

(2014) 11 DEL CK 0045
In the Delhi High Court
Case No : C.M.(M) No. 981/2011

Delhi Development Authority

APPELLANT

Vs

Metro Paint Industries

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 11 DEL CK 0045

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Rajiv Bansal and D. Ray Chaudhary, Advocate for the Appellant;
Kanwal Chaudhary, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.—This petition under Article 227 of the Constitution of India impugns the order of the court below dated 4.3.2010 by which it has been held that the respondent herein is not bound to surrender any land to the Delhi Development Authority (DDA) pursuant to the judgment of the Supreme Court in the case of M.C. Mehta Vs. Union of India and Ors. (1996) 4 SCC 351 read with the subsequent judgments being the judgment dated 4.12.1996 reported as M.C. Mehta Vs. Union of India (1997) 11 SCC 327 and the judgment dated 1.3.2001 in M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, .

2. It is an undisputed fact that the Supreme Court as per its judgment in the case of M.C. Mehta Vs. Union of India and Ors. (1996) 4 SCC 351 directed closure of hazardous industries in the city of Delhi and directed them to hand over 57% of their land if they had land in excess of 2000 sq mtr and upto 5000 sq mtr and allowed the industries to retain 43% of the land for being used in accordance with the conforming regulations under the Master Plan of Delhi.

3. What happened after passing of the judgment of the Supreme Court reported as (1996) 4 SCC 351 was that certain units stopped their hazardous industries and started conforming user of their plots wherein permissible industries were started. The issue thus then came up before the Supreme Court as to what is the

position if the industries have stopped the hazardous units and have started confirming/permissible use as per the Master Plan and therefore whether such units still have to surrender their lands in terms of the judgment 1996 (4) SCC 351 of the Supreme Court dated 10.5.1996.

4. The judgment of the Supreme Court reported as M.C. Mehta Vs. Union of India (1997) 11 SCC 327 deals with this position as per paras 2 and 3 of this judgment dated 4.12.1996 (and more importantly para 3) . Supreme Court in terms of the judgment dated 4.12.96 allowed industries to stop their non-conforming user and start conforming user and in which circumstances there was no requirement for that industry to surrender land in terms of the judgment reported as (1996) 4 SCC 351. Paras 2 and 3 of the judgment reported as (1997) 11 SCC 327 read as under:-

"2. So far as the first contention is concerned, learned Additional Solicitor General has taken us through the order of this Court in M.C. Mehta Vs. Union of India : (1996) 4 SCC 351 regarding land-use along with the order dated 8-7-1996 regarding relocation of 168 industries. The intention of this Court is clear that the order regarding land re-use was both for relocating industries as well as those which decide to close down and not to relocate. The learned counsel for the industries have not disputed this interpretation. We, therefore, accept the contention of learned Additional Solicitor General. Nothing more need be said on this point.

3. We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The existing hazardous industries having been closed, what remains is the plot, superstructure and the workmen. The occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case. We make it clear that Government permission and the consent from the Pollution Control Board/Committee, if required under law, shall have to be obtained. Control Board/Committee, if required under law, shall have to be obtained. Even fresh electric connection and water connection shall have to be applied for and obtained in the changed circumstances. We have no doubt when approached for necessary permission/licence/water/electric connections the authorities shall expedite in dealing with the applications."

5. A peculiar position thus arose inasmuch as the effect of the judgment dated 4.12.1996 reported as (1997) 11 SCC 327 would be that no industry needed to relocate once they closed down the non conforming user/hazardous industries and after closing down they may even not have started any industry at all and the effect of which would be that actually there would be no hazardous industry existing and thus implied would it be that the land had not to be surrendered in terms of 1996 (4) SCC 351. What would thus be the position on this aspect reached the Supreme Court for its decision, and the Supreme Court by its

decision reported as M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, has dealt with and decided this issue. In para 12 of this 2001 judgment, Supreme Court raised the issue for answer which was sub para (iv) of para 12 and which reads as under:-

"12(iv) Certain units have restarted their industries removing/modifying the objectionable-use process and obtained clearances from various departments. Are such industries also liable to surrender land to the Delhi Development Authority as per orders dated 10-5-1996, 8-7-1996 and 4-12-1996?"

6. After raising this question/issue in para 12(iv) , the Supreme Court in its 2001 judgment referred to its earlier judgment of 4.12.1996 in para 28 of its judgment and reproduced paras 2 and 3 of the judgment dated 4.12.1996. Thereafter, the Supreme Court answered the issue as to whether any and every industry which wanted to stop non conforming user/hazardous industry should be allowed to continue to do so and not surrender their lands irrespective of their starting or not starting a new conforming industry, and this was answered by the Supreme Court in para 31Re (iv) of its judgment by effectively putting a cut off date being the date of 2001 judgment i.e. 1.3.2001 whereby those industries which have started conforming user i.e. non-hazardous industry prior to passing of the order on 1.3.2001 such industries were not to surrender land, however, merely because an industry had stopped the non-conforming user/hazardous industry the same by itself did not protect such industry from the direction to surrender land given as per the judgment dated 10.5.1996 reported as (1996) 4 SCC 351. Paras 28 and 31Re(iv) of the 2001 judgment read as under:-

"28. While it is true that this Court has directed user of land left with the owner to be developed in accordance with the user permitted under the Master Plan but the whole aim, object and spirit of the order was to meet the community need and it is in this context also that Mr. Gopal Subramaniam drew our attention to the appendix to the Zonal Development Plan pertaining to area "G". We are however unable to accede to such a submission since time has not come as yet in any event to assess the situation in its entirety. The Zonal Development Plan produced before the Court has not been finalised as yet since it is presently in the draft stage and as such no reliance can be placed by this Court on the data and the materials available thereon. A proposal cannot be said to be a final declaration of the community need. We are thus unable to record our concurrence therewith for the reasons noticed above. The order of this Court dated 4-12-1996 in the matter in issue (M.C. Mehta Vs. Union of India (1997) 11 SCC 327) was passed in an interlocutory application for directions filed by the Union of India wherein in paras 2 and 3 this Court observed as below: (SCC pp. 328-29)

"2. So far as the first contention is concerned, learned Additional Solicitor General has taken us through the order of this Court in M.C. Mehta v. Union of India : (1996) 4 SCC 351 regarding land-use along with the M.C. Mehta Vs. Union of India and Others, regarding relocation of 168 industries. The intention

of this Court is clear that the order regarding land reuse was both for relocating industries as well as those which decide to close down and not to relocate. The learned counsel for the industries have not disputed this interpretation. We, therefore, accept the contention of learned Additional Solicitor General. Nothing more need be said on this point.

3. We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The existing hazardous industries having been closed what remains is the plot, superstructure and the workmen. The occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case. We make it clear that Government permission and the consent from the Pollution Control Board/Committee, if required under law, shall have to be obtained. Even fresh electric connection and water connection shall have to be applied for and obtained in the changed circumstances. We have no doubt when approached for necessary permission/licence/water/electric connections the authorities shall expedite in dealing with the applications."

(emphasis supplied)

31.Re(iv) . So far as the fourth issue is concerned, it is to be noted that on the application of the Union of India, this Court by order dated 4-12-1996 in IA No. 36 in Writ Petition No. 4677 of 1985, accepting the second contention of the learned Additional Solicitor General, held that the occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry and such industry can be established if permissible under the Master Plan. The Court also observed that when approached for necessary permission/license/water/electric connections, the authorities shall expedite in dealing the applications (See M.C. Mehta V. Union of India (1997) 11 SCC 327) . In view of the aforesaid clarificatory order of the Court on the application of the Union Government it would not be necessary for those units who have started new industries after obtaining clearances from various departments, provided that the Master Plan permits establishment of such industries, to surrender the land. But those who have not started such industries with appropriate clearance from the competent authority, cannot be permitted to take the stand that they intend to start such industry nor such a plea will entitle them to retain the land. They must be bound by the earlier direction of the Court requiring them to surrender. This will apply to those industries which have not relocated their hazardous industries elsewhere. But if they have relocated, they cannot get the benefit, as has been held by the Court in the order dated 28-4-2000, reported in M.C. Mehta Vs. Union of India (UOI) and Others, "

7. A reading of all the aforesaid judgments of the Supreme Court given in the years 1996, 2000 and 2001 shows that the final position which emerges is by

virtue of para 31.Re(iv) of the judgment reported as M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, i.e. those industries which had stopped non conforming user but had not started any fresh industry till 1.3.2001 were not exempted from the direction to surrender the land in terms of the judgment dated 10.5.1996, but all those industries which had already started industries by 1.3.2001 which were conforming user as per the Master Plan, were held not liable to surrender any land as per the categorical observations in para 31.Re(iv) reproduced above.

8. In the present case, the factual position which emerges is that the respondent-industry had been given a licence with respect to carrying out a conforming industry being cement products and which is noted in the impugned order dated 4.3.2010 in para 5. The licence was with respect to cement coating, cement water proofing, compound etc and was granted vide licence no. 17282 dated 16.1.1997 i.e. prior to passing of the judgment of the Supreme Court in the year 2001. Since this factual position emerged before the trial court, on behalf of the present petitioner its concession was recorded that since the respondent has started a conforming user industry prior to passing of the judgment of the Supreme Court dated 1.3.2001, obviously therefore the respondent did not have to surrender any land and was fully covered by para 31.Re(iv) of the judgment of the Supreme Court dated 1.3.2001. Paras 5 and repeat para 5 of the impugned order dated 4.3.2010 read as under:-

"5. During the course of arguments, it has been urged by learned counsel for the respondent that review of the order dated 25/7/2000 passed by the learned District Judge is not permissible, as the review application in fact is an appeal against the order dated 25/7/2000. It has further been submitted by the learned counsel for the respondent M/s. Metro Paints that in view of the order passed by the Hon"ble Supreme Court in M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, , hazardous industries which have already changed the user to conforming industries after obtaining clearances from various departments, are not liable to surrender any land. In reply to para 9 of the preliminary objections, DDA has not disputed that Metro Paints has already been allowed to run a conforming industry of cement products i.e. "Cement products at Sr of the Master Plan with 135 HP (Cement Coating, Cement water proofing, compound etc.) " vide licence No. 17282 dated 16.1.1997. Issue No. 4 raised before the Hon"ble Supreme Court was decided as follows:-

"So far as the fourth issue is concerned, it is to be noted that on the application of the Union of India, this Court by order dated 5.12.96 in IA No. 36 in Writ Petition No. 4677 of 1985, accepting the 2nd contention of the learned Additional Solicitor General, held that occupation of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry and such industry can be established if permissible under the Master Plan. The Court also observed that when approached for necessary permission/license/water/electric connections, the

authorities shall expedite in dealing the applications. (See : 1997(11) SCC327y) . In view of the aforesaid clarificatory order of the Court on the application of the Union Government, it would not be necessary for those units who have started new industries after obtaining clearances from various departments, provided that the Master Plan permits establishment of such industries, to surrender the land. But those who have not started such industries with appropriate clearance from the competent authority, they cannot be permitted to take the stand that they intend to start such industry nor such a plea will entitle them to retain the land. They must be bound by the earlier direction of the Court requiring them to surrender. This will apply to those industries which have not relocated the hazardous industries elsewhere. But if they have relocated, they cannot get the benefit, as has been held by the Court in the order dated 28.4.2000, reported in M.C. Mehta Vs. Union of India (UOI) and Others, "

(emphasis supplied)

5. Shri K.D. Sharma, learned counsel for the DDA has thus fairly conceded that in view of the aforesaid order of the Hon"ble Supreme Court dated 1-3-2001, no industry which had started conforming user before the date of the order of the Hon"ble Supreme Court dated 1-3-2001 was liable to surrender any land. It is undisputed fact that M/s. Metro Paints had changed to conforming use of the industry prior to 1-3-2001. In view of this and the order reproduced above, M/s. Metro Paints is not liable to surrender any land. The review application has therefore, become infructuous. Same is accordingly dismissed.

File be consigned to record room."

9. I completely agree with the observations of the executing court in the impugned judgment dated 4.3.2010 and the executing court has rightly held that the respondent herein is fully protected by para 31.Re(iv) of the judgment of the Supreme Court reported as M.C. Mehta Vs. Union of India and Others M/s. Delhi Development Authority, .

10. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.