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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 20th February, 2018

Decided on : 6th March, 2018

+ CM (M) 1173/2010

**SWATANTRA BHARAT MILLS AND
DCM SILK MILLS LTD.**

..... Petitioner

Through: Mr. Rajiv Nayyar, Sr. Adv.
with Ms. Meghna Mishra, Mr.
Bimal Roy Jad, Mr. Varun
Kumar, Mr. Saurabh Seth, Ms.
Avshreya Rudy & Ms. Nandini
Singh, Advs.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Rajiv Bansal, Sr. Adv. with
Ms. Rukhmini Bobde & Ms.
Vidhi Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. The petition at hand filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India sought to assail the order dated 25.03.2010 of the executing court (District Judge) passed on the file of miscellaneous execution case (no. 80/10/03) whereby the application dated 08.08.2003 of DCM Shriram Consolidated Limited, owners of Swatantra Bharat Mills ("SBM") and DCM Silk Mills ("DCM") for review of earlier order dated 18.07.2003 under Order XLVII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) was dismissed, the prime issue being as to whether SBM

and DCM are entitled, as two separate units, to retain and develop, for their own benefit, 2000 square metres each of land while surrendering the remaining land to the use of the community at large in terms of directions of the Supreme Court by orders dated 10.05.96, 08.07.96, 04.12.96 and 28.04.2000 in Writ Petition (Civil) 4677/1985 titled as *M.C. Mehta vs. Union of India and Others*, the said decisions having been reported as (1996) 4 SCC 351; (1996) 4 SCC 750; (1997) 11 SCC 327 and (2000) 5 SCC 525.

2. Before advertng to the issues raised, it is proper to take note of the background facts.

3. Taking note of the facts that Delhi is one of the most polluted cities in the world, quality of ambient air here having become so hazardous that lung and respiratory diseases have been on the increase, it having become a fast and unmanageable conglomeration of commercial, industrial unauthorized colonies, resettlement colonies and unplanned housing, with total lack of open spaces or green areas, the most vital “community need” being the conservation of the environment and reversal of the environmental degradation by urgently providing for “lung spaces” in the shape of green belts and open area, the Supreme Court, by its order dated 10.05.96 in the case of *M.C. Mehta vs. Union of India and Others* [(1996) 4 SCC 351] approved a scheme, as proposed, for relocation/shifting of certain industries from Delhi and the surrender of the land used by such industries by their owners so that it could be developed and be put to use for the community at large, the owners having been given the liberty to retain, to an extent, part of such land.

4. The relevant portion of the observations and directions to above effect as appearing in the order dated 10.05.96 may be quoted as under:-

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

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

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

10. We do not agree with the learned counsel for the industrialists that Floor Area Ratio (FAR) be permitted

to them on the total area of the plot. We however, direct that on the percentage of land as shown in column 4 the owners at Serial Nos. 2, 3 and 4 shall be entitled to one and a half times of the permissible FAR under the Master Plan".

(emphasis supplied)

5. In the wake of directions given by the Supreme Court by various orders in the matter of *M.C. Mehta vs. Union of India and Others* (supra), certain authorities entrusted with the task made reports before the Supreme Court, upon consideration of which, by order dated 08.07.96 [(1996) 4 SCC 750], the Supreme Court held that 168 industries which had been identified were “*hazardous/noxious/heavy/large industries*” setting out their particulars in the list (in para 26), it including SBM and DCM (at serial no. 39 & 40 respectively), with further conclusion (in para 27) that “*these industries cannot operate in the city of Delhi*”. The Court gave the following directions with regard to the above-mentioned 168 industries – that included SBM and DCM – (in para 28) as under:

“28. We, therefore, hold and direct as under:

(1) The above-listed 168 industries cannot be permitted to operate and function in Delhi. These industries may relocate/shift themselves to any other industrial estate in the NCR. We direct that the 168 industries listed above shall stop functioning and operating in the city of Delhi with effect from 30-11-1996. These industries shall close down and stop functioning in Delhi with effect from the said date.

(2) The Deputy Commissioner of Police concerned shall, as directed by us, effect the closure of the above industrial units with effect from 30-11-1996 and file compliance report in this Court within 15 days thereafter.

(3) The National Capital Region Planning Board shall render all assistance to the industries in the process of relocation. This direction shall go to the Board through its Secretary. The National Capital Territory, Delhi Administration, through its Chief Secretary and Secretary, Industries, State of Haryana through its Chief Secretary and Secretary, Industries, State of Rajasthan through its Chief Secretary and Secretary, Industries and the State of Uttar Pradesh through its Chief Secretary and Secretary, Industries shall provide all assistance, help and necessary facilities to the industries which intend to relocate themselves in the industrial estates situated in their respective territories.

(4) The allotment of plots, construction of factory buildings, etc., and issuance of any licences/permissions etc. shall be expedited and granted on priority basis.

(5) In order to facilitate shifting of industries from Delhi, all the four States constituting the NCR shall set up unified single agency consisting of all the participating States to act as a nodal agency to sort out all the problems of such industries. The single window facility shall be set up by the four States within one month from today. This direction to the four States is through the Chief Secretaries of the States concerned. The Registry shall convey this direction separately to the Chief Secretaries along with a copy of this judgment. We make

it clear that no further time shall be allowed to set up the single window facility.

(6) The use of the land which would become available on account of shifting/relocation of the industries shall be permitted in terms of the orders of this Court dated 10-5-1996 in M.C. Mehta [(1996) 4 SCC 351].

(7) The shifting industries on their relocation in the new industrial estates shall be given incentives in terms of the provisions of the Master Plan and also the incentives which are normally extended to new industries in new industrial estates.

(8) The closure order with effect from 30-11-1996 shall be unconditional. Even if the relocation of industries is not complete they shall stop functioning in Delhi with effect from 30-11-1996.

(9) The workmen employed in the above-mentioned 168 industries shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from 30-11-1996 provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation;

(e) The “shifting bonus” and the compensation payable to the workmen in terms of this judgment shall be paid by the management before 31-12-1996.

(f) The gratuity amount payable to any workmen shall be paid in addition”.

(emphasis supplied)

6. Certain clarifications were given with regard to the directions in the order dated 10.05.96 and 08.07.96, on the basis of interlocutory applications filed by the Union of India, by order dated 04.12.96 [(1997) 11 SCC 327].

7. The matter came up before the Supreme Court again on the application of the writ petitioner that though the industries had been closed, a large number of it had not surrendered the excess land to DDA, the main prayer being for the order dated 10.05.96 “to be implemented”. Against this backdrop, the Supreme Court gave, *inter*

alia, the following directions (in para 10) by order dated 28.04.2000 [(2000) 5 SCC 525]:-

"10. Coming to the prayers of Mr M.C. Mehta, we hereby direct that within one month, all the industries which are required to surrender the land in terms of this Court's order dated 10-5-1996 should voluntarily surrender the same to the Delhi Development Authority. If this is not done, DDA will be dutybound to file application(s) for execution of this Court's order before the District Judge, Delhi and the District Judge, Delhi shall thereupon execute this Court's order dated 10-5-1996 and report compliance within four weeks of the filing of the execution application(s). The execution application(s) should be filed by DDA not later than eight weeks from today."

(emphasis supplied)

8. Delhi Development Authority (DDA) presented an execution application dated 23.06.2000 before the executing court (District Judge) praying for execution of the orders dated 10.05.96 and 28.04.2000 of the Supreme Court against such units as had failed to make the voluntary surrender of the land inspite of a public notice, published in newspapers, the time requisite therefor having lapsed, including against 24 units which though having approached DDA for surrender having "*not made a proper surrender*", such offer being either conditional or without compliance with the other necessary surrender requirements.

9. As per the documents filed by the petitioners, SBM and DCM jointly submitted objections (Annexure P-9) in July 2000 before the

District Judge, *inter alia*, pleading that each of them were factories duly registered – separately – under the Factories Act, they having been “closed down in Delhi” with effect from 30.11.96 in terms of directions of the Supreme Court in the order dated 08.07.96. It was further pleaded that the SBM and DCM were “owned by DCM Shriram Consolidated Ltd.”, the said company i.e. the DCM Shriram Consolidated Ltd. being “the objector”. It was submitted in the objection petition that the objector had been in correspondence with DDA in respect of both the said units – SBM and DCM – regarding surrender of land in terms of order dated 10.05.96 and had submitted a plan for use of the sites as per the Master Plan for Delhi 2001 – (MPD – 2001) as well as respecting the “retainable land to be redeveloped by the objector”. The objection petition, *inter alia*, pleaded thus:-

“The total extent of free hold land owned by the Objector Company at Shivaji Marg, (Najafgarh Road), New Delhi - 11 0015, is 45.43 hectares (112.26 acres). As per Municipal records this land is situated on Plot Nos. 119 and 120-21-521/577/82 (120, 621/6, 571/1 to 571/3), Najafgarh Road, New Delhi -110015. The manufacturing activities were carried out on Plot No. 119, Najafgarh Road, New Delhi. It is submitted that 63.49 acres (26.69 Hac.) of land was being used for industrial/manufacturing activities by both the above industries.

Admittedly, there is residential complex, it is submitted that the residential complex, a regular approved colony under MPD-2001 and MCD inter alia comprising of Houses, Shops and recreational activities, including Senior Secondary School, Drama Stage, Library, Swimming Pool and Play Ground etc. are on Plot No. 120-121-521/577/82 (120, 621/1 to 621/6, 571/1 to 571/3).”

10. The objection petition pleaded that the execution petition was not maintainable *vis-à-vis* the objector since it had made voluntary surrender of land to DDA. The objection petition was considered by the District Judge leading to the order dated 25.07.2000 being passed whereby the objector was called upon to take certain further steps including compliance with the requirement of removal of the superstructure and an undertaking to be given that it was free from all encumbrances.

11. The matter continued to linger before the executing court (District Judge) till 21.05.2001 when DDA submitted an application under Section 151 CPC, *inter alia*, seeking directions to certain industrial units to submit site plan showing the area proposed for surrender as per orders dated 10.05.96 and 01.03.2001 of the Supreme Court, such industrial units (as per annexure –II to the application) including SBM and DCM mentioned at serial no. 1 and 2. In response, DCM Shriram Consolidated Ltd. (the objector) submitted a reply “*for and on behalf of*” its units (SBM and DCM) on 30.05.2001, *inter alia*, pleading that “*the objector is the owner of 45.43 hectares (112.26 acres) of land at Najafgarh Road, New Delhi, it being the land situate on two plots at Najafgarh Road, New Delhi*”, the industrial manufacturing activities of both the said units having been carried out from plot no. 119, Najafgarh Road, New Delhi. By the said reply directions to DDA were sought for measuring the land as per the ownership and revenue records and having offered the

possession of the surrendered land in terms of the offer made by the objector, the encroachments existing being not in its control.

12. Against the aforementioned backdrop, the District Judge by his order dated 18.07.2003 overruled the objections and granted warrant of possession for the lands in the control of the two industrial units as prayed for by its applications dated 18.05.2001 and 22.08.2001.

13. The petitioner filed a review application under Order XLVII Rule 1 CPC on 13.08.2003 against aforesaid order. While the said review application was pending, the petitioner submitted before the District Judge on 27.09.2004 its readiness to surrender the land in terms of the approved site plan without prejudice to the review petition.

14. It is stated that on 31.03.2005 in compliance with the order dated 18.07.2003, the petitioner surrendered land admeasuring 30.078 hectares (or 74.33 acres). On 08.12.2006, DDA informed the District Judge that it had taken possession of the land in terms of the orders of the Supreme Court.

15. The review petition was eventually dismissed by the District Judge by order dated 25.03.2010 drawing curtain on the proceedings. It is the correctness of the said order dated 25.03.2010 which is brought in question by the petition at hand.

16. It is noted that for deciding on the review petition, the District Judge had framed two issues for consideration, the same reading as under:-

“1) Whether Swantantra Bharat Mills and DCM Silk Mills are two separate units and the table as given in the

Supreme Court's order has to be applied separately to each factory while calculating the surrender and retainable land? If so, whether the benefit of first 2000 sq. metres is also to be given to both the units?

2) Whether surrender is required only from Industrial land and not from residential complex of the respondent /industry, as per the order of the then District Judge dated 25/7/2000?"

17. It may be mentioned here that while arguing on the petition at hand submissions were made restricted to the conclusions reached by the District Judge only on the first of the aforementioned two issues, no argument or contention having been pressed with regard to the objection before the District Judge as to there being no obligation to surrender the lands which were in use of the industries for “*residential complex*” as formed the subject matter of the second above-mentioned issue.

18. The submissions before the District Judge on the first issue and the conclusions reached thereupon by the order dated 25.03.2010, as indeed the reasons set out for such decision, may be extracted as under:-

“3. It has been urged by the learned counsel for the applicants that as per the case of the DDA itself, SBM and DCM are two separate industries and to that extent, the order dated 18/07/2003 passed by the District Judge is liable to be reviewed and the applicants are entitled to be given back land measuring 2000 sq. metres as the benefit of only 2000 sq. mtrs. was given to the applicants, treating SBM and DCM as one unit, instead of two units.

4. Ld. Counsel for the applicants has referred to MC Mehta vs. UOI AIR 2001 SC 1544, wherein in para 24 of the report, it has been referred that SBM and DCM are

two separate industries. I would like to extract the portions of para 24 of the judgment hereunder for ready reference:-

“..... Needless to dilate that in the case of Swantantra Bharat Mills and DCM Silk Mills, the learned District & Sessions Judge, Delhi recorded in the order dated 25th July, 2000 about the factum of filing of objections to the execution petitions pertaining to the surrender of land. The order of the learned Judge records that the land in question has not been offered as yet and as such directed the industry to remove all the superstructure from the land and also file an undertaking that it is free from all encumbrances. The land should further be accessible from the public road; Be it recorded that the two industries named above in which the learned District and Sessions Judge passed the directions as above in no uncertain terms submitted that the land to be offered, stands free from all encumbrances and there is existing no cloud on the title of the industry over the land which is to be surrendered....:”

(emphasis supplied)

5. A perusal of the above stated paragraph would show and otherwise also it has not been disputed by the DDA that SBM and DCM were two separate industries. The question for consideration however, is whether SBM and DCM are entitled to the benefit of another 2000 sq. mtrs. of land on this ground. I may mention that total area of the land was about 45.43 hectares and the applicant was required to surrender 68 per cent of the land as per the criteria fixed by the Hon'ble Supreme Court of India in MC Mehta vs. UOI (1996) 4 SCC 351. I really wonder whether the applicant really wants additional 2000 sq. mtrs of land or there is some other motive behind this application as the applicant has already got retention of 32 per cent of 45.43 hectares i.e. 1,45,376 sq. metres of land. Admittedly, these two industries are owned by the same company i.e. DCM Shriram Consolidated Ltd. The purpose of the order

dated 10/05/1996 of the Hon'ble Supreme Court was that because of hazardous and noxious industries being run within the city of Delhi, the ambient air has become too much polluted which has resulted into lung and respiratory diseases and disorders. The Hon'ble Supreme Court had felt the need to provide for the lung spaces for the city of Delhi in the shape of green belt and open spaces. The polluting industries were therefore, required to surrender certain percentage of land, depending upon the size of the land on which the industry was being run. For this surrender a concession was also extended to such industries that the industries were to be relocated elsewhere and the residue and i.e. after surrender of the land to the DDA for the purpose aforesaid, was to be used by the owners of the industries in accordance with the purpose as stipulated in the Master Plan. The industries were further allowed to have 1.5 times of the FAR for development of the such land, which by any means was a big concession. Since the owners of both industries was one, in my view, the owner will get only one exemption of 2000 sq. mtrs., as given in the order dated 10.05.1996. If I take any other view, the result would be disastrous. For instance, there may be a owner running five industries in a piece of land measuring 12000 sq. metres of land, he will get flat exemption of 10,000 sq. metres of land and in addition, he will be required to surrender only 57 per cent of remaining 2000 sq. metres of land and will get FAR of 1.5 times on the entire residual land i.e. approx. 11000 sq. metres of land. So I do not find any merit in the contention raised on behalf of the applicant. First issue is accordingly decided against the applicant/objector."

19. The learned senior counsel arguing for the petitioners submitted that the executing court has fallen in error by going "*behind the decree*". His submission was that the applications of DDA as submitted before the executing court clearly showed that SBM and

DCM were two independent units, as was also noted by the Supreme Court in the list of 168 industries particulars whereof were set out in the order dated 08.07.96 (supra). His arguments were that the District Judge as the executing forum was not vested with any jurisdiction to club the two industries so as to treat them as one. He placed reliance on the judgments of the Supreme Court in *Regional Provident Fund Commissioner & Anr. vs. Dharamsi Morari Chemical Co. Ltd.* (1998) 2 SCC 446 and *Vodafone International Holdings BV vs. Union of India & Anr.* (2012) 6 SCC 613 to submit that a company is a separate legal persona and the fact that all its shares are owned by one person or by the parent company has nothing to do with its separate legal existence.

20. In the considered opinion of this Court, there is no error or infirmity in the approach of or view taken by the trial court in the impugned order. There is nothing in the order which can be construed as the executing court going behind the order under execution. Rather, the executing court was duty-bound to construe the order and enforce it in letter and spirit as has been done.

21. The reliance on the cases referred to above in the present context is wholly misplaced. As noted above, it has been the admitted position of the petitioners that SBM and DCM have been two industrial units which were operating till they relocated to District Kota in Rajasthan as facilitated by concerned authorities in terms of the directions of the Supreme Court in *M.C. Mehta vs. Union of India and Others* (supra), both continuing to be owned and controlled by DCM Shriram Consolidated Ltd. (the objector). Given this admitted

position, the contention that each of the said industrial units was entitled to retain independently 2000 square metres of land cannot be accepted. As quoted earlier, the directions of the Supreme Court were for the “owner” to retain specified part of the land used by the industry and surrender the remaining to the use of the community at large. There is nothing in any of the orders of the Supreme Court from which it could be inferred that each industry was entitled to retention of land in its own rights. The right of retention of the specified part of the land and the obligation to surrender the remaining were not of the industry (which itself would not be a legal entity) but of “the owner” of the industry. It having been admitted case of the objector that SBM and DCM have been industrial units owned by DCM Shriram Consolidated Ltd., the arguments in above nature do not cut any ice.

22. Thus, the petition is found to be wholly devoid of substance or merit. It is dismissed.

23. Needless to add, if any compliance with the directions of the Supreme Court by various orders in the case of *M.C. Mehta vs. Union of India and Others* (supra) remains outstanding, DDA has the liberty to approach the District Judge in such regard.

R.K.GAUBA, J.

MARCH 06, 2018

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