

(2011) 03 DEL CK 0081

In the Delhi High Court

Case No : Writ Petition (C) 1246 of 2010 and CM No. 2622 of 2010

Delhi State Bharat Scouts and Guides

APPELLANT

Vs

Land and Development and Others

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0081

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; Amarjit Singh Chandhiok, ASG, Jatan Singh, CGSC, Ritesh Kumar and Ashish Kumar Srivastava for R-1/L and DO and Jayant Tripathi, for ASI, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Petitioner, Delhi State Bharat Scouts and Guides, a Society registered under the Societies Registration Act, 1860 and affiliated to the Bharat Scouts and Guides, challenges the action of the Respondent Land and Development Office ("L&DO") in the Ministry of Urban Development ("MoUD"), Union of India in cancelling the lease in its favour in respect of land measuring 9.86 acres at Nizamuddin East (hereafter "the premises in question"), ordering re-entry therein and thereafter re-allotting the premises in question to the Archaeological Survey of India ("ASI"), Respondent No. 3 herein.

2. The Petitioner states that on 26th November 1941, the Governor General of India in Council allotted the premises in question to the Petitioner and executed a perpetual lease deed. The lease deed described the land admeasuring 9.86 acres as being situated to the north of Humayun's Tomb. Clause 2 (7) mandated that the lessee will not without the consent of the lessor "carry on or permit to be carried on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a camping ground or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Chief Commissioner of Delhi may be an annoyance or disturbance to the Governor

General in Council or his tenants in the New Capital of Delhi." Clause 2(5), inter alia, mandated that within a year of the allotment, the Petitioner would erect on the land a camp with a chowkidar's hut and a storeroom for camp equipment with all necessary sewers drains and other appurtenances in accordance with plans prepared and submitted in consultation with the Archaeological Department and the consulting Architect to the Government of India and approved in writing by the Chief Commissioner, Delhi. This Clause further mandated that the lessee would not, without previous consent in writing of the Chief Commissioner of Delhi or duly authorized officer, "erect or suffer to be erected on any part of the said demised premises any building other than and except the chowkidar's hut and a storeroom hereby covenanted to be erected." Clause 2(8) of the lease deed acknowledged that on the leased land there were certain monuments which were protected monuments within the meaning of the Ancient Monuments Preservation Act, 1904. Clause 3 gave the power to the Chief Commissioner of Delhi in the event of any breach by the lessee to enter the premises and to remove or demolish any alterations in or additions to the building erected on the premises. Clause 5 mandated that no forfeiture or any re-entry shall be affected without the permission of the Chief Commissioner of Delhi and such re-entry will not be ordered "until the lessor has served on the lessee a notice in writing." Under Clause 5(b) if the breach was capable of remedy and upon serving a notice, the lessee was able to remove the breach, the Chief Commissioner in his discretion would withdraw such forfeiture on such terms and conditions as thought proper. Under Clause 6, if the demised premises or any part thereof was required for a public purpose, it will be lawful for the lessor to re-enter the premises and determine the compensation in lieu of concession in respect of premium and ground rent to be paid to the lessee.

3. On 2nd November 1964, a supplementary perpetual lease was executed and registered whereby the Petitioner agreed to surrender a piece of land measuring 0.93 acre by 30th April 1963 for the construction of an approach road to the second Yamuna Bridge. In lieu thereof two pieces of land measuring 1.319 acres and 1.907 acres were leased to the Petitioner. The Petitioner states that till 1989 it used the demised premises for organizing camps, training and other activities for youth and children. In 1989, to commemorate the birth centenary of Pandit Jawahar Lal Nehru, a cultural programme, "Bhartiyam", was organized by the Government of India on 14th November 1989. It is stated that around 6000 children participated in the event for which the Sports Authority of India ("SAI"), erected certain "modules" on the camping grounds for accommodating the participants of the cultural programme. On conclusion of the Bhartiyam event, the SAI by a letter dated 29th November 1989 handed over to the Petitioner the complete charge of the modules and allied infrastructure erected for the event.

4. The premises in question were inspected on 4th June 2001 by the L&DO and by a letter dated 18th June 2001 the L&DO notified the Petitioner of certain breaches on account of misuse and unauthorized constructions. The three instances cited were that the area was being misused for a "park land club", a

swimming pool and that the Petitioner was selling water at the rate of Rs. 120/- per tank at about 15 water tanks daily. Apart from this, 27 unauthorized constructions were listed. The Petitioner was asked to remedy the breaches within 30 days. In reply the Petitioner on 2nd July 2001 informed the L&DO that the swimming pool was constructed by the New Delhi Municipal Council ("NDMC") out of funds provided by the Lieutenant Governor of Delhi (Chief Commissioner). The modules had been erected by the SAI for the Bhartiyaam event. The Petitioner pointed out that "the Government of India being the lessor and Government of India having spent the amount of construction and the Government of India being the builder the Petitioner had not raised any unauthorized construction". The allegation that the Petitioner had sold the water tanks at the rate of Rs. 120/- per tank was denied. The Petitioner informed the L&DO that if the Ministry of Youth Affairs and Sports ("MYAS") required the swimming pool to be destroyed, the Petitioner would request them to do so since the Petitioner had no authority to destroy government property.

5. On 27th December 2001, the Petitioner addressed another letter to the L&DO furnishing a cloth mounted plan as required by a letter dated 12th November 2001. It was again reiterated that the modules, toilet blocks and bathrooms were constructed by the MYAS under the supervision of a high power committee constituted by the Prime Minister at the time of Bhartiyaam in 1989. A similar letter was written on 6th February 2004 to the Minister MoUD requesting him to intervene in the matter and issue appropriate orders for settling the issues.

6. By a letter dated 8th November 2005, the L&DO informed the Petitioner that the premises in question had been inspected on 26th November 2005 and the following misuses were noted:

- i) 16 modules m/a 16 x 27'-0" x 27'-0" + 11664 sq. ft. are being misused for Madhubala Institute.
- ii) The unauthorized (U/A) construction reported vide Item No. XVIII below known as Bajpai Hall m/a 998.43 sq. ft. is being used as Madhubala Institute.

7. The notice also listed out 18 instances of unauthorized constructions. The Petitioner was asked to remove the breaches within 30 days.

8. In reply the Petitioner on 1st December 2005 informed the L&DO that the unauthorized constructions were in fact erected by the Government of India. It was then stated as under:

Due to lack of funds, Delhi State Bharat Scouts & Guides could not undertake regular repairs & maintenance of the modules & other facilities. So the conditions of the facilities started deteriorating. Ultimately, Government of India, Ministry of H.R.D. came to our help & they managed to give some modules to INTACH. In lieu of sharing these modules for a specified period they agreed to undertake repairs & maintenance of the modules & other facilities.

When INTACH had their own building, they vacated the modules. Then we again

faced the same problem of repair & maintenance of modules & other facilities. Then we had to share those very modules with Madhubala Institute affiliated to Guru Gobind Singh University for a specified limited period with the condition that they will repair & maintain the modules & other facilities. If the Department feels that this sharing is not in order & the line set by Ministry of H.R.D., Government of India was not proper, then we ask the Institute to vacate the premises from the next session ensuing from June, 2006.

9. It was further clarified that certain other unauthorized constructions referred to in that notice dated 8th November 2005 would be dismantled soon but that certain other structures had been erected to provide residential accommodation to the chowkidar, plumber, electrician and sweeper whose services were required round the clock.

10. By a letter dated 27th March 2006, the L&DO informed the Petitioner that its reply dated 1st December 2005 was not found satisfactory and that the breaches pointed in the notice dated 8th November 2005 were in violation of the lease deed. The Petitioner was given another opportunity of removing the breaches within 30 days failing which the premises would be re-entered in accordance with Clause 3 of the lease deed.

11. The Petitioner then sent a legal notice dated 22nd April 2006 stating that the L&DO in consultation with the Prime Minister's office should constitute a consortium of various Ministries concerning the structures erected at the time of Bhartiya and "decide the fate of the structures forever and absolutely". This was followed by another letter dated 7th September 2006 sent by the Petitioner in response to the letter of the L&DO dated 5th September 2006 asking the L&DO to withdraw the order of re-entry. In the said letter, a mention was made of the fact that there was a Public Interest Litigation ("PIL") pending in the Delhi High Court. Further, in Suit No. 311 of 2004, the High Court had directed that the status quo be maintained in relation to the premises in question. In the meanwhile, the Monitoring Committee ("MC") appointed by the Supreme Court sealed the camping ground of the Petitioner. By a letter dated 2nd April 2007 addressed to the MCD, the Petitioner explained that structures in the form of 153 modules had been erected by the Government of India in the premises in question to accommodate the participants of the Bhartiya event in 1989. The Petitioner admitted that the accommodation had been shared with INTACH and an MoU had been entered into for that purpose in 1982. This was since the Petitioner did not have funds to maintain the facilities. INTACH vacated the premises in 1999. The Petitioner admitted that it allowed the Madhubala Institute ("MBICEM") to share some accommodation on the condition that they would provide support in the maintenance of modules and other facilities on the same lines as decided in the case of INTACH by the Government of India. The Petitioner claimed that some sharing of space is permissible in terms of L&DO circular dated 10th December 1999 but that the issue pertaining to the sharing was still pending with the L&DO. The Petitioner assured the MCD that it would

get the premises vacated from MBICEM by 30th June 2007. The Petitioner also enclosed an affidavit undertaking that it would stop forthwith the alleged misuse and that it would not deviate from the terms and conditions stipulated by the MC. The Petitioner prayed that the premises be de-sealed.

12. On 21st May 2007, the L&DO wrote to the Petitioner as under:

Sir,

I am directed to refer to your letter No. D.S. B.S.G./2006/09 dated 7.9.06 on the captioned subject and to say that you are requested to remove the breaches within 15 days of receipt of this letter or latest by 4th June 2007 and intimate this office so that further action could be taken in the matter.

13. On 28th May 2007, the Petitioner again assured the L&DO that the breaches would be removed within two days but that this could only be done after the de-sealing of the premises. The Petitioner reiterated this request by a separate letter dated 28th May 2007 addressed to the MCD. It again reiterated that "the shifting of MBICEM, removal of Tents and Furniture and compliance of orders of Land and Development Office is only possible if the Camping Ground is de-sealed at the earliest".

14. A request for de-sealing was again made by the Petitioner on 22nd June 2007. Two reminders dated 29th June 2007 and 1st August 2007 were sent to the MoUD requesting for de-sealing of the premises. The Petitioner wrote to the MC on 23rd July 2008 and to the L&DO on 12th August 2008.

15. The Petitioner had also filed an application in Writ Petition (Civil) No. 20229-20232 of 2005 in this Court for vacation of the sealing order of the MC of the Supreme Court. The said application was dismissed on 27th November 2008 on the submission made by the L&DO that the property had been re-entered and that the Petitioner's rights as lessee stood forfeited. This Court observed that it was open to the Petitioner as well as the L&DO to approach the MC for appropriate directions. Thereafter the Petitioner made a detailed representation on 31st December 2008 to the MC. The Petitioner states that it thereafter learnt that the premises in question were allotted to the ASI, Respondent No. 3. The MC de-sealed the premises on 15th February 2010. However, upon de-sealing the premises in question were handed over to the ASI. Hence this petition.

16. On 26th February 2010, a statement was made before this Court by counsel for the Petitioner that after the premises were de-sealed by the MC "the Petitioner resumed possession of the premises and has been running its office." It was stated that the ASI was seeking to demolish the structures in the premises without prior notice. In those circumstances, this Court on 26th February 2010 passed a status quo order.

17. At a subsequent hearing on 16th April 2010, this Court clarified that the status quo order passed by this Court would not prevent the ASI from carrying out any maintenance work in the two monuments and the surrounding area. At

the hearing on 13th May 2010, the Respondents disputed that the Petitioner had resumed possession after the de-sealing of the premises. They produced a copy of the memo drawn up at the time of de-sealing which showed that in the presence of the officials of the Petitioner the possession of the premises was handed over to the ASI. With the counsel for the Petitioner contesting the position, this Court appointed a Court Commissioner to visit the premises and inform the Court "if after the de-sealing of the premises on 15th February 2010 there was any activity undertaken by the Petitioner for running its office in the premises." Pursuant to the above order dated 13th May 2010, the Court Commissioner visited the premises and filed a detailed report along with photographs and a video CD. The Court Commissioner concluded that there was no activity being undertaken in the premises since a long time.

18. On 31st August 2010, the following order was passed by this Court:

1. Mr. Saint's arguments have been heard in part. He submitted that the structures which have been labeled by the L&DO as "unauthorised" have been put up, way back in 1989, by the Government of India for the Bhartiya festival and that the Petitioner could not have unilaterally removed such structures. Without prejudice to the contentions of the Petitioner, he submits that the Petitioner is not opposed to the structures being removed. Further, he states that the Petitioner will not be opposed to giving up such of the area which is required for preservation of the two monuments located within the property in question.

2. The Court would like the L&DO to consider without prejudice to its rights and contentions in the matter, whether in the facts and circumstances of the case and in view of the statement made today on behalf of the Petitioner, any alternative space can be allotted to the Petitioner.

3. List on 21st September 2010.

19. However, the counsel for the L&DO informed the Court at the hearing on 2nd December 2010 that it was not possible to allot any alternative space to the Petitioner.

20. Mr. R. K. Saini, learned Counsel appearing for the Petitioner submitted that the L&DO has not followed the due process of law in evicting the Petitioner unceremoniously from the premises in question. The Petitioner had been complying with the lease conditions and operating the camp in terms of the lease deed for over six decades. It is submitted that at the time the premises were sealed, it was the Petitioner who was in possession thereof. Once the premises were de-sealed, the possession of the premises had necessarily to be handed back to the Petitioner.

21. It is submitted by Mr. Saini that under the terms of the lease deed the giving of a prior notice about breaches was not an empty formality. It is pointed out that in the instant case no cogent reason was given by the L&DO for rejecting the detailed representations given by the Petitioner. Even as per the terms of the

lease, if the breaches were remediable, and in this case according to Petitioner they were, the L&DO ought not to have taken the extreme step of straightway evicting the Petitioner which had been occupying the premises as a lessee for over 60 years.

22. As regards the sub-letting of the premises to MBICEM, Mr. Saini submitted that the said breaches had admittedly ceased with the premises being sealed by the MC. He further pointed out that the transfer of the premises to the ASI even before formally evicting the Petitioner showed that this move was pre-meditated and was entirely without the authority of law. He submitted that the plea of unauthorised construction was untenable as it had been undertaken by the Government of India itself. He submitted that without prior permission of the Government of India it would not have been possible for the Petitioner to remove the said structures. Mr. Saini placed reliance on the decisions in *Bishan Das and Others Vs. The State of Punjab and Others*, *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, and *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, .

23. Mr. A.S. Chandhiok, learned Additional Solicitor General ("ASG") appearing for the Union of India submitted that the notices to the Petitioner for breach of the terms of the lease deed after repeated inspections on different dates were essentially on two grounds. One was for misuse on account of sub-letting of the premises to MBICEM and second, for the unauthorised structures. He pointed out that in the replies submitted by the Petitioner there was no categorical denial of the factum of sub-letting. Further, there was no indication that the misuse would be stopped. He submitted that in fact till the sealing of the premises on the order of the MC of the Supreme Court, MBICEM continued to occupy a portion of the premises. It was in this context that the Respondents passed the order of re-entry.

24. Mr. Chandhiok submitted that when the premises were de-sealed by the Supreme Court MC, it was in the presence of the representatives of the Petitioner. He produced a note signed by the representatives of the ASI, the L&DO and the Petitioner dated 15th February 2010 under which the premises were handed over to the ASI. He pointed out that there was no protest by the Petitioner at that stage. The Petitioner voluntarily gave up possession of the premises. Therefore it was not open to the Petitioner to contend that it had been forcibly evicted and that possession should be restored to it. The learned ASG pointed out that with the re-entry order having been passed and for valid reasons as explained hereinbefore, there was no question of the Petitioner being put back in possession of the premises.

25. Mr. Chandhiok pointed out that the prayer in this writ petition was as regards the land to the extent of 9.86 acres, whereas by way of the supplementary lease deed the total extent of land leased to the Petitioner was 12.56 acres. Mr. Saini submitted that this was only a technical plea and should not come in the way of the Petitioner's prayer for substantive justice.

26. The first issue to be considered is whether the Respondent L&DO has complied with the principles of natural justice in passing the impugned order of re-entry. Although there were breaches notified by the L&DO after an inspection on 10th January 1974, it appears that no action was taken by the L&DO thereafter. What is relevant for the purposes of the present case is the inspection that took place on 4th June 2001 leading to the notification of the breaches by the L&DO to the Petitioner by a letter dated 18th June 2001. At this stage, misuse noticed was for use of the area for "park land club", for a swimming pool and the allegation that the Petitioner was selling water @ Rs. 120/- per tank. The notice also listed the alleged unauthorised constructions.

27. In response to the reply of the Petitioner dated 2nd July 2001, the L&DO by its letter dated 12th November 2001 asked the Petitioner to submit the sanctioned building plan duly cloth mounted in order to verify the construction. The Petitioner's reply dated 27th December 2001 pointed out that the unauthorised structures were constructed by the Government of India at the time of Bhartiya in the year 1989. The swimming pool and the open air stadium were constructed by the NDMC and Delhi Administration respectively. The sanctioned plan was not available with the Petitioner. The above explanation appears to have been accepted by the L&DO and, therefore, no further action was taken thereafter. Further since no formal order was communicated, the Petitioner wrote to the MoUD on 6th February 2004 seeking settlement of the issues. There was no reply to this letter.

28. The subsequent issuance of notice dated 8th November 2005 for breaches was consequent upon an inspection undertaken of the premises in question by the L&DO on 26th October 2005. From the counter affidavit, it appears that prior to this some time in February 2003, the Ministry of Tourism and Culture, Government of India as well as the Director General of the ASI had informed the L&DO that the land surrounding the protected monuments, i.e. Bada Batashewala and Chota Batashewala, which was leased out to the Petitioner was being used for commercial purposes in violation of the lease conditions. The ASI had drawn up a plan for development of the entire land surrounding Humayun's Tomb. The ASI proposed that lease of the Petitioner be cancelled and the land be transferred to the ASI for care and maintenance and for development as a world heritage site in an integrated and aesthetic manner. The ASI requested the MoUD for transfer of the land measuring 9.86 acres to them in accordance with the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 ("AMASR Act"). Further, by virtue of two notifications, dated 16th June 1992 and 4th July 1992, no construction activities could be carried out within the prohibited area of 100 metres radius surrounding the Humayun's Tomb and no construction within the regulated area, i.e., within a radius of 300 metres surrounding Humayun's Tomb could be undertaken without prior permission of the ASI.

29. When the inspection was undertaken on 26th October 2005 the breaches

noticed were that 16 modules in the premises were being used by the MBICEM. Further, the Bajpai Hall admeasuring 998.46 sq. m., which was itself an unauthorised construction, was also being used by the MBICEM. The other breaches related to other unauthorised constructions.

30. The reply dated 1st December 2005 of the Petitioner to the said notice, admitted that the Petitioner had allowed the MBICEM to use the premises in question. There was a clear admission that this was done without prior permission of the lessor. The reply also did not give any assurance of stoppage of the said misuse. The reply was in fact equivocal inasmuch as it was stated that "if the Department feels that this sharing is not in order & the line set by Ministry of H.R.D., Government of India was not proper, then we can ask the Institute to vacate the premises from the next session ensuing from June, 2006."

31. It is not surprising, therefore, that the L&DO did not find the above reply to be satisfactory and required the Petitioner by the notice dated 27th March 2006 to remove the breaches. Further, the reply dated 22nd April 2006 by the Advocate for the Petitioner made no reference whatsoever to the misuse of the premises by sub-letting it to the MBICEM. The breaches remained unremedied. Consequently, the re-entry order was passed on 25th May 2006.

32. Given the above exchange of correspondence where there were sufficient notices issued to the Petitioner for removal of the breaches and it failed to do so, no fault can be found with the order of re-entry with effect from 25th May 2006. It cannot be said that in arriving at the said decision the L&DO acted in violation of any of provisions of the lease deed much less in violation of the principles of natural justice.

33. It appears that some of the employees of the Petitioner had filed Suit No. 311 of 2004 in which a status quo order had been passed. On that ground the Petitioner on 7th September 2006 wrote to the L&DO requesting it to "withdraw the order of re-entry and issue terms for withdrawal of re-entry order." From the letter dated 7th September 2006, it is plain that by this time the Petitioner was aware of the order of re-entry. The letter dated 7th September 2006 in fact refers to the L&DO's letter dated 5th September 2006. The second aspect is that this letter dated 7th September 2006 of the Petitioner also makes no reference to the misuse on account of the MBICEM occupying the structures. The third aspect is that despite the re-entry order the Petitioner at that stage did not chose to challenge the order. This position obviously continued till the sealing of the premises by the Supreme Court's MC on 29th March 2007.

34. Interestingly, the affidavit dated 2nd April 2007 furnished by the Petitioner to the MCD assures that "the alleged misuse of the above mentioned premises will be stopped forthwith and no further extension will be sought on any ground whatsoever nor will deviate from the terms and conditions agreed before the monitoring committee." The affidavit was furnished along with a letter of the same date, i.e. 2nd April 2007, addressed to the MCD in which the Petitioner

stated: "we will get the premises vacated from MBICEM by 30.06.07." It is perhaps in light of the above undertaking that on 21st May 2007, the L&DO again requested the Petitioner to remove the breaches within 15 days. This led to the Petitioner writing on 28th May 2007 that it would remove the breaches within 15 days of the de-sealing of the premises. It is only by the letter dated 28th May 2007 that the Petitioner informed the MCD as under:

As per instructions from Humble Monitoring Committee MBICEM applied and submitted affidavit to your good office for de-sealing the premises and also agreed to vacate the Camping Ground within the specific period.

The Portion being used by MBICEM was de-sealed with the condition that they will have to vacate the premises before 30.06.07. The institute is ready to shift to the new premises but furniture and other equipment cannot be shifted because the main gate of the Camping Ground is closed and sealed. Copy of the letter of MBICEM is attached.

35. On 22nd June 2007, the Petitioner wrote to the L&DO stating as under:

...MBICEM has vacated the 90% of the premises occupied by them. The Bajpai Memorial Hall is completely vacated and removed the equipment and material.

The Algeria"s and big size furniture is yet to be removed as the main gate of the camping ground is locked & sealed.

The MBICEM vide their letter No. MB/17-27/2006-07 dated 19.6.2007 requested the Humble Monitoring Committee to De-Seal the main gate for two days so that they can remove the Algeria"s & big furniture etc. lying there.

36. This was followed by another letter dated 29th June 2007 from the Petitioner to the L&DO stating that MBICEM has completely vacated the premises including the Bajpai Memorial Hall. There were repeated letters written by the Petitioner thereafter on 1st August 2007, 23rd July 2008 and 12th August 2008 to the L&DO and to the MC requesting for withdrawal of the re-entry order and for de-sealing of the premises in question.

37. While it is true that the L&DO did not reply to the above letters, its stand was made clear in proceedings in this Court in Writ Petition (Civil) No. 20229 of 2005 on 27th November 2008. While rejecting an application being CM No. 13650 of 2008 filed by the Petitioner for de-sealing of the premises, this Court passed the following order:

27.11.2008

CM No. 13650 of 2008

At this stage we are not inclined to pass any order on this application. It appears that the property was sealed under the orders of the Supreme Court Monitoring Committee (SCMC) and an application has been moved by the ex-lessee for vacating that order. The stand of the land and development officer (Land DO) is

however that as the property has been re-entered and it no longer stands in the name of the ex-lessee, all rights of lessee stand forfeited, the ex-lessee is not entitled/authorised to request for de-sealing of the premises. It is open for the ex-lessee as well as the land DO to approach the SCMC for appropriate directions. It is made clear that we have not expressed any opinion on the merits of the case. The application is rejected.

38. Learned ASG has rightly pointed out that whatever may have been the doubts earlier, the above order made it clear that the L&DO was not willing to recall the re-entry order and that the property in question no longer stood in the name of the Petitioner.

39. The action of the L&DO in allotting the premises to the ASI on 30th November 2009 has to be seen in the above light. The Petitioner clearly did not seek any legal remedy as regards the re-entry order prior to that date. It made representations to the MC of the Supreme Court on 31st December 2008 requesting for de-sealing.

40. The relevant notings on the file leading to the de-sealing of the premises have been placed on record. The first is a noting of 3rd July 2007 of the office of the MC about a letter dated 19th June 2007 received from the L&DO requesting the MC not to de-seal the premises on the request of the Petitioner as the premises did not stand in the name of the Petitioner any longer. The other is a noting of 12th February 2010 of the MC that the L&DO had forwarded a letter dated 10th February 2010 to the MC requesting it to de-seal the premises north of Humayun's Tomb measuring 12.156 acres "for transferring the same to ASI." The MC approved the de-sealing of the premises "except the temporary structure in which Aap Ka Tent House articles are lying." The noting further is to the effect that "the Bharat Scouts and Guides have agreed to remove their articles etc. within two days of de-sealing (Member M/C spoke to Mr. R.S. Saini, Humble State Secretary of Bharat Scouts and Guides on 10th February 2010 over telephone)." The MC further noticed that "L&DO will ensure the recovery of misuse charges from Bharat Scouts and Guides. The premises be de-sealed on 12th February 2010 when ASI and L&DO officers are present."

41. It appears, therefore, that it was with the full knowledge of the Petitioner that de-sealing of the premises took place in the presence of the Petitioner. Further, the Petitioner appears to have consented to the de-sealing of the above premises in the aforementioned manner. The subsequent noting of 15th February 2010 when the de-sealing actually took place also shows that it took place in the presence of the Petitioner.

42. The above developments have also to be seen in light of the explanation given by the L&DO in its counter affidavit of the need to preserve the entire area surrounding the Humayun's Tomb free from encroachment and misuse. Viewed in that light, it is not possible to conclude that the action of the L&DO was arbitrary or unreasonable.

43. The handing over of the premises to the ASI on 11th November 2009 was after the re-entry order had been passed in the circumstances explained hereinbefore. In view of sealing of the premises by the MC under the authorisation of the Supreme Court, it is not possible to hold that the L&DO forcibly evicted the Petitioner. With the Petitioner having been in possession in the above circumstances, and with the re-entry order not having been set aside prior to the de-sealing, the handing over of the premises after de-sealing to the ASI, in the presence of the Petitioner, without any protest from the Petitioner, cannot be said to be illegal. There was no obligation on the L&DO to put the Petitioner back in possession when the MC de-sealed the premises on 15th February 2010.

44. The fact remains that till sealing of the premises by the MC, the breaches had not been removed. The misuse by the MBICEM was perhaps stopped while the premises were sealed. But this was at a time when the re-entry order had already been passed.

45. For the aforementioned reasons, this Court does not find any merit in this writ petition and it is dismissed as such, with no order as to costs.