani Kumar, V.P. Singh Manmohan, M.C. Mehta-in-Persson, Ms. B. Vijaylakshmi Menon, Sanjiv Sen, Praveen Swarup (N.P.), Sudhir Nand Raj Yog, Vishnu B. Saharya (for M/s. V.B. Sharya & Co.), Vijay Panjwami, Mrs. Sheel Sethi, Vikas Sharma, Mrs. Anil Katiyar, D.N. Goburdhan, Ms. Sandhya Goswami, Ajay Siwach, Sandeep Sharma, T.V. George, Ashok Bhan, Mrs. Kiran Bhardwaj, S. Wasim A. Qadri, Manish Jha, Ms. Bina Gupta, Mrs. Rakhi Ray, Ms. Inkle Barooah, Kamendra Mishra, Rajiv Kumar Dubey, Ms. Rashmi Singh, Arun Sinha, Varinder Kumar **F** Sharma, B.K. Prasad, B.V.B. Das, Suresh Chandra Triparthy, Ms. Indu Malhotra Ms. Vibha Datta Makhija, Rajan Narain, R.P. Sharma and Ms. Madhu Sikri for the appearing parties.

The Judgment of the Court was delivered by

G **Y.K. SABHARWAL, CJ.** In respect of large number of immoveable properties throughout Delhi, flagrant violations of various laws including Municipal Laws, Master Plan and other plans besides Environmental Laws have been engaging the attention of this Court for number of years. With a view to secure the implementation of laws and protect fundamental rights of the citizens, various orders were passed from time to time.

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This Court has a constitutional duty to protect the fundamental rights of Indian citizens. What happens when violators and/or abettors of the violations are those, who have been entrusted by law with a duty to protect these rights? The task becomes difficult and also requires urgent intervention by court so that the rule of law is preserved and people may not lose faith in it finding violations at the hands of supposed implementers. The problem is not of the absence of law, but of its implementation.

Considering such large-scale flagrant violations, this Court had to prioritize as to which violations may be taken up first and then issue appropriate directions. In this view, at first instance, directions were issued in respect of shifting of hazardous and noxious industries out of Delhi. Directions were also issued for shifting of heavy and large industries as also some extensive industries. For shifting polluting industries had to be given top most priority. Later, directions were issued for shifting of other extensive industries considering the continued unauthorized use contrary to Master Plan and Zonal Plan, by those industries as well as some other industries continuing in residential/non-conforming areas.

On one hand repeated orders were made to seek implementation of the laws and, on the other hand, simultaneously, more and more violations were taking place. Detailed reference to earlier orders made from time to time, the shifting stand of the authorities, various laws being violated, requirements of Town Planning and the constitutional obligations of the authorities, has been made by this Court in the judgment dated 7th May, 2004 while dealing with unauthorized industrial activity and issuing time bound directions for compliance and appointing a Monitoring Committee with directions for filing of periodical progress reports (*M.C. Mehta v. Union of India*, [2004] 6 SCC 588. The order dated 19th August, 2003 sets out various issues involved including the issue of misuse but, at that stage, the issue of unauthorized industries was given priority and the directions in respect of shifting of industries were issued. In a way, this judgment is in continuation of the judgment dated 7th May, 2004 with the difference that now we have taken up the issue of large scale misuse of residential premises for commercial use.

With regard to commercial use of premises in residential areas, it has been more than three years, i.e., 30th September, 2002 when the order was made directing respondents to file reply. In fact, the question of misuse of residential premises for commercial purposes was taken up even earlier as is

A apparent from the orders dated 31st July, 2001 and 20th February, 2002. By order dated 31st July, 2001 passed in Writ Petition No.725 of 1994 titled *News Item AQFMY v. Central Pollution Control Board*, the Court directed that :

B “The MCD will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential usage is permitted.”

C Again on 20th February, 2002, the Order dated 31st July was reiterated in the following terms :

D “MCD is also directed to file within four weeks from today an affidavit indicating as to what it intends to do for stopping the misuse of the buildings in the residential areas which are being used for commercial purposes as has been directed by this Court’s order dated 31st July, 2001. If no affidavit is filed, the explanation in respect thereof should be given to the Court by the Municipal Commissioner.”

E The learned Amicus Curiae filed IA No.1860/04 referring to aforesaid orders dated 31st July, 2001, 20th February 2002, 30th September, 2002 and 19th August, 2003 and bringing to the notice of this Court a press release dated 22nd July, 2004 issued by Municipal Corporation of Delhi (‘MCD’ for short) declaring a scheme to facilitate registration of shops, establishments, commercial establishments etc. in the non-conforming/residential areas by granting *ad hoc* licences in respect of premises existing till 31st March, 2003.

F This shows the apathy of a municipal body, which is constituted, amongst others, to ensure compliance of the laws. In this application, learned Amicus Curiae sought stay of the press release and the scheme. By order dated 2nd August, 2004, the press release and the *ad hoc* Trade Registration Scheme were stayed by this Court.

G The question under consideration also is about the power of MCD and Delhi Development Authority (DDA) to direct demolition and/or sealing of the properties being misused.

H Few residents of a residential colony by the name of Green Park Extension, making averments about large scale unauthorized constructions

and stating that various letters written to the MCD complaining about the illegal and unauthorized constructions and misuser and consequent violation of Master Plan etc. resulted in no action, filed in about October 1994, a writ petition in Delhi High Court alleging how misuse of residential premises for commercial purposes was taking place, citing specific instances and complaining about total inaction on the part of the authorities in stopping such misuse. According to them, the officers were, in fact, encouraging or conniving with persons who were indulging in such misuse. The officers failed to carryout their statutory duties in stopping such misuse. A writ of mandamus was sought against the authorities directing them not to allow illegal commercial user. Petitioners therein alleged that such misuser and acts of omission and commission by the authorities was resulting in the environment in the residential colony being totally polluted and civic amenities jeopardised.

MCD, in reply, filed in April 1995, i.e., more than 10 years ago, admitted the violations and said that show cause notices had been issued under the Delhi Municipal Corporation Act, 1957 (for short, 'the DMC Act') and the Corporation was doing its best in the matter. The same was the stand of DDA. All officers being directed to file affidavits reporting as to what action had been taken, filed affidavits with reference to the properties of which instances had been given, *inter alia*, stating that owners had been booked and action was being taken. Similar affidavits were filed by both MCD and DDA. In March 2000, MCD filed a status report giving particulars of approximately 663 properties in Green Park Main and 407 properties in Green Park Extension stating that many properties were being used as commercial and others partly commercial. When this was the position in a small colony, one can well imagine the plight in manifold other residential colonies and of residents living in those colonies in the capital city of Delhi.

By impugned judgment dated 31st May, 2002, disposing of the aforementioned writ petition and other connected matters, a Full Bench of the High Court came to the conclusion that neither under the DMC Act nor under the Delhi Development Act, there was any power to seal property for its misuse, *inter alia*, holding that the power of sealing of premises is drastic as by reason of such sealing, a person could become homeless, thus, affecting his human or fundamental rights and that the power of sealing in relation to misuse has been intentionally excluded from the provisions of two Acts. Later, some other matters were also decided by the High Court following the Full Bench decision. Those judgments are also under challenge.

A The judgment of the Full Bench is under challenge in Civil Appeal No.5413 of 2002 filed by the original writ petitioners/residents of Green Park colony and Civil Appeal No.8694 of 2002 filed by the MCD.

The questions to be determined are :

- B A. Whether MCD under the DMC Act has power to seal the premises in case of its misuser?
- B. Whether DDA, under the Delhi Development Act, has also similar power of sealing or not?
- C C. Directions to be issued in respect of residential properties used illegally for commercial purposes.

In these matters, we are considering only the issue of misuser. We are not considering the issue of unauthorized constructions.

D **Re : Question A Whether MCD under the DMC Act has power to seal premises in case of its misuser**

E It is not in dispute that large numbers of residential premises are being misused for commercial purposes. The question is can the MCD stop such misuser by putting a seal on misused property? For dealing with the question of power of MCD to seal the premises in case of misuser, it is necessary to examine few provisions of the DMC Act. The expression 'building' is defined in Section 2(3) of the DMC Act as a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter.

F The expression 'land' as per Section 2(24) includes benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by law over any street.

Section 2(26) defines 'market' as under:

G "Sec.2(26) - "market" includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, meat, fish, fruits, vegetables, animals intended for human food or any other articles of human food whatsoever, with or without the consent of the owner of such place notwithstanding that there may be no common regulation

H for the concourse of buyers and sellers and whether or not any control

is exercised over the business of, or the person frequenting, the market by the owner of the place or by any other person;" A

Section 2(34) defines 'occupier' as under:

"Sec.2(34) "occupier" includes-

(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable; B

(b) an owner in occupation of, or otherwise using his land or building;

(c) a rent-free tenant of any land or building; C

(d) a licensee in occupation of any land or building; and

(e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;"

Under Section 2(59) 'trade premises' means: D

"2(59) - "trade premises" means any premises used or intended to be used for carrying on any trade or industry;"

Chapter XVI of the DMC Act deals with building regulations and comprises Sections 330A to 349A. E

The definition of the expression 'building' shows that it is very wide and encompasses any structure only excluding portable shelter with which we are not concerned. We are concerned with the building and its erection.

The definition of the words 'to erect a building' is very pertinent for deciding the present question. The expression 'to erect a building' is defined in Section 331 as under: F

"Sec.331 Definition.—

In this Chapter, unless the context otherwise requires, the expression "to erect a building" means— G

(a) to erect a new building on any site whether previously built upon or not;

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- A (b) to re-erect—
- (i) any building of which more than one-half of the cubical contents above the level of the plinth have been pulled down, burnt or destroyed, or
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- (ii) any building of which more than one-half of the superficial area of the external walls above the level of the plinth has been pulled down, or
 - (iii) any frame building of which more than half of the number of the posts or beams in the external walls have been pulled down;
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- (c) to convert into a dwelling house any building or any part of a building not originally constructed for human habitation or, if originally so constructed, subsequently appropriated for any other purpose;
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- (d) to convert into more than one dwelling house a building originally constructed as one dwelling house only;
- (e) to convert into a place of religious worship or into a sacred building any place or building not originally constructed for such purpose;
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- (f) to roof or cover an open space between walls or buildings to the extent of the structure which is formed by the roofing or covering of such space;
- (g) to convert two or more tenements in a building into a greater or lesser numbers;
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- (h) to convert into a stall, shop, warehouse or godown, stable, factory or garage any building not originally constructed for use as such or which was not so used before the change;
- (i) to convert a building which when originally constructed was legally exempt from the operations of any building regulations contained in this Act or in any bye laws made thereunder or in any other law, into a building which had it been originally erected in its converted form, would have been subject to such building regulations;
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- (j) to convert into or use as a dwelling house any building which has been discontinued as or appropriated for any purpose other than, a
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dwelling house.”

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Clauses (c), (h) and (j) are very significant. These clauses bring in the concept of user of a building for the purpose of definition of the expression ‘to erect a building’. Under clause (h), if any building not originally constructed for use as a stall, shop, warehouse etc. is converted for use as such, it would fall within the expression ‘to erect a building’.

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In respect of an area where the notified/specified land use is residential, sanction for erection of a commercial building cannot be accorded, as is apparent from sub-section (2) of Section 336. Section 336 reads as under:

“Section 336. - Sanction or refusal of building or work.—

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(1) The Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) of this section or the provisions of section 340.

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(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:—

(a) that the building or work or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order made under such other law;

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(b) that the notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made in this behalf;

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(c) that any information or documents required by the Commissioner under this Act or any bye-laws made thereunder has or have not been duly furnished;

(d) that in cases falling under section 312, lay-out plans have not been sanctioned in accordance with section 313;

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(e) that the building or work would be an encroachment on Government land or land vested in the Corporation;

(f) that the site of the building or work does not abut on a street or projected street and that there is no access to such building or

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A work from any such street by a passage or pathway appertaining to such site.

(3) The commissioner shall communicate the sanction to the person who has given the notice; and where he refuses sanction on any of the grounds specified in sub-section (2) or under section 340 he shall record a brief statement of his reasons for such refusal and communicate the refusal along with the reasons therefor to the person who has given the notice.

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(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf.”

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This takes us to the provision of sealing as contained in Section 345A of the DMC Act. That provision was inserted by Act 42 of 1984 with effect from 10th December, 1985. One of the objects for the amendments, as stated in the Statement of Objects & Reasons, is to contain massive conversion of residential constructions into commercial complexes. The Statement of Objects and Reasons, *inter alia*, states that ‘in recent years, growth of unauthorized colonies, encroachment on public streets, unauthorized construction of public and private lands and conversion of residential constructions into commercial complexes have assumed alarming proportions’.

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Section 345A reads as under:

“Section 345A. Power to seal unauthorised constructions.--

(1) It shall be lawful for the Commissioner, at any time, before or after making an order of demolition under section 343 or of the stoppage of the erection of any building or execution of any work under section 343 or under section 344, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed in the manner prescribed by rules, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

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(2) Where any erection or work or any premises in which any erection or work is being carried on, has or have been sealed, the Commissioner may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

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(3) No person shall remove such seal except—

(a) under an order made by the Commissioner under sub-section (2); or

(b) under an order of an Appellate Tribunal or the Administrator, made in an appeal under this Act.”

A plain reading of the aforesaid provisions shows that sealing can be resorted to at any time, before or after making an order of demolition under Section 343 or under Section 344 in respect of such erection being carried on or completed, for the purpose of carrying out the provisions of the Act. Sections 343 and 344 read as under:

“Sec. 343—Order of demolition and stoppage of buildings and works in certain cases and appeal.—

(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person), as may be, specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against

A the order of demolition, if made, may be preferred under sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the erection or work to which it relates.

B (3) Where an appeal is preferred under sub-section (2) against an order of demolition the Appellate Tribunal may, subject to the provisions of sub-section (3) of section 347C stay the enforcement of that order on such terms, if any, and for such period, as it may think fit:

C
D Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Appellate Tribunal unless security, sufficient in the opinion of the said Tribunal has been given by the appellant for not proceeding, with such erection or work pending the disposal of the appeal.

E (4) No court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

F (5) Subject to an order made by the Administrator on appeal under section 347D, every order made by the Appellate Tribunal on appeal under this section, and subject to the orders of the Administrator and the Appellate Tribunal on appeal, the order of demolition made by the Commissioner shall be final and conclusive.

G (6) Where no appeal has been preferred against an order of demolition made by the Commissioner under sub-section (1) or where an order of demolition made by the Commissioner under that sub-section has been confirmed on appeal, whether with or without variation, by the Appellate Tribunal in a case where no appeal has been preferred against the order of the Appellate Tribunal, and by the Administrator in a case where an appeal has been preferred against the order of the Appellate Tribunal the person against whom the order has been made shall comply with the order within the period specified therein, or as

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the case may be, within the period, if any fixed by the Appellate Tribunal or the Administrator on appeal and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act." A

Sec. 344 Order of stoppage of buildings or works in certain cases.— B

(1) Where the erection of any building or execution of any work has been commenced or is being carried on (but has not been completed) without or contrary to the sanction referred to in section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or bye-laws made thereunder, the Commissioner may in addition to any other action that may be taken under this Act, by order require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith. C

(2) If an order made by the Commissioner under section 343 or under sub-section (1) of this section directing any person to stop the erection of any building or execution of any work is not complied with, the Commissioner may require any police officer to remove such person and all his assistants and workmen from the premises or to seize any construction material, tool, machinery, scaffolding or other things used in the erection of any building or execution of any work within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly. D

(2A) Any of the things caused to be seized by the Commissioner under sub-section (2) shall be disposed of by him in the manner specified in section 326. E

(3) After the requisition under sub-section (2) has been complied with, the Commissioner may, if he thinks fit, depute by a written order a police officer or a municipal officer or other municipal employee to watch the premises in order to ensure that the erection of the building or the execution of the work is not continued. F

(4) Where a police officer or a municipal officer or other municipal employee has been deputed under sub-section (3) to watch the premises, the cost of such deputation shall be paid by the person at H

A whose instance such erection or execution is being continued or to whom notice under sub-section (1) was given and shall be recoverable from such person as an arrear of tax under this Act.”

Section 347 contains a specific prohibition for change of the use of any land or building. The said section reads as under:

B *“Sec. 347 Restrictions on uses of buildings.—*

No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the conditions, if any, of such permission—

C (a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and the bye-laws made thereunder;

D (b) change or allow the change of the use of any land or building;

(c) convert or allow the conversion of one kind of tenement into another kind.”

E Section 349A contains the power of the Central Government to make bye-laws for carrying out the provisions of Chapter XVI. Regulations may provide for various matters including the use of sites for buildings from different areas etc. as mentioned in Clauses (a) to (w) of sub-section (2) of Section 349A, having regard to the requirement of town planning by the municipalities. Town planning is now part of constitutional obligation on insertion of Part IX-A in the Constitution of India w.e.f. 1st June, 1993.

F Section 349A was inserted soon thereafter on 1st October, 1993.

Reference may also be made to Chapter XX of the DMC Act which deals with markets, slaughter houses, trades and occupations and maintenance and regulations thereof. Section 416 recognises the importance of the density of population, pressure on the services in case more number of persons use the facilities or services. The said section under the heading ‘Trade and Occupations’ reads as under:

G *“Sec. 416 Factory, etc., not to be established without permission of the Commissioner.*

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(1) No person shall, without the previous permission in writing of the Commissioner, establish in any premises, or materially alter, enlarge or extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power. A

(2) The Commissioner may refuse to give such permission, if he is of the opinion that the establishment, alteration, enlargement or extension of such factory, workshop or trade premises, in the proposed position would be objectionable by reason of the density of the population in the neighbourhood thereof, or would be a nuisance to the inhabitants of the neighbourhood." B

A bare perusal of building bye-laws shows how relevant is the user, commercial or residential, and the large impact of occupation load on various facilities including water, sanitation and drainage. C

Keeping future needs in view, experts prepare Master Plans. Perusal of the Delhi Master Plan, 1962 and 2001 shows what were plan projections. At the time of planning, the experts in the field of town planning, take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses to be built and where the commercial buildings to be located, need of household industries etc. Provision for household industries in residential areas does not mean converting residential houses in the commercial shops. It only means permitting activities of household industry in a part of a residential property. It does not mean that residential properties can be used for commercial and trading activities and sale and purchase of goods. Master Plan contemplates shops in District Centres, Community Centres, Local Shopping Centres etc. and not in residential areas. Be that as it may, for the present, we are not considering the cases of small shops opened in residential houses for catering to day-to-day basic needs, but are considering large-scale conversion, in flagrant violation of laws, of residential premises for commercial use. D E F

In respect of planning, reference can usefully be made to Section 313 of the DMC Act as well. The said section provides for the requirement of layout plan of the land. It, *inter alia*, provides that before utilizing, selling or otherwise dealing with any land under Section 312, the owner thereof shall send to the Commissioner a written application with a layout plan of the land showing various particulars including the purpose for which the building will be used. For breach of Section 313, action can be taken under Section 314. It has rightly not been disputed by any counsel that neither layout plan, nor G H

A the building plan, can be sanctioned by MCD except in the manner and for the purpose provided in the Master Plan. If in the master plan, the land use is residential, MCD cannot sanction the plan for any purpose other than residential.

B In the impugned judgment, while dealing with the provisions of the layout plan, it was observed that the provisions for user 'are only regulatory in nature'. While dealing with the user, the High Court observed that 'the power, whereby and whereunder the basic human rights or the fundamental rights conferred upon a person is taken away, must be specifically conferred by a statute'. The provision of user may be regulatory but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory provisions on massive scale can result in plans becoming merely scraps of papers. That is the ground reality in the capital of the country. None has any right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorised. Further, the words 'unless the context otherwise requires' in Section 331 of the DMC Act are of no consequence for determining the point in issue as the context herein does not provide otherwise for the present purposes. It does not provide that the power of sealing under Section 345A cannot be exercised in case of misuser. In view of the clear language of Section 345A, we are also unable to sustain the view of the High Court that action under Section 345A can be taken only when there exists order of demolition under Section 343 or an order under sub-section (1) of Section 344. The conclusion of the High Court that action under Section 345A can be taken only when there exists an order of demolition under Section 343, or on passing of an order under sub-section (1) of Section 344, and in no other contingency cannot be accepted in view of the clear provision of Section 345A that action can be taken even before or after an order is made under those provisions.

G It is clear from a conjoint reading of the definition of the expression 'to erect a building' in Section 331 and Section 345A that conversion of user would come within the purview of the expression 'to erect a building'. In this respect useful reference can also be made to Building Bye-Laws for the Union Territory of Delhi, 1983, in particular Bye-Law Nos. 2.17 and 2.85, defining the expressions 'Conversion' and 'To Erect' respectively, which read as under:

H "2.17 *Conversion* —The change of an occupancy to another occupancy

or change in building structure or part thereof resulting into change of space or use requiring additional occupancy certificates. A

2.85 *To Erect* —To erect a building means:

- (a) To erect a new building on any site whether previously built upon or not; B
- (b) To re-erect any building of which portions above the plinth level have been pulled down, burnt or destroyed; and
- (c) Conversion from one occupancy to another.”

Having regard to these definitions if a Building/structure not originally constructed for use as a shop, is put to use as a shop, such conversion of use would come within the ambit of the expression ‘to re-erect’ and, consequently, within the ambit of the definition of the expression ‘to erect a building’. C

In view of the aforesaid, reversing the impugned judgment of the High Court, we hold that under Section 345A of the DMC Act, the Commissioner of MCD is empowered to exercise power of sealing in case of misuser of any premises. D

Re : *Question No.B Whether under the Delhi Development Act, DDA has power to seal premises on account of its misuser?*

The High Court held that both under Section 345A of the DMC Act and under Section 31-A of the Delhi Development Act, there is no power to seal premises on account of ‘its’ misuser. We have held that MCD has such a power under the DMC Act. The position, however, is different when the provisions of the Delhi Development Act are examined. E

The Delhi Development Act defines in Section 2(e) ‘development area’ to mean any area declared to be a development area under sub-section (1) of Section 12. Section 12 reads as under: F

“Sec. 12—Declaration of development areas and development of land in those and other areas.— G

(1) As soon as may be after the commencement of this Act, the Central Government may, by notification in the Official Gazette, declare any area in Delhi to be a development area for the purposes of this Act : H

A Provided that no such declaration shall be made unless a proposal for such declaration has been referred by the Central Government to the Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days from the date of the receipt of the reference or within such further period as the Central Government may allow and the period so specified or allowed has expired.

B (2) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

C (3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless,—

(i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provision of this Act,

D (ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955, (53 of 1955), and in force immediately before the commencement of this Act:

E Provided that the local authority concerned may subject to the provisions of section 53A amend those regulations in their application to such area.

F (4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans,

G (5) Notwithstanding anything contained in sub-sections (3) and (4) development of any land begun by any department of Government or any local authority before the commencement of this Act may be completed by that department or local authority without compliance

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with the requirements of those sub-sections.”

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The power of DDA to develop land in non-development area is provided in Section 22-A, which reads as under:

“Sec. 22-A Power of Authority to develop land in non-development area.—

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Notwithstanding anything contained in sub-section (2) of Section 12, the Authority may, if it is of opinion that it is expedient to do so, undertake or carry out any development of any land which has been transferred to it or placed as its disposal under Section 15 or Section 22 even if such land is situate in any area which is not a development area.”

C

Under Section 36, DDA has been empowered to require the local authority, within whose local limits area developed by it is situated, to assume responsibility for the maintenance of the amenities provided in the area by DDA and other ancillary matters. Section 30 provides for power of DDA to make an order of demolition of building where any development has been commenced or is being carried on or has been completed in contravention of the master plan or zonal development plan or without the permission, approval or sanction referred to in Section 12 or in contravention of any condition subject to which such permission, approval or sanction has been granted. Section 31 empowers DDA to stop development which is in contravention of the plan, permission, approval or sanction, mentioned therein or contravention of the conditions stipulated in such permission, approval or sanction. Section 31A empowers DDA to seal unauthorised development. If the misuser of the premises would come within the ambit of unauthorised development, DDA would have power to seal the premises. On the other hand, if misuser does not come within the ambit of ‘unauthorised development’, the power of sealing would be lacking. Section 31-A of the Delhi Development Act reads as under:

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“Sec. 31-A Power to seal unauthorised development.—

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(1) It shall be lawful for the Authority or the competent authority, as the case may be, at any time, before or after making an order for the removal or discontinuance of any development under Section 30 or Section 31, to make an order directing the sealing of such development in the manner prescribed by rules, for the purpose of carrying out the

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A provisions of this Act, or for preventing any dispute as to the nature and extent of such development.

(2) Where any development has been sealed, the Authority or the competent authority, as the case may be, may, for the purpose of removing or discontinuing such development, order the seal to be removed.

B

(3) No person shall remove such seal except--

(a) under an order made by the Authority or the competent authority under sub-section (2); or (b) under an order of the Appellate Tribunal or the Lieutenant Governor of the National Capital Territory of Delhi, made in an appeal under this Act.”

C

The expression ‘development’ is defined in Section 2(d) as under:

“Sec.2(d) “development” with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment;”

D

The Scheme under the Act clearly seems to be that during development it is the responsibility of DDA to demolish and seal any premises if there is contravention. After the handing over of the area to the local authority under Section 36, the power of demolition and/or sealing is conferred on that authority. That local authority may be MCD or cantonment or any other authority depending upon the developed area falling in the local limits of one or the other. The ‘development area’ is any area declared to be such under sub-section (1) of Section 12. So long as an area is a development area, the power to deal with it remains with the ‘authority’ which means Delhi Development Authority in terms of Section 3(1) of the Act. After the responsibility of any area has been assumed by the local authority in the manner provided in Section 36, the power to deal with properties in that area for any contravention would be exercisable by such authority depending upon the statutory provisions governing the said local authority, referred to in Section 31-A as ‘competent authority’. The power of ‘Competent Authority’ to seal premises would depend upon the statute governing it. The language of Section 31-A when it states that ‘it shall be lawful for the authority, or the competent authority, as the case may be’ shows that either the authority or the competent authority would have the power therein. The Act does not contemplate that both DDA and the competent authority would have concurrent

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power even after the local authority has assumed responsibility as provided in Section 36. Unlike Section 331, there is no provision in the Delhi Development Act to confer on the authority the power of sealing in case of misuse. The power under Section 31-A is to seal development under Section 30 or Section 31. The words 'such development' in Section 31-A refers to removal or discontinuance of development under Section 30 or Sec. 31-A and not for any development for the purpose of carrying out the provisions of the Act, as was sought to be contended by Mr. Ranjit Kumar. Section 31-A does not provide that sealing can be resorted to also for the purpose of carrying out the provisions of the Act. It can be resorted to for sealing of development under Section 30 or Section 31 for the purpose of carrying out the provisions of the Act. Misuse does not come within the ambit of development.

In view of the aforesaid, the High Court has rightly held that under the Delhi Development Act, there is no power of sealing in case of misuser.

Re : Individual cases and the Directions to be issued in respect thereof and also in respect of other residential properties used illegally for commercial purposes.

In Special Leave Petitions and Civil Appeal Nos. 608-611 of 2003 challenge is to the judgments of High Court disposing of writ petitions in terms of law laid down by Full Bench.

In Civil Appeal No.610 of 2003, it is contended on behalf of the private respondents that a factual error seems to have occurred when the matter was disposed of by the High Court along with batch matters. It has been pointed out that the Court has failed to note that the plot in question has been leased out by DDA for commercial purposes; due licence has been issued by the MCD to open a restaurant which is being run in the name of Copper Chimney and, therefore, there is no misuser. Our attention has been drawn to the copy of the lease deed and the licence. If this is the factual scenario, the authorities will examine it before taking action, if any, and the same would be subject to such legal remedy as may be available in law to the private respondents.

In Special Leave Petition No.23896 of 2002 on behalf of respondentbank, it has been pointed out that as per scheme of DDA, banks have been permitted in the residential properties. For DDA, it was submitted that the benefit of the scheme is available subject to the fulfillment of various conditions stipulated therein. In this view, the matter will have to be examined by the authorities

A in the light of the scheme, before proceeding to take action, if any, that may be available in law and subject to legal remedies of the Bank.

B In respect of C.A. No. 608 of 2003, MCD issued to the respondents, a show cause notice dated 1st August, 2000 under Section 345A read with Sections 347, 343 and 344 of the DMC Act stating that property No. 39 Ring Road, Lajpat Nagar III was being misused in the name and style of "Jagdish Store". In reply dated 15th September, 2000, it was, *inter alia*, stated that the MCD itself has been allowing non-residential activities in residential areas under a special scheme, without, however, giving any details or filing any document in support thereof. Further, we asked the learned counsel for the respondents to place on record the plan for the construction of the building which may have been sanctioned so as to ascertain whether the sanction was for construction of the residential property or commercial property. The plan has not been filed. The reasons are not far to seek. One of the simple method for ascertaining that there is misuser or not, is to examine the sanctioned plan.

D At this stage, it would be useful to notice letter dated 28th August, 2000 sent by the Ministry of Urban Development to the Commissioner, MCD, Vice-Chairman, DDA and other authorities conveying the deep concern of Parliament Consultative Committee over the rising menace of unauthorized construction, suspected connivance of the staff of the different authorities in the matter and requesting the authorities to take strong and prompt action and suggesting ten measures for strict enforcement. The letter reads as under:

"Annexure-R-1

F No.J-13036/3/96-DDIIB
Government of India
Ministry of Urban Development & Poverty
Alleviation

Nirman Bhawan, New Delhi

Dated: 28.08.2000

G To

- H 1. Shri P. S.Bhatnagar,
Chief Secretary,
Government of National Capital
Territory of Delhi, Delhi.

2. Shri P.K.Ghosh,
Vice-Chairman,
Delhi Development Authority,
Vikas Sadan, INA, New Delhi
3. Shri S.P.Aggarwal,
Commissioner,
Municipal Corporation of Delhi,
Town Hall, Delhi
4. Shri B.P.Misra,
Chairperson
New Delhi Municipal Committee,
Palika Kendra,
New Delhi
5. The Development Commissioner,
Government of National Capital
Territory of Delhi, Town Hall,
New Delhi

**Subject : Unauthorised Encroachment and Illegal Constructions
in Delhi**

Sir,

I am directed to say that the menace of illegal encroachment/
unauthorised construction in Delhi has been considered by the
Government of India at its highest level and it has been decided to
eliminate this menace with a firm hand. You are, therefore, requested
to take strong and prompt action against all illegal constructions/
unauthorised encroachments and also against misuses of land in
violation of the provisions of the Master Plan of Delhi. The following
measures are particularly required to be enforced strictly.

- (i) All illegal constructions should be demolished, not cosmetically
but in toto.
- (ii) The cost of demolition should be recovered from the illegal
builders within 15 days of demolition. In case of non-payment

- A within 15 days, the amount due should be recovered as arrears of land revenue.
- (iii) In all cases of illegal constructions, prosecution should invariably be launched against builders under the Delhi Municipal Corporation Act, Delhi Development Authority Act, New Delhi Municipal Council Act, etc. and the cases followed vigorously with the police authorities/courts.
- B
- (iv) Wherever the property is on lease, action should be taken under the terms and conditions of lease agreement and re-entry effected within the shortest permissible period under such lease agreement. After re-entry, physical possession of the property should be taken by invoking the provisions of Public Premises Eviction Act and damages collected immediately. The rates of damages/misuse charges should be the same as per the formula followed by the L&DO and approved by the Ministry of Urban Development.
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- D
- (v) In case of DDA flats, where constructions have come up beyond the condonable limits, cancellation of allotment should be carried out in addition to the demolition of the additional construction. Orders in respect of condonable and non-condonable items are being issued separately.
- E
- (vi) In cases, where after demolition, reconstruction is done, personal responsibility of the officer in-charge should be fixed and departmental action taken against him.
- (vii) In cases where illegal construction have taken place on rural agricultural lands, action under the Provisions of the Delhi Land Reforms Act, 1954, should also be taken and such lands should be taken over as per provisions of the Delhi land Reforms Act. Action in this respect should be taken as soon as the plots are cut by the colonisers and construction done in the shape of boundary walls, etc. In other words, construction should be nipped in the bud. If it comes up, it should be demolished immediately. Action in this respect should also be taken by the concerned local agencies/DDA as per the bye-laws pertaining to lay out/service plans, etc.
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- (viii) In all cases where party obtains stay/status quo orders, prompt action to get the stay order vacated should be taken and higher
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court moved, wherever necessary.

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(ix) All Senior Field Officers should be asked to carry out physical inspection of the area under their charge and the Supervising Officer should also make surprise checks to ensure that the subordinate staff takes immediate action to check/demolish unauthorised construction. Deterrent action should also be taken against the subordinate staff such as Building Inspectors, Junior Engineers, Assistant Engineers, etc. who do not take prompt action.

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(x) Field officers should be asked to maintain filed diaries and submit them to the Supervisory Officer regularly.

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2. It is also requested that a monthly report should be sent to the Ministry of Urban Development by the 5th of each succeeding month.

3. In this connection, it may be noted that both the Parliament and the Parliament Consultative Committee have expressed deep concern, through questions and interpolations, over the rising menace of unauthorised constructions in Delhi and the suspected connivance of the staff of the different authorities in the matter. A Flying Squad has been constituted in the Ministry and if, as a result of findings of this Squad, it is found that the subordinate staff has not done its duty or not carried out the aforesaid instructions, strict action against the Subordinate/Supervisory Staff would be taken by the Government.

D

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Yours faithfully,

Sd/-

(Dr. Nivedita P. Haran)

Joint Secretary to the Government of India

Copy for information and necessary action to:

1. Deputy C.V.O., Ministry of UD&PA, Nirman Bhawan, New Delhi.
2. L&DO, Ministry of UD&PA, Nirman Bhawan, New Delhi
3. DG(W), CPWD, Nirman Bhawan, New Delhi

Sd/-

(N.L. Upadhyay)"

A The aforesaid letter has been considered by this Court while passing order dated 31st July, 2001, part whereof has been quoted earlier. Although the letter and also the observations made in the order are in the context of unauthorized constructions, the same would equally apply to the misuser as well. It would be useful to reproduce the entire order which reads as under:

B *"Order dated 31.7.2001 in W.P.(C) No.725/1994 —*

C We have seen two affidavits, one of the Chief Secretary as well as the affidavit on behalf of the M.C.D. We are sorry to note that the affidavits do not specifically deal with the points in issue. Vide our order dated 9th May, 2001 these authorities along with Vice-Chairman, D.D.A, Chairperson, N.D.M.C. and the Development Commissioner were required to file affidavit to indicate as to what measures they have taken in the implementation of the letter dated 28th August, 2000. At least ten measures were required to be taken in terms of the said letter dated 28th August, 2000. The affidavits in reply do not deal with them specifically and general averments have been made which are not satisfactory.

D The perusal of the affidavits further shows that the parties concerned have not even touched the tip of the iceberg as far as demolition of unauthorised constructions is concerned. The number of unauthorised constructions which are said to have been demolished are a small fraction of what is required to be done. It is quite evident that there is now no fear of the law catching up at least with those persons who do not believe in adhering to following the rules and regulations laid down with respect to construction of property. Unauthorised encroachment and illegal construction even as per the affidavits are increasing. It is dangerous trend if the people do not have either respect for or fear of law primarily due to non-enforcement of the law. It is something which causes us some concern and it would be appropriate if serious thought is given to this aspect at the highest quarters.

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G We direct the Chief Secretary as well as the Commissioner, M.C.D. to file within four weeks specific affidavit dealing with each of the clauses of the letter dated 28th August, 2000. They will also indicate as to what is the total encroached area in Delhi as well as the number of unauthorised/illegal constructions which have been raised.

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The affidavit of the Chief Secretary seems to give some indication of action taken for removing encroachment from some of these areas in Delhi. We would require the Union of India/Ministry of Urban Development to check and inform the Court whether what is stated in the annexures to the affidavit of the Chief Secretary from pages 43 to 63 is correct. The Central Government will be at liberty to ask for information from the local authority in order to enable it to comply with the orders passed today.

The M.C.D. will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of the buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential houses are permitted. To come up after four weeks."

Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief, the orders made in the last so many years but it seems, the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens. We have noticed above the complaints of some of the residents in respect of such illegalities. For last number of years even the High Court has been expressing similar anguish in the orders made in large number of cases. We may briefly notice some of those orders.

More than fifteen years ago, on 17th May, 1990, a Division Bench of the Delhi High Court presided over by Justice B.N. Kirpal (as the former Chief Justice of India then was) in the case of *Ahuja Property Developers (P) Ltd. v. M.C.D.*, (1990) 42 Delhi Law Times 474, dealt with a writ petition in respect of a building in Kailash Colony, New Delhi and noticed the extent of

A illegalities and the massive construction made that could not be used for residential purposes since there was no kitchen or kitchen facilities. Dealing with the argument put forth on behalf of builder that there is no power to seal any building under Section 345A, dismissing the writ petition, it was observed that the petitioner had admittedly violated the law and cannot now be permitted to cry wolf. The Court said that the petitioner had admittedly constructed a building not only at variance with the sanctioned plan but also at variance with the completion certificate and completion drawings.

C Again on 22nd October, 1990, another Division Bench dealt with a property in Greater Kailash II, New Delhi in the case of *DDA v. Rajinder Mittal*, (1991) 20 DRJ 65 and observed that the residential buildings can only be used for residential purposes. The use of premises for widespread commercial activities is prohibited. This was while dealing with a criminal matter arising out of prosecution under Section 29 of the Delhi Development Act.

D On May 18, 1995, Justice R.C. Lahoti (as the former Chief Justice of India, then was) in the case of *ANZ Grindlays Bank v. The Commissioner, M.C.D. & Ors.*, (1995) 34 DRJ 492 echoed similar words and referred to decision of this Court, observing that the word 'environment' is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. There is constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. Dealing with the Municipal Laws providing for power of demolition, it was observed that while interpreting municipal legislation framed in public interest, a strict constitutional approach must be adopted. A perusal of the Master Plan shows that the public purpose behind it is based on historic facts guided by expert opinion.

G The injurious effects on the health and well being of those living in the neighbourhood were also noticed. Further, notice was taken of the fact of the unscrupulous builders building properties in deviation of laws, master plan with the connivance or collusion of the authorities.

H On 9th February, 1996 dealing with various properties at Pusa Road in the case of *Anil Kumar Khurana v. MCD* [1996 (36) DRJ 558] writing separate opinion as a member of Division Bench of Delhi High Court, one

of us (Y.K.Sabharwal, CJ) noticed that the unauthorised constructions and unauthorised user of residential building for commercial purposes in Delhi had gained alarming proportions and crossed all limits. It was said that these activities are against the interests of the society at large and need to be dealt with firmly and that the public interest demands that the court should not come to the aid of those who break the law with immunity and put up commercial complexes on the land meant admittedly for residential use. These complexes are put up and spaces purchased for petty commercial consideration without any regard to the hardship and inconvenience of other citizens. It was further said that in respect of blatant unauthorised constructions and misuser, it cannot be said that the Commissioner of MCD has a discretion to order demolition or not and vesting of discretion in the circumstances would itself be arbitrary and illegal.

In the concluding paragraph it was stated that:

“In the end, I regret to notice that despite warning and caution given by the Apex Court and also this court, from time to time, that stern action will be taken against unauthorised constructions and misuse, these activities have gone on unabated, without any let or hindrance and all the warnings have fallen on deaf ears without any effect on the unscrupulous builders and purchasers of these spaces. It is, therefore, necessary to once again send a message, loudly, clearly and firmly to all those who indulge in such illegal activities that courts will not come to the aid of persons who indulge in such blatant unauthorised constructions and misuser of the properties. It is also the duty of the courts to examine these matters carefully before granting injunction restraining demolition of such unauthorised constructions. Ordinarily the courts before issuing injunctions in such matters should insist upon filing of the sanctioned plans and details about the existing structures to *prima facie* find out whether the existing structures are in accordance with the sanctioned plan and building bye laws etc or not. The courts may also consider appointment of independent person to verify correctness of representations made about existing structures as in many cases unauthorised constructions are raised after issue of injunctions and in cover and garb of orders of injunction. The alarming nature of such illegal activities can be controlled only by due cooperation from all citizens including the Media and the Press. It is the duty of all to expose these law breakers. I hope the Media would bring to the notice of public in general that unauthorised constructions

A and misuser have been severely dealt with by this court and henceforth also no leniency would be shown in such matters. A copy of this judgment shall be sent forthwith to Delhi Doordarshan and All India Radio. Everyone has to be told that such unauthorised activities are against public interest. These activities have to be stopped forthwith.

B If in spite of this warning anyone indulges in such unauthorised construction or misuse or in purchase of these unauthorised constructions he would be doing it at his own risk and peril and would not be heard to say that he has made large investments. I hope that at least now this message would be taken with all seriousness.

C In view of the above, in my opinion, all the petitions and appeals deserve dismissal with costs quantified at Rs.10,000/- in each case. These costs would be utilised by M.C.D. for creating in a Special Cell which should be set up to curb unauthorised construction and misuser of the immovable properties so that at least a beginning is made now to promptly check these illegal activities. The officials and officers manning this Cell will have to be informed that any dereliction of duty would be severely dealt with.”

D

It seems that in view of the aforesaid judgment attaining finality, some formal or cosmetic demolition had taken place. What is the position of these properties now is evident from the affidavit dated 16th November, 2005 filed by Additional Commissioner, MCD placing on record the present status after conducting inspections in second week of November, 2005. A perusal of the status report in respect of properties referred in the aforesaid case shows large scale violations in the shape of show-rooms, commercial offices, shops, law institutes and gymnasiums. The report shows that even after a lapse of 10 years, commercial activity is in full swing. This also shows the urgent need to introduce stringent measures for fixing accountability.

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Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the concerned officers. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also

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implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, *prima facie*, such large scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.

We have perused the suggestions given by MCD. It has suggested four steps. MCD requires six months to complete the whole survey in 12 zones divided into 134 wards. As a second step, after initial survey of all the zones, notice of the proposed action/sealing and/or stopping misuse to be given to the concerned persons. The third step is grant of opportunity to them of being heard. The fourth step is the operations for sealing blatant and obvious cases of large scale misuse at the first instance. Further suggestion is that the major violations would be sealed first and simultaneously action in all 12 zones would be conducted after following the due process of law. It is stated that the success of operation would largely depend on the availability of the Police force. Recognising that the parties later tamper the seal, it is suggested that necessary directions be issued warning those who tamper the seal that they shall be punished for contempt of court.

Regarding the *Ad hoc* Trade Registration Scheme, 2004, the stand of the MCD is that, if allowed by the Court, it will be implemented in the same area as is permitted by the Master Plan for category 'A' household industry to the extent of 25% of the floor space or 30 sq. mt., whichever is less, and this will be the maximum space permissible. The minimum space having already been specified in the scheme as 30 sq. ft. We may note that the scheme for *ad hoc* registration itself provides that it is applicable to the following areas :

1. Walled city and other built up areas.
2. Schemes executed by the Delhi Improvement Colonies.
3. Schemes executed by the Ministry of Rehabilitation Colonies.
4. Resettlement Colonies.
5. Urban Villages
6. Unauthorised regularized colonies.

- A This scheme is not applicable to the following areas :
1. NDMC and Delhi Cantonment area.
 2. Planned Colonies and housing schemes developed after 1957.
 3. Unauthorised colonies not regularized.
- B
4. J.J. Clusters.
 5. Staff Housing colonies.
 6. Rural Settlement (except household and rural industrial units Group A & A1-Annexure-II)
- C The areas and the colonies above-referred themselves show that the so-called Registration Scheme, 2004 can have no applicability to the nature of misuse under consideration. It deserves to be noted that it is implicit in the scheme that a person to get benefit of the scheme has himself to be resident of such premises.
- D The introduction of the *Ad hoc* Registration Scheme would not only regularize the illegalities but further encourage more illegalities to take place by sending a wrong message underlying the press release. This *ad hoc* scheme has been stayed by this Court. A similar scheme was also sought to be introduced by DDA as well for grant of temporary permission for commercial use in industrial plots and for condonation of misuse of industrial premises for offices and other commercial purposes on payment of requisite charges. On learned Amicus Curiae filing IA 1816 of 2002 seeking stay of the said scheme, the scheme was given up and an affidavit filed that no action is being taken by DDA upon the scheme or the notice, subject matter of the application. The introduction of such schemes by MCD and DDA show the extent of the apathy and lack of concern of these bodies.
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- Mr. Ashwini Kumar, learned senior Advocate appearing for MCD, also contended that since there is a large scale misuse of residential premises for commercial purposes, it is a physical impossibility to remove the misuser.
- G The contention deserves outright rejection. We have already noted how the misuser has attained such enormity. Despite repeated orders and directions, MCD took no action. Such a contention is not open to MCD. It is not merely a case of only lack of will to take action, it appears to be a case of predominance of extraneous considerations.
- H 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.

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 violations 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.

- A 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.
- B 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.
- C 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.
- D 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.
- E 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.
- F 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.
- G 9. MCD shall file monthly status report as to action taken by 15th of each month commencing from 10th April, 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.

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Civil Appeals, Interlocutory Applications (except I.A.22) and Special A
Leave Petitions are disposed of but MCD is granted liberty to seek further
directions from this Court from time to time.

K.G.

Special Leave Petition disposed of.