

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 6030 of 2007

STUDENTS ISLAMIC MOVEMENT OF INDIA Petitioner

Through: Mr. Trideep Pais with
Ms. Bijoylaakshmi Das and
Mr. Mobin Akhtar, Advocates.

versus

THE SECRETARY HOME & ORS. Respondents

Through: Mr. A.S.Chandhiok, ASG with
Mr. Sachin Datta and
Mr. Sanjay Katyal, Advocates for R-1 & R-2.
Mr. Saleem Ahmed, Advocate
for R-3 & R-4.

CORAM: JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the order? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the order should be reported in Digest? | Yes |

ORDER
12.03.2010

1. The Petitioner, Students Islamic Movement of India ('SIMI'), is by this petition filed through its erstwhile President Mr. Shahi Badr Falahi, seeking a direction to the Delhi Police to de-seal its premises at H.No. 151 C Gali No.9, Zakir Nagar, Okhla, New Delhi.

2. The petitioner was by a Notification dated 27th September 2001 issued by the central government under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 ('UAPA') declared to be an unlawful association. This declaration was confirmed by the Unlawful Activities Prevention Tribunal ('Tribunal') by an order dated 26th March 2002 which was published in the gazette dated 8th April 2002.

The declaration was for a period of two years i.e. up to 26th September 2003. By a subsequent Notification dated 26th September 2003 under Section 3 UAPA the petitioner was declared to be an unlawful association. This was confirmed by a Tribunal by an order on 23rd March 2004. Thereafter, on 8th February 2006 a fresh Notification was issued by the Central Government under Section 3(1) UAPA declaring the Petitioner to be an unlawful association. That Notification was confirmed by yet another Tribunal by an order dated 7th August 2006. The current status is that the petitioner continues to be declared by the central government to be an unlawful association.

3. In terms of Section 19 UAPA (prior to the amendment in 2002), the central government could delegate its powers to the State Government which in turn could authorise any person working under it to exercise the powers under the UAPA. (After the amendment in 2002 the corresponding provision is Section 42 UAPA) By a Notification dated 10th December 1992, the Central Government delegated the powers under the UAPA to the State Governments and the Administrations of the Union Territories. Consequent to the above Notification on the same date i.e. 10th December 1992, the Government of National Capital Territory of Delhi ('GNCTD') passed an order authorising the Commissioner of Police, Delhi to exercise powers under Sections 7 and 8 UAPA.

4. Simultaneous with the issuance on 27th September 2001 of the

notification declaring the petitioner to be an unlawful association, the central government passed the following order:

“ORDER

Subject: Declaration of the Students Islamic Movement of India as an “unlawful association” under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967- Notification issued by the Central Government under Section 19, directing that all powers which may be exercised by the Central Government under sections 7 and 8, shall be exercised also by any State Government/Union Territory Administration.

Whereas, the Central Government, in exercise of powers conferred by Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) have declared the Students Islamic Movement of India as an unlawful association;

And whereas, in exercise of the powers conferred by Section 19 of the said Act, the Central Government have directed that all the States and Union Territory Administrations shall exercise the powers exercisable by the Central Government under Sections 7 and 8 of the said Act;

And whereas, it has been considered necessary that the powers directed to be exercised by all the State Governments as above, may be exercised by any person subordinate to the State Governments;

Now therefore, the approval of the Central Government is hereby conveyed that the State Government may, by, order in writing, direct that any power which has been directed to be exercised by it,

shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by the Commissioners of Police, District Magistrates/Deputy Commissioners of Districts under the State Government.

By order and on behalf of the Government of India

(B.K. Haider)
Joint Secretary to the Government of India”
(emphasis supplied)

5. Purportedly acting pursuant the above authorisation, the Commissioner of Police (Delhi) passed the following order on 28th September 2001:

“In exercise of the Powers on me vide order No.11/107/92 dated 18.1.1995 issued by Govt. of NCT of Delhi (Home Police II).

I, Ajai Raj Sharma, Commissioner of police, Delhi after due enquiry, am satisfied that Students Islamic Movement of India, having its head quarters at H.No. 151 C Gali No.9, Zakir Nagar, Okhla, New Delhi, which has been declared as an unlawful association and banned vide notification No. 960(E) dated 27.9.2001 issued by Govt. of India, Ministry of Home Affairs, New Delhi, is declared as a notified place from where the members of this Association were indulging in unlawful activities creating public disorder.

I, Ajai Raj Sharma, Commissioner of Police Delhi, therefore, under the provisions of Section 7 and 8 of the Unlawful Activities (Prevention) Act, 1967 do hereby empower the SHO/New Friends Colony/any Inspector of

Special Cell/PHQ to take necessary action in violation of the notification as well as this order.

Sd/-

(Ajai Raj Sharma)
Commissioner of Police, Delhi
Dated, Delhi, the 28.9.2001.”

6. The Petitioner states that acting on the above order, its headquarters at House No. 151C, Gali No.9, Zakir Nagar, Okhla, New Delhi-110065 was sealed by the Delhi Police on 29th September 2001. The premises has been lying sealed since then. It is submitted that Section 8 UAPA does not empower the Respondents, and in particular the Delhi Police, to seal the aforementioned premises of the Petitioner. Reliance is placed on the judgment of the Division Bench of this Court in ***Suruchi Sansthan v. Government of the National Capital Territory of Delhi 50 (1993) DLT 183 (DB)***. It is stated that only the District Magistrate (DM) can pass orders to seal premises under Section 8(4) read with Section 8(1) UAPA. No such order has been passed by the DM directing the sealing of the premises. Despite making several representations, the Respondents have not de-sealed the premises. Hence the present petition.

7. Notice was issued in this petition on 17th August 2007. In response, a counter affidavit was filed by Respondents 3 and 4 (the Delhi Police) on 6th November 2007 stating that on enquiry it was found that the premises in question belongs to one Mr. Habibullah Siddiqui. It is accordingly contended that the Petitioner has no *locus standi* to seek restoration of the premises to it. The order passed by the Commissioner

of Police sealing the premises is sought to be justified with reference to the Notification dated 27th September 2001 delegating the powers under Sections 7 and 8 to him. Since the Petitioner continued to be declared to be an unlawful association, it did not have any right to seek restoration of the premises to it. It is pointed that articles from the premises were seized as part of the evidence collected during the investigation of FIR No. 532 of 2001 dated 28th September 2001 under Sections 3 and 10 UAPA read with Sections 124-A/153-A/120-B IPC registered at Police Station New Friends Colony. The Union of India, represented by Respondents 1 and 2, has taken a more or less similar stand in its counter affidavit.

8. On 4th May 2009 this Court passed the following order:

“The writ petitioner contends that the power to desal the premises bearing no. 151-C, Gali No.9, Zakir Nagar, New Delhi does not exist under the Unlawful Activities (Prevention) Act, 1967. It was submitted that such power did not exist when the impugned sealing took place.

Learned counsel submitted that in this case, the Commissioner of Police, on 28.09.2001 declared the premises as a notified place. It is contended that apart from the question of legality of such declaration, there could be sealing of the premises within the meaning of that expression, as understood in law. It was submitted that the Division Bench judgment of this Court in ***Suruchi Sansthan v. Govt. of NCT of Delhi 50 (1993) DLT 183*** held that the Act does not contain any provision enabling the respondent authorities to seal the premises of any unlawful association or premises where such unlawful associations function from. It was submitted that even the respondents are locating source of power in this case under Section 8. It is pointed out that in the counter affidavit of Respondent Nos. 3 and 4, while stating that the writ petitioner does not have locus, it has suggested that the suitable remedy-if at all- would be to apply under Section 8(8) to the District Judge.

The Court has considered the submissions made.

Undoubtedly, the decision in *Suruchi Sansthan* (supra) is premised upon the understanding that the power under Section 8 does not extend to sealing the premises. In that decision, the contention of the authorities that such power exists in Section 33 of the Delhi Police Act was also overruled. This Court is of the opinion that the power of the police to seize property-an expression which extends to immovable property, prima facie, appears to exist in Section 102 of the Code of Criminal Procedure (Cr.PC). In this case, the premises were sealed, as is evident from the reading of the First Information Report (FIR). Apparently, notice of the Division Bench was not drawn to Section 102, and the safeguards provided and the remedies available under the Cr.PC. The Act provides a mechanism for declaring Associations as unlawful and also enacts certain special offences. As part of that mechanism, the premises of such associations or organizations can be notified under Section 8 and entry of certain persons, prohibited under Section 8(4). The existence of such power-unless there is an express bearing to the applicability of general enactments, such as Cr.PC, which outlines the process of investigation and the powers of the police itself, in the opinion of the Court, prima facie do not exclude the power of search and seizure.

Learned counsel for the petitioner seeks some time to examine the records and make submissions.

List on 24.07.2009.”

9. After the above order was passed, the Petitioner filed an additional affidavit on 7th September 2009 stating that learned counsel for the Petitioner had inspected the file of the trial court before which the criminal case arising out of FIR No. 532 of 2001 was pending trial. It was found that the Respondents had not relied on Section 102 CrPC to justify the sealing of the premises. Therefore, the question of the applicability of that provision did not arise. Reliance was placed on the judgment of the Rajasthan High Court in *Amrit Lal Kumawat v. The State of Rajasthan 1998 Cri LJ 3032* in which it was held that Section 102 CrPC did not contemplate sealing of immovable property.

10. On 12th January 2010 the following order was passed by this Court:

“1. One of the objections taken in the impugned order filed on behalf of Respondents 1 and 2 as well as Respondents 3 and 4 is that the Petitioner has not disclosed what right it has in the premises in question namely House No. 151C Gali No. 9, Zakir Nagar, Okhla, New Delhi, 110065. Learned counsel for the Petitioner states that he will within two weeks file an affidavit clarifying this aspect and also enclose the relevant documents, if any.

2. In an additional affidavit filed by the Petitioner on 7th September 2009 a reference has been made to the seizure memos in the criminal case that has been registered under FIR No. 532 of 2001 Police Station New Friends Colony. The Respondents are permitted to place on record copies of the said seizure memos along with an affidavit stating that they form part of the record of FIR No.532 of 2001. The affidavit be filed within a period of four weeks.

3. There will no further affidavit permitted to be filed in the matter.

4. List on 4th March 2010.”

11. The Delhi Police has along with an affidavit dated 11th February 2010, placed on record copies of the seizure memos prepared at the time of sealing the premises. In response thereto, the Petitioner filed a further affidavit on 15th February 2010 placing on record copies of a rent agreement dated 3rd April 1997 for the period from 3rd April 1997 to 31st March 1998 entered into between the Students Welfare Trust (as lessor) and the Petitioner (as lessee); copy of a rent agreement dated 28th September 1998 for the period of lease between 1st April 1998 to 31st March 1999; copy of a rent agreement dated 9th August 1999 for the period between 1st April 1999 to 31st March 2001 and copy of the rent agreement dated 8th May 2001 for the period of 1st April 2001 to 31st March 2003 between the same parties. Learned counsel for the

Petitioner also produced the originals of the above documents in court. On the strength of these documents, it is contended that on 29th September 2001 the petitioner was in lawful possession of the premises and, therefore, had *locus standi* to seeking restoration of the premises to it. It was reiterated that there was no seizure memo in FIR No. 532 of 2001 pertaining to sealing of the premises in question.

12. An application was filed by Respondents 3 and 4 seeking more time to verify the rent agreements referred to hereinbefore. However learned counsel for the Petitioner submitted that he does not wish to rely on those documents since the Petitioner was severely prejudiced on account of being continued to be deprived of its premises for over eight years. With the pleadings being complete, the petition was heard finally.

13. Mr. Trideep Pais, learned counsel appearing for the Petitioner reiterated the submissions made in the petition. While not disputing that the Petitioner continues to remain an association declared to be unlawful under the UAPA as on date, he submits that there must be a specific power in the UAPA to seal the premises of an organisation declared to be unlawful. He further submits that the power to pass orders under Section 8 UAPA could not have been delegated to the Commissioner of Police, Delhi. An order to that effect if at all could be made only by the DM in terms of Section 8(4). Then again, by such order, only the entry of the persons not ordinarily residing in the premises could have been barred. Person who were in ordinary

possession of the premises were not intended to be prevented from entering the premises. Therefore, the sealing of the Petitioner's premises is entirely without the authority of law.

14. This Court is unable to accept the above submission of learned counsel for the Petitioner. The relevant provisions of the UAPA for the purposes of the present case are Sections 3(1), 8 and 42 (which corresponds to Section 19 UAPA prior to the 2002 amendment). These provisions read as under:

“3 - Declaration of an association as unlawful

(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.”

“8 - Power to notify places used for the purpose of an unlawful association:

(1) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.

Explanation.— For the purposes of this sub-section, "place" includes a house or building or part thereof, or a tent or vessel.

(2) On the issue of notification under sub-section (1), the District Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry, cattle, grain and food-stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(3) If, in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save

in accordance with the written orders of the District Magistrate.

(4) The District Magistrate may thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on or in, the notified place:

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(5) Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.

(6) Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in the notified place and may detain any such person for the purpose of searching him;

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under, sub-section (1) or by an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is, situate—

(a) for declaration that the place has not been used for the purpose of the unlawful association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4), and on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question.

42. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under Section 7, or Section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing, direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.”

15. Under Section 8(1) of UAPA, the Central Government is empowered to “notify any place which in its opinion is used for such unlawful organisation.” The premises in question were being used by the Petitioner as its office. Its activities as an association were carried on from the said premises. A collective reading of Sections 3(1) and 8(1) UAPA would show that the purpose behind the Central Government declaring an association to be unlawful is to prevent it from carrying on any activity as such association thereafter. Under Section 7 the central government can issue orders prohibiting the use by such association of its funds in bank accounts. Section 8 deals with the power to notify the places which have been used by the unlawful association. The powers incidental to this are contained in Sections 8(2) and 8(3) which enable the passing of orders by the DM for making a list of all movable properties and prohibiting any person from using such articles; under Section 8(4) to the effect that no person “who at the date of the Notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter or be on or in, the notified place.” Under Section 8(8) any person aggrieved by an order or a notification issued under Section 8(1)

UAPA can within thirty days apply to the District Judge for declaration that the place was not used for the purposes of the unlawful association and ask for the setting aside of the order. Section 8 read with the erstwhile Section 19 (presently Section 42 UAPA) makes it clear that the power thereunder can be delegated by the central government to a state government and in turn by the latter to a Commissioner of Police. If the whole purpose of the declaration under Section 3 (1) UAPA is to prevent the association declared to be unlawful from carrying on any activity, then it does not stand to reason that such association can be allowed to resume the possession of the premises from which it was operating.

16. It is clarified here that this Court is not called upon to, and has in fact not, examine whether the petitioner was otherwise in lawful possession as a tenant in the premises as claimed by it or in the validity of the rent agreements produced by the petitioner since counsel for the petitioner did not wish to place any reliance on those documents. This court has proceeded on the footing that on the date of the sealing of the premises the petitioner was using it as its office.

17. There can be circumstances where a premises is used or occupied by persons who are themselves not members of the unlawful association which was using the premises for its activities. Such persons may have been using the premises either as a residence or for some other activity unrelated to the activity of unlawful association.

Such persons may be able to show that their use of the premises cannot be prevented in terms of Section 8(4) UAPA. However, that is not the situation here. It is the unlawful association itself which is seeking the restoration to it of the premises which it admittedly was using for its activities, even while it continues to be declared to be an unlawful association. Such contention is untenable in law. No such prayer can be granted in a writ petition under Article 226 of the Constitution.

18. It is the above fact that distinguishes this case from the facts in *Suruchi Sansthan*. There the Rashtriya Swayamsevak Sangh ('RSS') was the association that was declared to be unlawful under Section 3 (1) UAPA. However the RSS was not the Petitioner before the Court seeking restoration of the premises to it. The Division Bench of this court found that no specific orders had been passed by the District Magistrate under Section 8(4) in relation to the premises occupied by the Suruchi Sansthan. However, in the present case, the Commissioner of Police who has been duly delegated the powers of the DM under Section 8 UAPA, has passed an order sealing the premises. The decision in *Suruchi Sansthan* does not help the Petitioner at all.

19. The Notifications referred to hereinbefore issued by the Central Government and thereafter by the GNCTD are valid in terms of the erstwhile Section 19 UAPA, which corresponds to the present Section 42 UAPA. The exercise of the powers under Sections 7 and 8 UAPA by Commissioner of Police, Delhi in the instant case is therefore

lawful. It is the Commissioner of Police who has passed the consequential orders sealing the premises. Needless to say that as and when the declaration that the petitioner is an unlawful association ceases in accordance with law, the justification for the sealing of premises used by it will also cease. However, as at present as long as the petitioner continues to be declared to be an unlawful association no further justification is necessary to be shown for the premises used by it continuing to remain sealed.

20. For all the aforementioned reasons, this Court finds that the reliefs sought for in this petition cannot be granted. The petition is dismissed. The applications are disposed of.

S. MURALIDHAR, J.

MARCH 12, 2010
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