

SIEL FOODS & FERTILIZERS INDUSTRIES

v.

UNION OF INDIA & ORS.

Review Petition (C) Nos. 1200 of 2002

IN

IA NO. 22, 36 AND 129

IN

W. P. (C) NO. 4677 OF 1985 Etc.

MARCH 25, 2010

**[K.G. BALAKRISHNAN, CJI., R.V. RAVEENDRAN AND  
J.M. PANCHAL, JJ.]**

*Delhi Development Authority Act, 1957 – s. 15 – Shifting/relocation of polluting industries from Delhi – Land available as a result of shifting – Direction of Court by various orders to use the land partly by land-owner and a part of it to be surrendered to Development Authority (DDA) for development of green belt – Land-owners time and again taking plea that the authorities should acquire the land under DDA Act and pay compensation – Court in lieu of monetary compensation giving additional FAR to the land-owners – Petition for review of the previous orders of the Court taking plea that DDA could not take the land without resorting to compulsory acquisition – Held: Review not maintainable – Plea regarding acquisition repeatedly rejected by Court – The land surrendered by land-owners need not be acquired and additional FAR was the only compensation – The Land is surrendered by the land-owners to DDA in Trust for the purpose of development of green belt and for the benefit of the community – If DDA in deviation to the Trust, uses the land for any other purpose, the land-owner entitled to compensation – Since the land-owner already received some consideration in the form of additional FAR, DDA and land-*

- A *owner to share the compensation at 50% each – Any change in use of the surrendered land to be only after prior permission of Delhi High Court – Transfer of the land, surrendered by one of the applicants, by DDA to Delhi Metro Rail Corporation is not permissible – Urban Development – Environmental Law*
- B – *Trust.*

C In a Public Interest Litigation (*M.C. Mehta Vs. Union of India & Ors.*), series of orders were passed regarding shifting and relocating several hazardous, noxious, large and heavy industries, causing extensive pollution, from Delhi. Supreme Court monitored the matter and directed the authorities concerned to examine the question regarding utilization of land, made available as a relocation/shifting of industries.

D Supreme Court passed order dated 10.05.1996 taking the view that land surrendered should be used for the development of green belts and open spaces. The land owner would develop part of the land for his own use and surrender the remaining land for the use of community at large to Delhi Development Authority (DDA). The extent of land for community use and for personal benefit of land-owners was also specified.

F By another order dated 08.07.1996, the Court directed that the use of the land would be permitted in terms of the order dated 10.05.1996. By further order dated 04.12.1996, it was clarified that the order dated 10.05.1996 regarding the land-use was to be applicable for relocating industries as well as to those who decide to close down and not to relocate.

G Some of the industries filed IAs praying for direction to DDA to acquire the land under Delhi Development Authority Act, 1957 (DDA Act) or Land Acquisition Act, 1894, which was required to be surrendered. The IAs were dismissed as withdrawn.

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**The Court by order dated 28.04.2000 directed that as a compensation, FAR would stand increased to 'one and a half times of the permissible FAR under the Master Plan' and held that DDA was not bound to acquire the land u/ s. 15 of DDA Act.**

**Another attempt was made by the industries by raising the issue regarding compensation in an IA filed by DDA, wherein the plea was rejected.**

**The petitioners have filed the present petition seeking review of the orders dated 10.05.1996, 08.07.1996, 04.12.1996 and 28.04.2000, primarily taking the plea that DDA should resort to compulsory acquisition u/s. 15 of DDA Act.**

**The applicant in IA No. 1914 of 2006 and IA No. 2205 of 2007 contended that the land surrendered by it to DDA was further transferred to Delhi Metro Rail Corporation on payment of a premium and other amount and that such transfer was impermissible and that the monetary gain was required to be paid over to the land-owner.**

**Dismissing the petitions, the Court**

**HELD: 1. The orders dated 10.5.1996, 8.7.1996, 4.12.1996 and 28.4.2000 clearly demonstrate that the owners of land/industries were given a fair hearing before passing the order on 10.5.1996. The petitioners had now raised these very contentions that their lands will have to be acquired and that they are entitled to get reasonable compensation when their land was taken over. All these pleas had been repeatedly rejected by this Court. [Para 13] [831-E-G]**

**2. Some of the review petitions have been filed after dismissal or withdrawal of the earlier petition by the very same petitioners seeking almost the very same reliefs.**

A Therefore, such petitions are *prima facie* not maintainable and the pleas raised by these petitioners to review the earlier order passed by this Court cannot be considered. [Para 15] [833-F-G]

B 3. The order dated 10.5.1996 was passed to give  
effect to the Master Plan, to save the city and in public  
interest. Therefore, by surrendering a part of the land, the  
owners were not only benefitting the community, but  
themselves. The records clearly show that before the  
C order dated 10.5.1996 was passed, the question what  
should be the compensation for the surrendered lands  
was specifically raised and considered. It was made clear  
that additional FAR will be in lieu of any monetary  
D compensation for the land to be surrendered and  
dedicated to DDA for community use, for development of  
green belts and lung spaces. Therefore, it is evident that  
the order dated 10.5.1996 clearly intended that the land  
to be surrendered would vest in trust in DDA for the  
benefit of the community and the additional FAR was the  
E only compensation for such surrendered land for  
community benefit and there would be no further  
compensation. Contentions similar to the contentions  
now raised were rejected by this Court by order dated  
28.4.2000. Therefore, it is not possible for this Court to  
again review all these orders or take a different view.  
F [Para 14] [833-B-E]

G 4. The land dedicated by private owners to the  
community, if acquired for any other purpose, or is  
diverted to any other use by DDA (as for example for  
putting up constructions or for sale or lease for  
development or construction), the land-owner will be  
entitled to compensation. But so long as the land  
remained as lung space/green area, there is no question  
of any payment to the owner, as compensation or  
H otherwise. [Para 13] [832-G-H; 833-A]

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5. It is clarified that wherever such open lung space is created in the land surrendered, it shall be shown in the Municipal/DDA records as 'DDA land – dedicated by xxxxxxxx'. The DDA shall maintain a Trust Account of such surrendered lands. This would mean that the DDA which holds the surrendered and dedicated land in Trust cannot use it for any purpose other than as green belt or other spaces for the benefit of the community. This will be necessary to identify, if the land held by DDA in trust for the community is not lost and is not treated as DDA owned lands which can be dealt with by DDA as absolute owner. In the event of any acquisition or development of such surrendered land, the owner-dedicator will have the benefit of compensation on account of land ceasing to be 'land dedicated to the community purpose of lung/open space'. As the owner has already received some consideration in the form of 50% additional FAR, when such acquisition/alienation takes place, DDA and the land owner will be entitled to share the compensation at 50% each. Where the land surrendered is very small or being of an irregular shape, and DDA finds that it is not feasible or practical to maintain any small areas as independent green belt or park or playground or lung space or to safeguard any such area from encroachers, DDA can take steps to consolidate several smaller areas into larger blocks in the same locality so that they can be used effectively. For that purpose, DDA may also enter into suitable arrangements by way of exchange or otherwise. But any such consolidation or exchange shall be only with the sanction of the District Court, Delhi, after notice to the landowners-dedicators. Any change in use of such surrendered land held in Trust by DDA or any transfer by DDA shall be only after securing prior permission from the High Court of Delhi. [Para 16] [833-H; 834-A-H]

6. The land surrendered by the applicant in IA No.

A 1914 of 2006 and IA No. 2208 of 2007, which was transferred by DDA to Delhi Metro Rail Corporation on payment of a premium and other amounts, was not permissible. The land surrendered to DDA could be used only for community purposes and cannot be used for any  
B private purpose. In circumstances where the land is acquired or used (other than as green belt and open lung space) for any other purpose under extreme necessity the land owner would be entitled to get 50% of the compensation or consideration for the use of such land.  
C It is clarified that the owner of such land would be entitled to get 50% of the amount received by DDA as consideration/compensation. If DDA fails to pay the same, such persons would be entitled to take appropriate legal action. Any such diversion of use by DDA shall  
D henceforth be only with the permission of the District Court, Delhi, after notice to the landowners concerned.  
[Para 18] [835-C-E]

CIVIL ORIGINAL JURISDICTION

E Review Petition (C) Nos. 1200 of 2002

IN

IA NO. 36

F IN

I.A. No. 129

IN

G W. P. (C) No. 4677 of 1985

WITH

R.P. (C) No. 1256/2003 in I.A. No. 22 in I.A. No. 129 in W.P. (C) No. 4677/1995;

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R.P. (C ) No. 1295 of 2003 in I.A. No. 22 in W.P. (C ) No. 4677/1985; R.P. (C ) No. 1296 of 2003 in I.A. No. 22 in W.P. (C ) No. 4677/1985; A

I.A. No. 1328 in W.P. (C ) No. 4677/1985;

I.A. No. 1329 in W.P. ( C ) No. 4677/1985; B

I.A. No. 1782 in W.P. (C ) No. 4677/1985;

I.A. No. 1805 in W.P. (C ) No. 4677/1985;

I.A. No. 1850 in W.P. (C ) No. 4677/1985; C

I.A. No. 1 in I.A. No. .... IN W.P. (C ) No. 4677/1985;

Contempt Petition (C ) No. 22 of 2005 in I.A. No. 22 in W.P. (C ) No. 4677/1985; D

I.A. No. 1876 in CONMT. Petition (C) No. 22 of 2005 in W.P. (C ) No. 4677/1985;

I.A. No. 1877 in CONMT. PET. ( C ) No. 22 of 2005 in W.P. (C ) No. 4677/1985; E

I.A. No. 1883 in R.P. (C ) No. 1296/2003 in R.P. (C ) No. 1200/2002 in R.P. (C ) No. 1256/2002 in W.P. (C ) No. 4677/1985;

I.A. No. 1913-1914 in W.P. (C ) No. 4677/1985;

I.A. No. 2205 in I.A. 1914/06 in W.P. (C ) No. 4677/1985; F

I.A. 2222 in I.A. 1172 in W.P. ( C ) No. 4677/1985;

I.A. No. 2238 in I.A. 1914/06 in W.P. (C ) No. 4677/1985;

I.A. No. 2266 in W.P. (C ) No. 4677/1985 G

R. Mohan, ASG, Ranjit Kumar, (A.C.), Dr. A.M. Singhvi, Jaideep Gupta, Kamal Gupta (A.C.) M.C. Mehta (petitioner-in-person), O.P. Khaitan, Ankur Chawla, Jayant Mohan, Rahul H

- A Pratap (for O.P. Khaitan & Co.), Vijayalakshmi Menon, Shruti Verma, Bimal Roy Jad, Sunita Pandit, Bharti, Dinesh Kumar Garg, K.L. Mehta & Co., M.L. Lahoty, Paban K. Sharma, Himanshu Shekhar, K. Rajeev, Shiv Sagar Tiwari, Ritu Menon, Anupam Lal Das, Dheeraj Garg, Sukumaran, Meera Mathur,
- B Ashok Bhan, Kiran Bhardwaj, M.P.S. Tomar, S.W.A. Qadri, D.S. Mahra (for Anil Katiyar), Sandhya Goswami (for B.K. Prasad), V.B. Saharya (for Saharya & Co.), P. Parmeshwaran, D.N. Goburdhan, Geeta Luthra, Sheil Sethi, Avijit Bhattacharjee, Praveen Swarup (NP), L.P. Mangla (applicant-in-person) for the
- C appearing parties.

The Judgment of the Court was delivered by

- K.G. BALAKRISHNAN, CJI:** 1. In the city of Delhi, there were several hazardous and noxious industries, as also several
- D large and heavy industries, causing extensive pollution. The Master Plan for Delhi – Perspective 2001, which was published in the Gazette of India on 01.08.1990, did not permit any of these industries to operate in Delhi. In a Public Interest Litigation i.e. *M.C. Mehta v. Union of India & Others*, [IA No.22
- E in W.P. (C) No. 4677/1985] the question of shifting these polluting industries from Delhi and relocating them outside the city of Delhi and other related issues were considered and a series of orders were passed regarding shifting and relocating the industries. The polluting industries were notified through
- F individual notices, public notices in newspapers and electronic media. This Court monitored the matter from January, 1995 and all stake holders, including Union of India, Delhi Administration, Central Pollution Control Board, National Capital Region Planning Board, Delhi Development Authority, and the
- G polluting industries were heard/consulted during several hearings. The Delhi Development Authority [for short “DDA”] was also directed to frame suitable schemes regarding the utilization of land which would become available after the relocation of the hazardous/noxious/heavy/large industries from Delhi. DDA constituted a Committee with Mr. K.J. Alphons,
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Commissioner, Land Management, DDA, as Chairman for this purpose. The said Committee examined the question regarding the utilization of land made available as a result of the re-location/ shifting of the industries and submitted detailed proposals. Views of other experts were also considered. A

2. After hearing the parties including the affected industries, ultimately an order was passed on 10.05.1996 (reported in 1996 (4) SCC 351) relevant portions of which are extracted below: B

“6. We have given our thoughtful consideration to the point at issue before us. We have had elaborate discussion with the learned counsel representing various industries which are to be relocated/shifted. The basic charter for the land use in the city of Delhi is the Master Plan. The provisions of the Master Plan are statutory and binding. The relevant provisions regarding hazardous/noxious/heavy/large industries under the Master Plan are as under: C  
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**“HAZARDOUS AND NOXIOUS INDUSTRIES**

Refer Annexure III H(a). E

(a) The hazardous and noxious industrial units are not permitted in Delhi.

(b) The existing industrial units of this type shall be shifted on priority within a maximum time-period of three years. Project report to effectuate shifting shall be prepared by the units concerned and submitted to the authority within a maximum period of one year. F

(c) The land which would become available on account of shifting as administered in (b) above, would be used for making up the deficiency, as per the needs of the community; based on norms given in Master Plan; if any land or part of land, so vacated is not needed for the deficiency of the community services, it will be used as per G  
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A prescribed land use; however the land shall be used for light and service industries, even if the land use according to the Master Plan/Zonal Development Plan is extensive industry.

B (d) \* \* \*

### HEAVY AND LARGE INDUSTRIES

Refer Annexure III H(b)

C (a) No new heavy and large industrial units shall be permitted in Delhi.

D (b) The existing heavy and large-scale industrial units shall shift to Delhi Metropolitan Area and the National Capital region keeping in view the National Capital Region Plan and National Industrial Policy of the Government of India.

E (c) The land which would become available on account of shifting as administered in (b) above, would be used for making up the deficiency, as per the needs of the community; based on norms given in the Master Plan; if any land or part of land so vacated is not needed for the deficiency of the community services, it will be used as per prescribed land use; however the land shall be used for light and service industries, even if the land use according to the Master Plan/Zonal Development Plan is extensive industry.

F (d) \* \* \*

G It is thus obvious that the land which would become available on account of shifting/relocation of the industries can only be used for making up the deficiency, as per the needs of the community, based on the norms given in the Master Plan. If any land or part of the land, so vacated is not needed for community services it can be used as per the prescribed land use. To appreciate the concept "need

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A the housing, the sports activity and the recreational areas are also part of the "community need" but the most important community need which is wholly deficient and needed urgently is to provide for the "lung spaces" in the city of Delhi in the shape of green belts and open spaces.

B *We are, therefore, of the view that totality of the land which is surrendered and dedicated to the community by the owners/occupiers of the relocated/shifted industries should be used for the development of green belts and open spaces.*

C 8. *The core question for consideration, however, is how much of the total land which would become available from each of the industrialists is to be taken away by the community for its use and how much is to be left in the hands of the industrialists for the community use.* The suggestions given by Alphons Committee in this respect have been noted by us in the earlier part of the order. Mr. Omesh Sehgal, Mr. P.C. Jain and Justice Khanna by and large agree with the suggestions of the Alphons Committee. We are of the view that no useful purpose would be served by maintaining two categories as suggested by Alphons Committee in columns 3 and 4. After leaving a part of the land with the owner for developing the same in accordance with the surrender to the Delhi Development Authority [DDA] for developing the same to meet the community needs, it obviously means that the land has to be surrendered and dedicated to the community. While meeting the community needs it is necessary to make a suitable provision for the owner to enable him to meet the expenses of relocating/shifting the industry. *It would, therefore, be in conformity with the broader concept of "community need" under the Master Plan, to permit the owner to develop part of the land for his own benefit and surrender the remaining land for the use of the community at large.*

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9. *We, therefore, order and direct that the land which would become available on account of shifting/relocation of hazardous/noxious/heavy and large industries from the city of Delhi shall be used in the following manner:*

S.No.	Extent	Percentage to be surrendered and dedicated to the DDA for development of green belts and other spaces	Percentage to be development by the owner for his own benefit in accordance with the user permitted under the Master Plan
(1)	(2)	(3)	(4)
1	Up to 2000 sq. mts. (including the first 2000 sq. the Master Plan larger plot)	-	100% to be developed by the owner in accordance with the zoning regulation of mts. of the
2	0.2 ha to 5 ha	57	43
3	5 h to 10 ha	65	35
4	Over 10 ha	68	32

10. We do not agree with the learned counsel for the industrialists that Floor Area Ratio [FAR] be permitted to them on the total area of the plot. *We, however, direct that on the percentage of land as shown in column 4 the owners at Serial Nos. 2, 3 and 4 shall be entitled to one and a half times of the permissible FAR under the Master Plan*

11. *The DDA has suggested that it may be necessary*

A                    *to amend the Master Plan for regularizing the land*  
                         *use as directed by us. The totality of the land*  
                         *made available as a result of the relocating/*  
                         *shifting of the industries is to be used for the*  
                         *community needs. The land surrendered by the*  
B                    *owner has to be used for the development of green*  
                         *belt and open spaces. The land left with the owner*  
                         *is to be developed in accordance with the user*  
                         *permitted under the Master Plan. In either way the*  
                         *development is to meet the community needs*  
C                    *which is in conformity with the provisions of the*  
                         *Master Plan.”*

*(emphasis supplied)*

D                    3. This was followed by another order dated 8.7.1996  
(reported in 1996 (4) SCC 750) wherein this Court observed :

E                    “.... The allotment of the plots shall be made on priority  
                         basis. We have no doubt that reasonable incentives, which  
                         are normally provided to new industries in new industrial  
                         estates, shall be extended to the shifting industries. This  
                         Court by the order dated 10.5.1996 in *M.C. Mehta v.*  
                         *Union of India* [1996 (4) SCC 351] has already directed  
                         and laid down the manner in which the land which would  
                         become available on account of shifting of H(a) and H(b)  
F                    industries is to be used. *In view of the huge increase of*  
                         *prices of land in Delhi, the reuse of the vacant land is*  
                         *bound to bring lots of money which can meet the cost of*  
                         *relocation.”*

G                    “The use of the land which would become available on  
                         account of shifting/relocation of the industries shall be  
                         permitted in terms of the orders of this Court dated  
                         10.5.1996 in *M.C. Mehta.*”

*(emphasis supplied)*

H                    4. By order dated 4.12.1996 (reported in 1997 (11) SCC

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237) several clarifications were issued. One of the clarifications was that the order dated 10.5.1996 regarding land use – that is utilization of land available as a result of shifting/relocation/closure of hazardous/noxious/heavy/large industries from Delhi - are applicable both for relocating industries as well as those which decide to close down and not to relocate.

5. While most of the industries, shifted or relocated, there were delay and obstacles in surrendering the land for community purposes as per the order dated 10.5.1996. The District court, Delhi was authorized to implement the directions issued by this Court. The High Court has been monitoring the progress of the surrender of the lands as a consequence of such re-locations.

6. Some of the industries including Swatantra Bharat Mills and DCM Silk Mills filed interlocutory applications praying for a direction to DDA to acquire the land required to be surrendered under the DDA Act or Land Acquisition Act and to restrain DDA from trying to expropriate their lands. The request was turned down and IAs were dismissed as withdrawn.

7. Thereafter, M.C. Mehta, the petitioner in the public interest litigation moved an application (IA No.129 in IA No.22) making a grievance that though the industries were closed, they had not surrendered the excess land to DDA, in pursuance of the orders dated 10.5.1996 and 8.7.1996. Notices were issued to the defaulting industries. A large number of industries appeared through counsel and the matter was heard at length. Mr. K.K. Venugopal, learned senior counsel appearing on behalf of a group of industries contended that this Court had never contemplated that the land should be surrendered free of cost. He further contended that when this Court directed that their land should be surrendered, it was clearly implied that the DDA would have to acquire the land under Section 15 of the Delhi Development Act, 1957 and pay compensation for the land. After considering the contentions, this Court by order

A dated 28.4.2000 (reported in 2000 (5) SCC 525), categorically rejected the said contention by holding as follows:

B “When this Court first passed the order on 10.05.1996, it had before it the report of Mr. Justice D.R. Khanna and had the advantage of hearing several counsels over a period of six months as is evident from the order itself. It will be difficult to believe or accept that the Court was not aware of the provisions of the Delhi Development Authority Act which, inter alia, provides in Section 15 that the Authority could acquire the land for the purposes of the Act. C The Court nevertheless directed the surplus land not to be acquired by DDA but to be surrendered by the owners. With regard to the balance of land, it was to be retained by the owner. *The Court directed that FAR would stand increased to “one-and-a-half times of the permissible FAR under the Master Plan”.* D *It is true that the Court did not direct any compensation, but this element of compensation was clearly present in the mind of the Court when it increased FAR and permitted the owner to build more than what was permissible under the Master Plan.* E *It is not possible, therefore, to accept the contention that DDA is bound to acquire the land under Section 15 after paying compensation.*

F Be that as it may, there is nothing to indicate in the order nor has our attention been drawn to any affidavit that there was, at any point of time, a contention raised or a demand made that cash payment should be made for the land required to be surrendered or that DDA should be asked to acquire the land under Section 15. Mr. G.L. Sanghi, learned Senior Counsel submits that in a matter like this G where a public interest litigation is filed, the principle of res judicata does not strictly apply. *Even if this be so, we would have expected the owners to have raised this contention if they had genuinely felt that there was a need for compensation to be awarded for the land which was to be H*

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*surrendered. Perhaps they were happy to have an increased FAR which would have enabled them to construct more and would have offset the loss of land without payment of money.* In fact, by the order dated 08.07.1996 reported as *M.C. Mehta Vs. Union of India* [see : 1996 (4) SCC 750 at page 762, para 15], it was observed as follows:

'In view of the huge increase of prices of land in Delhi, the reuse of the vacant land is bound to bring lots of money which can meet the cost of relocation'

Be that as it may, we do not think that it is appropriate at this juncture to permit the erstwhile owners of the land to raise the contention that they should be paid compensation.

It has to be borne in mind that the Master Plan of 1990 made it obligatory on the hazardous industries to shift within three years. No time limit was stipulated with regard to the existing heavy and large industries, but the spirit clearly was that they should shift within a reasonable period of time. If the industries continued to use the land in violation of and in disregard of the Master Plan and then have had to lose some parcels of land, they have to blame themselves for it. It was contended before us by Mr. K.K. Venugopal that if the industry had shut before 1996, it would have been entitled to retain all the land, but because the closure has been effected as a result of the order of this Court, the owners have had to surrender part of the land free of cost. This is undoubtedly, true but as we have observed above if the owners had cared to obey the law then, as is always the case, would have been more profitable."

(emphasis supplied)

8. Another attempt was made by a group of industries by

A raising this issue regarding compensation for land surrendered, when DDA filed an interlocutory application for various directions. The industries also filed several applications. All those interlocutory applications came up before a three Judge Bench of this Court and this Court disposed of the matter by judgment dated 01.03.2001 [reported in (2001) 4 SCC 577]. It was contended by the industries that their industrial units which had been ordered to re-locate were not bound to surrender their freehold land free of cost and that the DDA had to acquire the land under Section 15 of the Act. The matter was elaborately argued by eminent counsel and their arguments were discussed in detail, and all their pleas were rejected. This Court also noticed that the Master Plan came into existence in 1962 and that 'H' category industries ought to have shifted out of the area in 1962 itself; that the subsequent Master Plan in 1990 directed shifting the industries within a specified period of within three years; that there was an obligation on the 'H' category industries to shift and relocate in terms of the Master Plan by the year 1993; and that all possible opportunities were given to the industries and upon assessment of the situation through the appointments of commissions and obtaining the consent of various parties on these aspects, the Court passed the order on 10.05.1996. This Court issued specific directions on several issues raised by DDA. This Court directed that even industries which closed prior to the order dated 10.5.1996 (whose names appeared in the list of 'H' category industries to be closed) are liable to surrender land as per order dated 10.5.1996. The relevant portions of the order are extracted below :-

G "Be it noted that the learned Amicus Curiae with his usual eloquence contended that review applications against the order passed on 10.5.1996 numbered 36 in the year 1966, 55 in the year 1997, 3 in the year 1999 and 2 petitions in the year 2000, as the records depict, were all dismissed and in the wake of the same, Mr. Ranjit Kumar addressed us in detail that the present petition said to be for clarification cannot but be attributed to be a further

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attempt to review the order dated 10.5.1996 which, in fact, does not call for any review nor does it call for any further order substituting the earlier order dated 10.5.1996. A

Be it noted that the order dated 10.5.1996 specifically directed that 'H' category industries are required to surrender the land to DDA. We may note here that this order of surrender was passed by reason of the fact that the pollution level has reached its optimum in the city of Delhi affecting the entire society – '*H' category industries were directed to close and to surrender the land so as to make available some green belt and open space popularly ascribed to be lung space for the city.* Industries might have closed in terms of the order of this Court and the compliance with the order was to this limited extent only. Structures are still lying there and no surrender has yet taken place. *The majesty of law demanded compliance in observance rather than in its breach – it is for the society only that this Court thought it fit to pass order to the extent as indicated above .....* B  
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..... We make it clear that the order dated 7.12.1999, in the case of vegetable oil was in the peculiar facts of that case and is not of universal application, nor does it in any way dilute the mandate of the order of this Court directing surrender of entire land subject to the extent of availability to the owner as per order dated 10.5.1996. E  
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..... On the question as to the land to be surrendered should be free from encumbrance, we are of the view, if the land is already encumbered, then a direction to release it from encumbrance and surrender will be a great burden. At the same time, such land will be of no use to the society unless released from encumbrance. In the circumstances we direct that the owner cannot utilize the land available to him by virtue of order of this Court dated 10.5.1996, until he releases the surrendered land from encumbrance. Further, if it is not made free from encumbrance within five G  
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A        years, then he will not get the benefit of the order dated 10.5.1996 and after five years even the land which the owner was otherwise entitled to retain would stand vested with DDA for the use and the need of the society. ”

B        9. The petitioners in these Review Petitions and Interlocutory Applications seek a review of the orders dated 10.5.1996 8.7.1996, 4.12.1996 and 28.4.2000 passed by this Court. We have heard Sri Harish Salve, Sri Mukul Rohatgi, Dr. A.M. Singhvi, Sri Dushyant Dave, Mr. Jaideep Gupta, Mr. M.L. Lahoti, and others for the land-owners (erstwhile industries in  
C        Delhi) as also the learned Additional Solicitor General on behalf of the Union Government, and Mr. D.N. Goburdhan, on behalf of the Delhi Development Authority. Mr. Ranjit Kumar rendered able assistance as *amicus curiae*.

D        10. The petitioners/ applicants contended that the findings of this Court in the earlier judgments and orders dated 10.5.1996, 8.7.1996 and 28.4.2000 regarding the element of compensation are *ex facie* incorrect and the judgment and order dated 10.05.1996 is liable to be reviewed. It was urged  
E        that the increased FAR mentioned in the Order is illusory and that there were restrictions on the permitted height of construction and many of the owners of freehold land had not been able to use the increased FAR. They contended that if  
F        any land is required for the purpose of development or for any other purpose, DDA should resort to compulsory acquisition under section 15 of the Delhi Development Act, 1957. It was contended that no land can be taken over or required to be surrendered without compulsory acquisition under Section 15 of the Delhi Development Act, 1957 and payment of market value as compensation. It was contended that transfer of  
G        ownership of freehold land otherwise than by acquisition or by conveyance or by inheritance was not known to law; and Article 300A of the Constitution barred any person being deprived of his property save by authority of law. It was further contended  
H        that the mere fact that this court did not want the Government

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to undertake the time consuming process of acquisition under Section 15 of the Delhi Development Act would not in any way detract from the rule of law which requires the land owners of Delhi Industries to be treated on par with owners of land in other parts of the country which are acquired for the purposes of urban development. It was submitted while Section 15 deals with compulsory acquisition of land where the land is required for the purpose of development or any other purpose under the DD Act, Section 55 of the said Act dealt with modification of the Master Plan or zonal development plan in certain cases. The said section provided that where any land is required by the Master Plan or a zonal Development Plan to be kept as an open space or un-built upon or is designated in any such plan as subject to compulsory acquisition, then if at the expiration of 10 years from the date of operation of the plan under section 11 or where such land has been so required or designated by any amendment of such plan, from the date of operation of such amendment, the land is not compulsorily acquired, the owner of the land may serve notice on the Government requiring his interest in the land to be so acquired; and if the Government fails to acquire the land within a period of six months from the date of the said notice, the Master Plan or the Zonal Development Plan, shall have effect, as if the land were not required to be kept as an open space or un-built upon or were not designated as subject to compulsory acquisition. It is submitted this provision was completely ignored by this Court, while passing the order dated 10.5.1996. It was argued that as relevant constitutional and statutory provisions had not been taken note of by this Court, and as there is an apparent error on the face of the record, the impugned order dated 10.05.1996 should be reviewed. Another argument put forth by some of the owners is the word 'surrender' used in the order dated 10.5.1996 would apply only to leasehold land and not to freehold land.

It was further submitted that physical surrender of land to DDA in pursuance of the order dated 10.5.1996 being for the

A limited purpose of maintaining green belt and lung spaces, DDA cannot claim any ownership right nor commercially exploit the same. It was lastly contended that the rule of '*res judicata*' would not apply in this case to prevent the Court from entertaining the grievance and giving appropriate directions.

B 11. The learned Amicus Curiae pointed out that despite  
 C the fact that the Master Plan for Delhi was published as early  
 D as in 1990, these hazardous, noxious, large and heavy  
 E industries did not take steps to shift their premises out of Delhi  
 F and these industries had been causing severe pollution for a  
 long period thereby violating the Master Plan as well as  
 damaging the environment and it was at this juncture that this  
 Court had passed the order and directed all these industries  
 to be re-located outside Delhi and issued categorical directions  
 regarding surrender of portions of the land cleared by shifting  
 of industries for community use; and that the landowners were  
 not entitled to any compensation in regard to such surrender  
 except the additional FAR granted under the decision. The  
 learned Additional Solicitor General and the learned counsel  
 for DDA also took the same stand. They further pointed out that  
 all the above-mentioned pleas had been raised before this  
 Court and had been considered in detail on more than one  
 occasion and that they had been rejected and many of these  
 petitioners have repeatedly filed review petitions, curative  
 petitions and writ petitions and some of these petitions have  
 been filed much after the original order that was passed on  
 10.05.1996. Therefore, it was urged that there is no merit in  
 the contentions advanced by the petitioners.

G 12. There is no question of acquisition and/or  
 H compensation in regard to the lands to be surrendered, is also  
 evident from the categorical directions given in the order dated  
 10.5.1996. The surrender of lands by the industries was under  
 a broad scheme framed by the court after assessment and  
 consideration of the then existing situation, the reports of  
 various committees, the grievances and contentions of various

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industries and the consensus arrived at on certain issues, and the findings on several other issues. This Court categorically stated :

*“After leaving a part of the land with the owner for developing the same in accordance with the permissible land use under the Master Plan, the remaining land should be surrendered to Delhi Development Authority for developing the same to meet the community needs.”*

In para 10 of the order dated 10.5.1996, this Court held that in respect of the land which was to be retained by the owner for its own benefit and to be developed in accordance with the permitted use, the owner will be entitled to one and half times the permissible FAR under the Master Plan. The scheme contemplated not merely surrender of a part of the land but “dedication” of such surrendered land to the DDA for development of green belts and open spaces. The land that was to be surrendered had to be retained as green belt and open spaces and not to be sold, constructed or developed by DDA.

13. We have carefully considered the various review petitions and other applications filed in this regard. We have extracted the relevant portions of the orders dated 10.5.1996, 8.7.1996, 4.12.1996 and 28.4.2000 which clearly demonstrate that the owners of land/industries were given a fair hearing before passing the order on 10.5.1996. The petitioners had now raised these very contentions that their lands will have to be acquired and that they are entitled to get reasonable compensation when their land was taken over. All these pleas had been repeatedly rejected by this Court. The Scheme evolved by this Court in its order dated 10.5.1996 is clear :

(i) The land which becomes available on account of an industry being shifted out of Delhi would be divided equitably into two portions. The one portion to be retained by the land owner for development for his own benefit and

A the other portion to be surrendered to DDA for community use for development of green belts, open/lung spaces. The land to be surrendered and dedicated for community use was 57% (where the size of the plot was 0.2H to 5H), 65% (where the size of the plot was 5H to 10H) and 68% (where the plot was over 10H). The balance was to be retained by the landowner. The percentage was to be calculated after deducting first 2000 sq.m. for development by the owner.

B  
C (ii) In consideration of the land owners surrendering and dedicating a part of the land for community use, they (land owners) will be entitled to an additional 50% FAR in regard to the land permitted to be retained by them for their benefit. That is, the FAR would stand increased to one and a half times of the admissible FAR under the Master Plan.  
D The landowners will not be entitled to any other consideration/compensation for the land surrendered and dedicated to the community.

E (iii) The portions of land surrendered to DDA and dedicated for community purposes, that is only for being used as green belt or open 'lung spaces' for the city. Such dedicated land will be used only for such dedicated purpose and not any other purpose.

F (iv) The land will be at the disposal of the community at large and the DDA shall not exploit it for either commercial use or construction of residential flats. As DDA is not going to derive any benefit by exploitation thereof, and was to only hold it in trust for and on behalf of the community, there was no question of DDA paying any compensation  
G therefore to the land owners.

H It therefore, follows that such land dedicated by private owners to the community, is acquired for any other purpose, or is diverted to any other use by DDA (as for example for putting up constructions or for sale or lease for development or

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construction), the land owner will be entitled to compensation. A  
But so long as the land remained as lung space/green area,  
there is no question of any payment to the owner, as  
compensation or otherwise.

14. The order dated 10.5.1996 was passed to give effect B  
to the Master Plan, to save the city and in public interest.  
Therefore by surrendering a part of the land, the owners were  
not only benefiting the community but themselves. The records  
clearly show that before the order dated 10.5.1996 was C  
passed, the question what should be the compensation for the  
surrendered lands was specifically raised and considered. It  
was made clear that additional FAR will be in lieu of any  
monetary compensation for the land to be surrendered and  
dedicated to DDA for community use, for development green  
belts and lung spaces. Therefore, it is evident that the order D  
dated 10.5.1996 clearly intended that the land to be  
surrendered would vest in trust in DDA for the benefit of the  
community and the additional FAR was the only compensation  
for such surrender land for community benefit and there would  
be no further compensation. Contentions similar to the E  
contentions now raised were rejected by this Court by order  
dated 28.4.2000. Therefore, it is not possible for this Court to  
again review all these orders or take a different view.  
Therefore, all these review petitions, applications for directions  
and clarifications are without any merit.

15. We may note that some of these review petitions have F  
been filed after dismissal or withdrawal of the earlier petition  
by the very same petitioners seeking almost the very same  
reliefs. Therefore, such petitions are *prima facie* not  
maintainable and the pleas raised by these petitioners to G  
review the earlier order passed by this Court cannot be  
considered. Be that as it may. As the contentions raised by  
others have been considered, this issue loses relevance.

16. One aspect requires clarification, particularly in view H  
of some of the surrendered land being acquired or taken

- A perpetual lease by Delhi Metro Rail Corporation from DDA. The landowners surrendered and dedicated portions of the land as shown in Column III of the Table contained in Para 9 of the Order dated 10.5.1996 exclusively for the purpose of development of green belt and open spaces. Therefore
- B wherever such open lung space is created, it shall be shown in the Municipal/DDA records as 'DDA land – dedicated by xxxxxxxx'. The DDA shall maintain a Trust Account of such surrendered lands. This would mean that the DDA which holds the surrendered and dedicated land in Trust cannot use it for
- C any purpose other than as green belt or other spaces for the benefit of the community. This will be necessary to identify if the land held by DDA in trust for the community is not lost and is not treated as DDA owned lands which can be dealt with by DDA as absolute owner. In the event of any acquisition or
- D development of such surrendered land, the owner- dedicator will have the benefit of compensation on account of land ceasing to be 'land dedicated to the community purpose of lung/open space". As the owner has already received some consideration in the form of 50% additional FAR, we are of the
- E view that when such acquisition/alienation takes place, DDA and the land owner will be entitled to share the compensation at 50% each. The second aspect is where the land surrendered is very small (say on account of 57% of 0.2 Hectare that is 1140 sqm being surrendered) or being of an irregular shape, and
- F DDA finds that it is not feasible or practical to maintain any small areas as independent green belt or park or playground or lung space or to safeguard any such area from encroachers, DDA can take steps to consolidate several smaller areas into larger blocks in the same locality so that they can be used effectively. For that purpose, DDA may also enter into suitable
- G arrangements by way of exchange or otherwise. But any such consolidation or exchange shall be only with the sanction of the District Court, Delhi, after notice to the Landowners –
- H Dedicators. Any change in use of such surrendered land held in trust by DDA or any transfer by DDA shall be only after securing prior permission from the High Court of Delhi.

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17. M/s SIEL Ltd., the applicant in IA No. 1914/2006 and IA No. 2205/2007 (SIEL Ltd.) submitted that DDA, out of 18.854 Hec. surrendered by it though it did not have either ownership or right of commercial exploitation had transferred 7.5 Hec. plus 1.21 Hec. to DMRC on payment of a premium of 1,55,33,213/- plus others amounts. It is contended that such transfer was impermissible and the monetary gain should be paid over to the owner of the land. It is also contended that the land should be used only in accordance with the order dated 10.5.1996. A B

18. The land surrendered by SIEL Ltd. as per the order dated 10.5.1996 to DDA could be used only for community purposes and cannot be used for any private purpose. In circumstances where the land is acquired or used (other than as green belt and open lung space) for any other purpose under extreme necessity the land owner would be entitled to get 50% of the compensation or consideration for the use of such land. We make it clear that the owner of such land would be entitled to get 50% of the amount received by DDA as consideration/compensation. If DDA fails to pay the same, such persons would be entitled to take appropriate legal action. We again reiterate that any such diversion of use by DDA shall henceforth be only with the permission of the District Court, Delhi, after notice to the landowners concerned. I.A. 1850/2003 and IA 1914/2006 with IA No.2205/2007 are disposed of accordingly. C D E

19. All review petitions, interlocutory applications and other petitions are dismissed, subject to the clarification contained in paras 13, 16, 17 and 18 above. F

K.K.T. Petitions and Interlocutory Applications dismissed.