

(2002) 05 DEL CK 0264

In the Delhi High Court

Case No : F.A.O. (OS) No. 293 of 1994 and C.W.P. No's. 2228/93, 3900 and 4316 of 1994

Bajaj Departmental Stores, D. Bhowmick and Others, Ms.
Devender Kaur and Others and D.S. Marketing Private Limited

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Delhi Development Act, 1957 — Section 12, 14, 29, 30, 31

Delhi Municipal Corporation Act, 1957 — Section 313, 326, 331, 332, 334

Citation : AIR 2002 Delhi 520 : (2002) 99 DLT 401 : (2002) 4 RCR(Civil) 165

Hon'ble Judges : S.B. Sinha, C.J.;S.K. Mahajan, J;Ramesh Chandra Chopra, J

Bench : Full Bench

Advocate : A.S. Chandhiok, amices Curiae, Neelam Rathore and Aparans, for the Appellant; Yashwant Das, Senior Advocate, Anil Grover and Rakesh K. Garg for MCD. and Sunil Malhotra, for DDA in FAO (OS) 293/94 and M.K. Singh, for DDA in CWP 4316/94, for the Respondent

Judgement

S.B. Sinha, C.J.—An interesting question of law as regards jurisdiction of the Municipal Corporation of Delhi (in short "MCD"), the Delhi Development Authority (in short "DDA") and the New Delhi Municipal Council (in short "NDMC") to seal the premises in case of a misuse is the question involved in these matters.

2. Having regard to the fact that a short question of law arises for consideration of this matter it is not necessary to notice the fact of the matter.

3. We may at the outset notice that a Division Bench of this Court in Rohit Talwar and Ors. v. MCD reported in 49 (1993) DLT 466 held that the Municipal Authorities have no such power.

4. Mr. A.S. Chandhiok, learned Senior Counsel, appearing as amices Curiae on behalf of the appellant would submit that the said decision has correctly laid down the law as therein all the relevant statutory provisions, viz., the Delhi Municipal Corporation Act, 1957 (in short DMC Act") and Delhi Development Act,

1957 (in short the DDA Act") had been considered. Learned counsel submitted that the said judgment must be held to have been accepted by the respondents, inasmuch as, although extensive amendments have been brought about in the said Act no amendment had been carried out in Sections 343, 344 and 345A of the DMC Act. Interpretation of the relevant provisions of law, he learned counsel would contend, thus, must be held to have been accepted by the respondents and, thus, they should not be permitted to raise the said question once over again.

5. Mr. Das learned counsel appearing on behalf of the MCD and Mr. Sunil Malhotra, learned counsel appearing for the Delhi Development Act (DDA Act) would, however, submit that the provisions of the MDC Act and DDA Act must be construed harmoniously so as to ascertain the real purport and object behind enacting Section 345A in the DMC Act which is in pari materia with Section 31A in the DDA Act. It was contended that the conversion of a residential house or building into a store, godown, whatsoever, which had not been originally constructed for such use, would amount to erection of the building which in turn would come within the purview of provisions as contained in Section 331 thereof. Having regard to the fact that Section 332 of the DMC Act puts an embargo on such activity, as a result whereof, the authorities under the said Act are entitled to take action in relation thereto and, thus, it must be held that by necessary implication they have the requisite power to seal the premises. Sealing of the premises, the learned counsel would contend, is necessary for carrying out the purport and object of the DMC Act. In the alternative, it was submitted that such misuse being accompanied by alteration/modification in the residential house, the same would amount to violation of Section 334 of the DMC Act, in relation whereof, even Commissioner cannot grant any sanction. In any event, contends the learned counsel such misuse being not in conformity with the provisions of the DMC Act, the building bye-laws, Master Plan and Zonal Plan, which would attract penal provisions in terms of Section 347 thereof, the authority must be held to have the requisite power to see that the same is prohibited, which in turn would confer on them a power of sealing the premises by necessary implication. Such change of user, according to the learned counsel, would attract the provisions of Section 347 of the DMC Act. If the Commissioner, in terms of the proviso appended to Section 343 or 344 of the DMC Act is empowered to direct stoppage of erection or execution of work, there is no reason as to why such a power u/s 345A of the DMC Act cannot be extended to a case of misuse also.

6. Learned counsel would contend that the power to direct sealing of a building or premises conferred upon the Commissioner, in terms of Section 345A of the DMC Act would, thus, not only extend to the cases of unauthorized constructions but also to cases where the premises are being misused by the occupants. The expression "erection or work" as occurring in Section 345A of the DMC Act, the learned counsel would contend, carry the same meaning and purport while specifying the power to seal the property. It was contended that when the meaning of the words is simple, plain or unambiguous and if they are susceptible

to only one meaning, the Court is bound to give effect thereto irrespective of consequences.

7. Reliance in this connection has been upon *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, and *Bishan Chand Vs. Vth Additional District Judge, Bulandshahr (Uttar Pradesh)* and *Another*, . It was submitted that as for misuse of the property a penalty can be imposed, a larger power must be held to be including a smaller power.

8. Before advertng to the question involved, we may notice the relevant provisions of the MDC Act and DDA Act. Section 313 of the DMC Act provides that before utilizing, selling or otherwise dealing with any land for construction of building thereupon, the owner shall apply for sanction of the layout plan of the land, showing the plots into which the land is proposed to be divided for erection of the building thereon and the purpose or purposes where for such building are to be used.

9. Section 331 of the DMC Act Defines the expression "to erect a building" inter alias to mean:-

(c) to convert into a dwelling house any building or nay part of a building not originally constructed for human habitation or, if originally so constructed, subsequently appropriated for any other purpose;

(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;

10. Section 334(1) of the DMC Act, Therefore, must be held to be providing a different meaning to the expression "execution of any work" from erection and re-erection".

Sections 343, 344 and 345A of the DMC Act read thus:-

"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 condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made there under, 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 Therefore 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 be 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 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.

(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 347 stay the enforcement of that order on such terms, if any, and for such period, as it may think fit:

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.

(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.

(5) Subject to an order made by the Administrator on appeal u/s 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.

(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 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.

344. Order of stoppage of buildings or works in certain cases-

(1) Where the erecting 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 there under, the Commissioner may in addition to any other action that may 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.

(2) If an order made by the Commissioner u/s 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.

(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.

(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.

(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 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.

345A. Power to seal unauthorized constructions-

(1) It shall be lawful for the Commissioner, at any time, before or after making an order of demolition u/s 343 or of the stoppage of the erection of any building or execution of ay work u/s 343 or u/s 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.

(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.

(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."

11. At this juncture, we may notice that change of user is permissible u/s 347 of the DMC Act, which is in the following terms:-

347. Restrictions on use 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-

(a) use of permit to be used for human habitation any part of a building not originally erected or authorized 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 there under;

(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.

12. Let us consider the provisions of the DDA Act, 1957:-

13. Section 7 of the DDA Act provides for preparation of a Master plan for Delhi and under the master plan various zones are defined into which Delhi may be divided for developmental purposes.

Sub-sections 2(b) and 2(d) of the DDA Act read thus:

2. Definitions:-

In this Act, unless the context otherwise requires:-

2(b) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not;

2(d) "development" with its grammatical variations means the carrying out of the 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."

14. Section 8 of the Act provides for preparation of the Zonal Development Plan for each zone. The "development" inter alias defines "use Zone" to mean an area meant for anyone of the specific dominant uses of the urban functions. " Use

premises" had been defined to mean one of the may sub-divisions of a use zone designated at the time of preparation of the lay-out plan for a specific main use or activity.

15. Sub-clause (4) of Clause 8 of the Master Plan provides for control of a building/buildings for use of premises. Section 30, 31 and 31A of the DDA Act read thus:-

"30. Order of demolition of building:

(1) 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 conditions subject to which such permission, approval or sanction has been granted-

i. in relation to a development area, any officer of the Authority, empowered by it in this behalf,

ii. in relation to any other area within the local limits of a local authority, the competent authority thereof,

may, in addition of any prosecution that may instituted under the Act, make an order directing that such development shall be removed by demolition, filling or otherwise by the owner thereof by the person at whose instance the development has been commenced or is being carried out 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 removal , with a brief statement of the reasons Therefore, has been delivered to the owner or that person) as may be specified in the order and on his failure to comply with the order, the officer of the Authority or, as the case may be, the competent authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue:

PROVIDED THAT no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

(1A) If any development in an area other than a development area 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 approval or sanction referred to in Section 12 or in contravention of any condition subject to which such approval or sanction has been granted and the competent authority has failed to remove or cause to be removed the development within he time that may be specified in this behalf by the Lieutenant Governor of the National Capital Territory of Delhi, the Lieutenant Governor may, after observing such procedure as may be prescribe by rules made in this behalf, direct any officer to remove or

cause to be removed such development and that officer shall be bound to carry out such direction and any expenses of such removal may be recovered from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue.

(2A) Any person aggrieved by the direction of a Lieutenant Governor under Sub-section (1-A) may appeal to the Central Government within thirty days from the date thereof, any the Central Government may after giving an opportunity of hearing to the person aggrieved, either allow or dismiss the appeal or may reverse or vary any part of the direction.

(3) The decision of the Central Government on the appeal and subject only to such decision the order under Sub-section (1) or, as the case may be, the direction under Sub-section (1-A), shall be final and shall not be questioned in any court.

(4) The provisions of this section shall be in addition to, and not in derogation of, any other provision relating to demolition of building contained in any other law for the time being in force.

31. Power of stop development

(1) Where any development in any area has been commenced 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-

(i) in relation to a development area, the Authority or any officer of the Authority empowered by it in this behalf.

(ii) In relation to any other area within the local limits of a local authority, the competent authority thereof,

May in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

(2) Where such development is not discontinued in pursuance of the order under Sub-section (1), the Authority or the officer of the Authority or the competent authority, as the case may be, may require any police officer to remove the person by whom the development has been commenced and all his assistants and workmen from the place of development or to seize any construction material, tool, machinery, scaffolding or other things use din such development within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(2A) Any of the things caused to be seized by the Authority or the officer of the Authority or the competent authority, as the case may be, under Sub-section (2) shall unless the owner thereof turns up to take back such things and pays to the

Authority, the officer of the Authority or the competent Authority, as the case may be, the charges for the removal or storage of such things, be disposed of by it or him by public auction or in such other manner and within such time as the Authority, the officer of the Authority or the competent authority thinks fit.

(2B) The charges for the removal and storage of the things sold under Sub-section (2A) shall be paid out of the proceeds of the sale thereof and the balance, if any, shall be paid to the owner of the things sold on a claim being made Therefore within a period of one year from the date of sale, and if no such claim is made within the said period, shall be credited to the fund of the Authority or the competent authority, as the case may be.

(3) if any development in an area other than a development area has been commenced in contravention of the master plan or zonal development plan or without the approval or sanction referred to in Section 12 or in contravention of any condition subject to which such approval or sanction has been granted and the competent authority has failed to make an order under Sub-section (1) or, as the case may be, a requisition under Sub-section (2), within, the time that may be specified in this behalf by the Lieutenant Governor of the National Capital Territory of Delhi, the Lieutenant Governor may, after observing such procedure as may be prescribed by rules made in this behalf, direct any officer to make the order or requisition, as the case may be, and that officer shall be bound to carry out such direction and the order or requisition made by him in pursuance of the direction shall be complied with accordingly.

(4) After the requisition under Sub-section(2) or Sub-section (3) has been complied with, the Authority or the competent authority or the officer to whom the direction was issued by the Lieutenant Governor under Sub-section (3), as the case may be, may depute by a written order a police officer or an officer or employee of the Authority or local authority concerned to watch the place in order to ensure that the development is not continued.

(5) Any person failing to comply with an order under Sub-section (1) or, as the case may be, under Sub-section (3), shall be punishable with fine which may extend to two hundred rupees for every day during which the non-compliance continues after the service of the order.

(6) No compensation shall be claimable by any person for any damage which he may sustain in consequence of the removal of any development u/s 30 or the discontinuance of the development under this section.

(7) Omitted by Act 38 of 1984 w.e.f. 24-2-1987

(8) The provisions of the section shall be in addition to, and not in derogation of, any other provision relating to stoppage of building operations contained in any other law for the time being in force.

31A. Power to seal unauthorised development

(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 u/s 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 provision 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.

(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.

16. Section 14 of the DDA Act provides that after coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan.

17. It may be true, as has been contended by the learned counsel for the respondents that, while granting sanction to lay out plan in terms of DDA Act, 1957 the user to which such premises belongs forms an important part inasmuch as no sanction for building plan may be granted by the Commissioner in exercise of his power conferred upon him u/s 334 of the DMC Act unless the same comes within the purview of the master plan or zonal development plan. We may however, notice that the object of the regulations framed under the DDA Act is to provide control for building to use premises covered and controlled by the building Bye-laws. User of a building may play an important role in the context of the provisions of the said Act but there cannot be any doubt whatsoever that the said provisions are only regulatory in nature.

18. A statute providing for sealing of a premises is a drastic one. By reason of exercise of such power a person would become homeless. For example, if a building, which is meant for using as an office, for some reason or the other cannot be put to such use and for a temporary period an employee uses the same either for residential purpose or even for protecting the property, the purported power of sealing can be exercised. The power, whereby and whereunder the basis human rights or the fundamental right conferred upon a person is taken away, must be specifically conferred by a statute. the existence thereof would not ordinarily be inferred. such a provision, in our opinion cannot be read into a statute by necessary implication. Even if such a power is expressly conferred upon an authority by reason of a statute, the same would not only require a strict construction but even an action there under must conform to the procedures laid down therefore. Even a slight deviation or departure from teh

requirements of law before such a drastic action is taken, would render the action ultra vires. We may notice that DDA has a limited power to demolish a building or a shop, i.e. only when development has commenced or is being carried out in contravention of the Matter Plan or Zonal Development Plan or without sanction, and to seal unauthorized development u/s 30, 31 and 31A respectively. However, emphasis in terms of the afore-mentioned three Sections is on the development, which as noticed hereinbefore does not take within its ambit any misuse of building. Power u/s 31A can be taken recourse to provided Section 30 and 31 are attracted.

19. The matter relating to use of a building is specifically provided for in Section 14 of the DDA Act. The legislature, Therefore, must be held to have intentionally excluded operation of Section 31A in relation to misuse of the building. So far as the misuse is concerned, action in relation thereto may lead to a penal action provided for u/s 29 thereof and, thus, it itself makes a distinction between development on the one hand and uses thereof on the other. If the contention of the learned counsel for the petitioner is accepted such a distinction become otiose.

20. In a situation of this nature the doctrine of cusses omisus shall also come into play. In terms of Section 31-A of the DDA Act, thus, only limited power has been conferred which is to be applied in cases of unauthorized development only. It may be true that Section 331 of the DMC Act, as by reason of an enlarged definition, includes within its purview conversion of a building, house, etc. for any other purpose within the meaning of "to re-erect". But such definition is prefaced by the words "unless the context otherwise requires".

21. The said definition was necessary having regard to the provisions contained in Section 347 of the DMC Act which imposes restrictions on uses of building. Section 347 thus provides for permission as regards change of the user of the building and conversion. We may notice that Section 343 provides for order of demolition and stoppage of buildings and works in certain other cases. Section 344 provides for stoppage of buildings or works in certain cases. Sub-section 4 of Section 344 confers an additional power upon the Commissioner, in the event, the direction as specified in Section 343 or Sub-section (1) of Section 344 is not carried out, in terms whereof the Commissioner may require any police officer to remove such person and all his assistants and workman from the premises or to seize any construction, material, tool, machinery 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.

22. In the afore-mentioned backdrop the interpretation of the provisions of Section 345A of the DMC Act may be considered. The said provision refers to Sections 343 and 344 of the Act. An action there under can be taken recourse to only when there exists an order of demolition u/s 343 or on passing of an order under Sub-section (1) of Section 344. The said provisions cannot be taken

recourse to in any other contingency. Such a provision, however, can be taken recourse to only if the authorities are satisfied that the conditions precedent as mentioned under Sections 343 and 344 exist.

23. We may also notice that in Section 344(1) the expression "execution of any work" means and includes:-

(a) to make any addition to a building;

(b) to make any alteration or repairs to a building involving the removal or re-erection of any external or party wall thereof or of any wall which supports the roof thereof to an extent exceeding one-half or such wall above the plinth level, shall half to be measured in superficial feet; etc."

24. In a case relating to misuse of the premises an order of demolition cannot be passed although penal provisions can be taken recourse to. Neither erection of a building nor execution of work would bring within their purview re-erection of building. It is, Therefore, difficult for this Court to accept the proposition propounded by the respondent to the effect that in terms of Section 345A the power of the Tribunal would not only extend to cases of unauthorized constructions but also to the cases where premises are being misused by the occupants.

25. In K.V. Muthu Vs. Angamuthu Ammal, it is stated:

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the prose of the Act has to be ignored and not accepted.

12. Where the definition or expression as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the Section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.

26. Reference may also be made to Smt. Pushpa Devi and others Vs. Milkhi Ram (Dead) by his L.Rs., . National Buildings Construction Corporation Ltd. v. Pritam Singh Gill and Ors. reported in AIR 1579 SC it was held that the word "workman" would include a dismissed workman although in the definition of that word as given in Sub-section (2) of Section 33C of Industrial Disputes Act, 1947, a dismissed workman is excluded for the purpose of Section 10 thereof.

27. The words which are used in declaring the meaning of other words may also need interpretation and the legislature may use a word in the same statute in several different senses. In that view of the matter it would not be correct to contend that the expression as defined in the interpretation clause would carry the same meaning throughout the statute irrespective of the context in which it

is used.

28. Furthermore it is also a settled principle of law that such a provision must be construed very strictly. It is also well settled that when the words of the Section are plain and unambiguous, a plain meaning should be attributed thereto.

29. In *Gurudev datta VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, it is stated:

"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

30. On a plain reading of the afore-mentioned provisions, it is clear that the proviso thereto cannot be extended so as to confer power of sealing of the remises upon the Commissioner in relation to misuse of the property. We are of the opinion that the submission of the learned counsel for the respondents to the effect that such a power must be held to be existing by reason of necessary implication, must Therefore be rejected.

In *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, the Apex Court held:

10. Two principles of construction- One relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. In regard to the former the following statement of law appears in *Maxwell on Interpretation of Statutes* (12th Edn.) at page 33.

"Omissions not to be inferred -"It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express, Lord Moray said: It is a strong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity it is wrong thing to do. We are not entitled, said Lord Loreburn L.C., to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should

have been omitted, and the omission appears in consequence to have been unintentional."

In regard to the latter principle the following statement of law appears in Maxwell at page 47:

A statute is to be read as a whole -"It was resolved in the case of Lincoln College's case 1595 03 CR 58 that the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only be itself. Every clause of a statute is to be constructed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute". C" Per Lord Davey in Canada Sugar Refining Co. Ltd. v. R., 188 Ac 735."

In other words, under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", a said Danckwerts L.J. in Artemiou v. Procopiou 1996) 1 QB 878, " is not to be impugned to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, (Per Lord Reid in Luke v. I.R.C., 1963 AC 557 he also observed: "this is not a new problem, though our standard of drafting it such that it rarely emerges". In the light of these principles we will have to construe Sub-section (2) (b) with reference to the context and other Clauses of Section 33-B."

31. In a case of this nature a question of public interest is not involved, inasmuch as, the legislature must be held to have made the enactment upon application of its mind and, in any event, no statute can be construed in such a fashion in the name of public interest or otherwise, which would confer upon them an additional power to take an action which would have serious civil consequences although it was not conferred upon them expressly. The very fact that the legislature deliberately avoided such a contingency while enacting Section 345A in the DMC Act 1957 or Section 31A in the DDA Act is a clear pointer to show that the Parliament did not intend to apply such harsh provision in the case of misuse of premises" also.

32. The Parliament has brought the matter relating to non-user u/s 347 of the DMC Act. Section 461 read with first column of the table appended to 12th

Schedule of the DMC Act provides that any person who contravenes the provisions of Section 347 shall be punishable with simple imprisonment which may extend to six months or with fine which may extend to specified amount or with both. Violation of Section 14 of the DDA Act also attracts the penal provisions u/s 29 thereof. Even under the NDMC Act provisions similar to DMC Act are provided e.g. Section 252, 369 etc., read with the Table contained in the Tenth Schedule.

33. It is one thing to say that some steps are required to be taken to prevent an offence and it is another thing to say that when an offence is committed the authority would take the law in their own hands and although the procedure for imposing punishment upon the accused has to be followed, he may be imposed some additional punishment at the hands of the complainant itself. The question as to whether an offence has been committed or not would be a disputed question of fact. To presume that an offence has been committed is, thus, contrary to the criminal jurisprudence. If somebody has committed an offence punishment can be imposed upon him in accordance with law only when the same has been proved to have been committed. The complainant thus by no stretch of imagination can be conferred with any power by way of intendment when no such power has expressly been provided. It is not a case where the owner of a property intends to throw out a trespasser during the process of trespassing.

34. We may notice in *Ram Rattan v. State of Uttar Pradesh* reported in 1977 SC 619 the Apex Court held that a true owner has every right to dispossess or throw out a trespasser while the trespasser in the act process of trespassing and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. Incidentally we may notice that almost a similar contention relying upon *Ram Rattan supra* was advance din *Sri Hanuman Steel Rolling Mill v. CESC Ltd* 1996 Cal 449 to the effect that the electrical connection can be disconnected to prevent theft of electrical energy but the same was rejected.

35. For the reasons afore-mentioned, we are of the opinion that the Commissioner cannot exercise its power of sealing of property for misuser of the premises u/s 345A of the DMC Act and Section 31A of the DDA Act. The question thus referred to the full Bench is answered accordingly.

Aforesaid LPA and CWPs are accordingly disposed of. However, in the facts and circumstances of the case there shall be no order as to costs.