



\$~46 to 57

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9841/2016 & CM APPL. 39189/2016, CM APPL. 36391/2017**

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Anand Prakash, SC-MCD with
Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

M/S PLB INFRASTRUCTURE PVT. LTD. Respondent
Through: *Counsel (appearance not given)*

47

+ **W.P.(C) 9842/2016 & CM APPL. 39194/2016, CM APPL. 36387/2017**

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Anand Prakash, SC-MCD with
Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

PRADEEP KUMAR GUPTA Respondent
Through: Mr. Ajay Kohli and Ms. Dipika
Prasad, Advs.

48

+ **W.P.(C) 9857/2016 & CM APPL. 39234/2016, CM APPL. 36392/2017**

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Anand Prakash, SC-MCD with
Ms. Varsha Arya, Mr. Satbeer, Advs.

versus



49
+ M/S PLB INFRASTRUCTURE PVT. LTD. Respondent
Through: *Counsel (appearance not given)*
W.P.(C) 9869/2016 & CM APPL. 39304/2016, CM APPL. 36386/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Anand Prakash, SC-MCD with
Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

50
+ M/S PLB INFRASTRUCTURE PVT LTD Respondent
Through: *Counsel (appearance not given)*
W.P.(C) 9873/2016 & CM APPL. 39319/2016, CM APPL. 36393/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Anand Prakash, SC-MCD with
Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

51
+ M/S PLB INFRASTRUCTURE PVT LTD Respondent
Through: *Counsel (appearance not given)*
W.P.(C) 9893/2016 & CM APPL. 39368/2016

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Anand Prakash, SC-MCD with
Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

SUSHMA GUPTA Respondent



Through: Mr. Ajay Kohli and Ms. Dipika Prasad, Advs.

52

+ **W.P.(C) 9895/2016 & CM APPL. 39373/2016**

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr. Anand Prakash, SC-MCD with Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

MANISH JAIN

..... Respondent

Through: *Counsel (appearance not given)*

53

+ **W.P.(C) 9896/2016 & CM APPL. 39375/2016, CM APPL. 36385/2017**

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr. Anand Prakash, SC-MCD with Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

SALONI KHANNA

..... Respondent

Through: *Counsel (appearance not given)*

54

+ **W.P.(C) 9906/2016 & CM APPL. 39413/2016, CM APPL. 12958/2017, CM APPL. 36394/2017**

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr. Anand Prakash, SC-MCD with Ms. Varsha Arya, Mr. Satbeer, Advs.

versus

DEEPAK AGGARWAL

..... Respondent

Through: Mr. Ajay Kohli and Ms. Dipika



Prasad, Advs.

55

+

W.P.(C) 3513/2017 & CM APPL. 17583/2017

NEW DELHI MUNICIPAL COUNCIL

..... Petitioner

Through: Mr. Bhupendra Pratap Singh, ASC-
NDMC alongwith Mr. Tushar Sannu
and Mr. Hardik Saxena, Advs.

versus

SUSHIL KUMAR ARORA AND ANR

..... Respondents

Through: Mr. Ajay Kohli, Mr. S.S. Subhi, Ms.
Ritu Subhi and Ms. Dipika Prasad,
Advs.

56

+

W.P.(C) 4039/2017

NEW DELHI MUNICIPAL COUNCIL

..... Petitioner

Through: Mr. Bhupendra Pratap Singh, ASC-
NDMC alongwith Mr. Tushar Sannu
and Mr. Hardik Saxena, Advs.

versus

KAMAL SAINI

..... Respondent

Through: Mr. Ajay Kohli and Ms. Dipika
Prasad, Advs.

57

+

W.P.(C) 4041/2017

NEW DELHI MUNICIPAL COUNCIL

..... Petitioner

Through: Mr. Bhupendra Pratap Singh, ASC-
NDMC alongwith Mr. Tushar Sannu
and Mr. Hardik Saxena, Advs.

versus

SUJAN SINGH PARK TRADERS ASSOCIATION (REGD.)

..... Respondent



Through: Mr. Saurabh Suman Sinha, Mr.
Gautam Parbhakar and Mrs. Chittra
V. Parande, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

03.09.2024

%

1. The instant writ petitions at the instance of the Corporation/Council are essentially directed against the impugned orders passed by the Appellate Tribunal-Municipal Corporation of Delhi (AT-MCD), wherein, the action of sealing taken by the petitioners herein, on the directions of the Monitoring Committee, came to be set aside.
2. The issue involved in all the writ petitions is common and therefore, the same is being decided analogously.
3. The Court *vide* order dated 26.07.2024 considered the submissions made by learned counsel for the private respondent who pointed out that under the almost similar circumstances, *vide* order dated 10.10.2023 passed in W.P.(C) 8647/2017, at the request of Council/Corporation itself, the matter was sent to the Monitoring Committee. Learned counsel who appeared on behalf of the respective writ petitioners sought time to take instructions and accordingly, the matters were adjourned for 20.08.2024. On 20.08.2024 again, at the request of the petitioners, the matters were adjourned and accordingly, the same are being taken up for consideration today.
4. Learned counsel appearing on behalf of the writ petitioners submit that the controversy involved in these writ petitions will have to be adjudicated by this Court and the dispute cannot be referred to the



Monitoring Committee or Judicial Committee. They have pointed out order dated 11.04.2022 passed by the Supreme Court in W.P.(C) 4677/1985 titled as ***M.C. Mehta v. Union of India & Ors.*** on an application being I.A. No. 138597/2021 and submit that the Supreme Court, while disposing of the said application, has clarified the earlier orders passed by the Supreme Court on 15.12.2017, 27.11.2018 and 28.01.2019. According to them, even in that case, the appeal filed by the private individual before the AT-MCD was allowed to be continued instead of directing the said party to avail any other recourse.

5. For the sake of clarity, the order dated 11.04.2022 passed in ***M.C. Mehta (supra)*** is extracted as under:-

“This application has been filed seeking clarification of the orders passed by this Court on 15.12.2017, 27.11.2018 and 28.01.2019. The applicant was running a tailoring shop in the premises which was sealed on 11.06.2007. Liberty was granted by this Court to the applicant to file an appeal for setting aside the order dated 11.06.2007 before the Appellate Tribunal. An appeal was filed by the applicant which is pending before the Tribunal. In the meanwhile, this Court by an order dated 15.12.2017 in I.A.No.93010 and 93007 of 2017 clarified that from the date of the said order, it will not be necessary for persons whose premises were sealed to file an appeal before the appropriate Statutory Appellate Tribunal. Such persons whose premises have been sealed were permitted to directly approach the Monitoring Committee. Thereafter, by orders dated 27.11.2018, 28.01.2019, this Court clarified that no court or Tribunal or any other authority shall adjudicate matters pertaining to de-sealing.

The order dated 15.12.2017 is clear in as much as it specifies that it is applicable only to the applications that would be filed after the date of the order. As the appeal filed by the applicant was prior to the said date, the Appellate Tribunal cannot be deterred from hearing the appeal.

As the appeal filed by the applicant has been pending for the last 5 years and relates to a small premises run by the applicant, the Appellate Tribunal is directed to dispose of the appeal expeditiously and not later than three months from today.



Interlocutory application stands disposed of.”

6. Learned counsel appearing for the petitioners further point out from the order passed by this Court in W.P.(C) 8647/2017 that the stand of the Corporation/Council has duly been recorded and according to them, against the order passed by the AT-MCD, the only remedy which can be pursued is to approach this Court.

7. In W.P.(C) 3513/2017, learned counsel for the petitioners takes this Court through the rejoinder affidavit and while reading paragraph no.10 of the said rejoinder affidavit, he submits that in the instant case, the Monitoring Committee had ordered the sealing of premises and the Supreme Court *vide* its order dated 30.04.2013, relegated the private individual to AT-MCD for adjudication. According to him, while passing the order on 30.04.2013, the Supreme Court in terms of observation in paragraph 8(vii) made it clear that in case the AT-MCD decides in favour of the applicant (i.e. private individual), it will be open for the Monitoring Committee to recommend the MCD/NDMC/DDA to prefer a writ petition before the High Court for assailing the order passed in favour of the private individual. He, therefore, emphasised that as per the instructions of the Monitoring Committee dated 14.01.2015, the present writ petitioners seek to challenge the impugned order passed by the AT-MCD before this Court and he, therefore, draws sustenance to his argument on the basis of observations made by the Supreme Court. According to him, the petitioners have rightly filed these writ petitions as per the advice given by the Monitoring Committee and therefore, these writ petitions need to be heard on merits by this Court.



8. *Per contra*, learned counsel who appears on behalf of the respondents opposes the submissions and reiterates the stand which he had taken on the previous dates of hearing. Learned counsel draws the attention of the Court to the order dated 18.12.2019 passed by this Court in W.P.(C) 8647/2017, especially the Status Report dated 21.10.2019 therein, which is stated to be filed by the Monitoring Committee. According to him, the said order makes it clear that the Monitoring Committee abides by the Status Report dated 21.10.2019 which highlights that the Monitoring Committee had discussed the issue with *Amicus Curiae* in **M.C. Mehta (supra)** who stated that in light of the subsequent order passed by the Supreme Court, the Delhi High Court has been restrained from entertaining any petition in connection with the matters relating to Monitoring Committee (order dated 28.01.2019). For the sake of clarity, paragraph nos. 11 to 17 of the order dated 18.12.2019 is extracted as under:-

“11. I may look at the status report dated 21.10.2019 filed on behalf of the Monitoring Committee which reads as under:-

“STATUS REPORT ON BEHALF OF THE COUNSEL FOR THE MONITORING COMMITTEE PURSUANT TO THE DELHI HIGH ORDER DATED 28.02.2019 MOST RESPECTFULLY SHOWETH:

1. That pursuant to the Hon'ble Delhi High Court order dated 28.02.2019, I, the counsel for the Monitoring Committee in the above stated matter received instructions to state before this Hon'ble High Court that the Monitoring Committee has discussed the issue with Mr.Ranjit Kumar, Amicus Curie and states that in' the light of the recent judgment passed by the Hon'ble Supreme Court in M.C.Mehta vs. Union of India in WP(C) No. 4677/1985 the Apex Court has restrained the Hon'ble Delhi High Court "to entertain any petitions in connections with the matters relating to the Monitoring Committee".(Order dated 28.1.2019)

2. The relevant judgments of the Hon'ble Supreme Court passed



in M.C.Mehta vs. Union of India in W.P.(C) No. 4677/1985 are filed with this status report for kind perusal of this Hon'ble Court."

12. Learned counsel appearing for the Monitoring Committee reiterates that the Monitoring Committee abides by its report dated 21.10.2019. He further states that in view of the orders of the Supreme Court dated 28.01.2019, this court should not entertain this writ petition.

Learned counsel for the Monitoring committee has also pointed out that there are several subsequent orders of the Supreme Court which clearly show that the intent was that, it is the Supreme Court or the Monitoring Committee which has to deal with the cases which emanate from the directions of the Supreme Court/Monitoring committee which are prior to 28.01.2019.

13. Learned counsel appearing for the petitioner has stated that they have no objection if this court were to follow the report as filed by the Monitoring Committee or otherwise.

14. Learned counsel for respondent No. 1 has however taken a stand that this writ petition and other connected writ petitions have been filed against a judicial order passed by the ATMCD. It is their contention that the appropriate forum to challenge the orders of ATMCD would be the District Judge who is the appellate authority of ATMCD as per the judgment of the Supreme Court in Amrik Singh Lyallpuri vs. UOI & Ors., (2011) 6 SC^oC 535. Petitions were filed here on the instructions of the Supreme Court dated 30.04.2013. Learned counsel for the respondent also states that they have complied with the directions of the ATMCD.

15. I may note that this writ petition has been filed on the directions given by the Monitoring Committee to SDMC. The Monitoring Committee, however, in the status report has now taken the stand that this court in view of the orders of the Supreme Court dated 28.01.2019, Should not deal with these writ petitions. As the petitions have been filed on the instructions of the Monitoring Committee, it would be appropriate that this writ petition be treated accordingly.

16. Even otherwise, a perusal of the order of the Supreme Court dated 28.01.2019 shows that the intent was that where the premises have been sealed/dealt with at the instance of the Monitoring committee, then it is the ' Monitoring Committee/Supreme Court who are to deal with litigations pertaining to such a situation

17. Keeping in view the status report filed by the Monitoring Committee



and the aforementioned orders of the Supreme Court, it would be for the petitioner to take further appropriate steps as per law/as per the directions passed by the Supreme Court. The petitioner is also free to approach the Monitoring Committee/Supreme Court for appropriate directions/further proceedings”.

9. Learned counsel for the respondents further submits that keeping in view the Status Report filed by the Monitoring Committee, the Court in W.P.(C) 8647/2017 filed by the erstwhile South Delhi Municipal Corporation left it open to the petitioners therein to take further appropriate steps as per law or as per the directions passed by the Supreme Court and declined to entertain the controversy on merit.

10. He has also pointed out the orders dated 24.08.2022 and 13.09.2022 passed by the Supreme Court in ***M.C. Mehta (supra)*** to contend that in subsequent order dated 13.09.2022, the Supreme Court put the controversy to rest while clarifying that the subject matter has to be looked into by the Judicial Committee. He, therefore, submits that the present writ petitions against the order passed by the AT-MCD directing de-sealing of the property of the respondents need to be adjudicated by the Judicial Committee only.

11. I have considered the submissions made by learned counsel appearing on behalf of the parties and have perused the record.

12. If the order dated 11.04.2022 passed in ***M.C. Mehta (supra)*** is to be understood in right perspective, the same would indicate that an application came to be filed by one of the shopkeepers seeking clarification of the earlier orders passed by the Supreme Court dated 15.12.2017, 27.11.2018 and 28.01.2019. The applicant therein was running a tailoring shop in the premises which was sealed on 11.06.2007. He was granted liberty by the



Supreme Court to file an appeal before the AT-MCD. The appeal was filed and in the meantime, on account of passing of the order on 15.12.2017 in IA Nos. 93010/2017 and 93007/2017 in **M.C. Mehta (supra)**, solidifying the position that from the said date it would not be necessary for the persons whose premises were sealed to file an appeal before the AT-MCD, the clarification was sought by the applicant therein.

13. It would thus be seen that the Supreme Court, under the factual scenario of that case also, has taken into consideration the fact that the appeal remained pending before the AT-MCD for five years and the same was related to small premises run by the applicant therein. Accordingly, the AT-MCD was directed to dispose of the appeal expeditiously and not beyond three months from the date of passing of the order. In any case, after 11.04.2022, the Supreme Court *vide* order dated 24.08.2022, recorded that endeavour to send matters to the AT-MCD or to this Court, in the perspective of the Supreme Court, did not produce any desired results and thus, it was realised that the matters were going back to the Supreme Court itself. The Supreme Court also took note of the fact that it would be difficult to find time to deal with each of the grievances being raised before the Supreme Court in different applications and therefore, it was thought appropriate to evolve the mechanism in the form of Committee of two former Hon'ble Judges with adequate power to deal with the decision of the Monitoring Committees.

14. The relevant observations made by the Supreme Court in the order dated 24.08.2022 passed in **M.C. Mehta (supra)** reads as under:-

“Learned counsel for the parties have drawn our attention to the order passed in the present proceedings on 15.12.2017 in IA No. 93010 and 93007/2017 in WP(Civil) No. 4677/1985 reported as (2018) 2 SCC



144 to sketch out the history of this litigation. The fact remains that endeavour to sent it to the Tribunal or to the Delhi High Court, in the perspective of this Court, did not produce the desired result and thus, the matter is back in the lap of this Court. What troubles us is that we are required to go into the decisions of the Monitoring Committees (whether administrative Committees or appointed by this Court which are akin to administrative Committees) analyzing facts of each case.

We do believe that this is not a task of this Court, more so, when the number of applications have become so large that it is difficult to find time to deal with each of these applications. It was thus, thought aloud that if a committee of two retired Judges is constituted with adequate power to deal with the decision of the Monitoring Committees, that should be able to take care of the cases where such a judicial Committee directs de-sealing. Not only that if either of the parties come to this Court, the exercise of power required would be over a judicial order and would be akin to the SLP approach. This will facilitate in a quick disposal of almost 150 applications pending as on date and which continue to arise so that the compliant people are able to get remedy at an early date. We would like to empower the judicial Committee with necessary powers to analyze all aspects of the matter i.e., what was the nature of allotment, whether there has been a change of the policy of that allotment, what according to the norms prevalent is permissible and what are the nature of violations and in view thereof pass necessary orders.

This would include any direction even for compounding on payment of charges if compliance is possible under the existing norms.

Learned Amicus state that after discussion with the counsels for the applicants, they will place structure of such a judicial Committee to be appointed and the needful will be done within 10 days and be placed on the website of the Monitoring Committee so that any party which is desirous of making suggestions may do so within two days thereafter. The final suggestion of the Amicus Curiae will be placed before us by the next date for our necessary orders.”

15. *Vide* another order dated 13.09.2022, the Supreme Court further clarifies the controversy, wherein, a Judicial Committee consisting of two Hon’ble Judges of the Delhi High Court was directed to be constituted. The said Committee was empowered to hear the challenges raised against the orders, decisions and recommendations of both the Monitoring Committee



constituted by the Supreme Court *vide* orders dated 23.04.2006 and 07.05.2004 resulting in action by the Municipal Corporations and Regulatory Committees in respect thereof. The subject matters have also been delineated in the said order. It has also been held that all pending applications before the Supreme Court challenging the orders passed by the Monitoring Committee in respect of the issues involved therein stood referred to the Judicial Committee for consideration and passing orders. The relevant extract of the order dated 13.09.2022 in ***M.C. Mehta (supra)*** reads as under:-

“An alternative remedy instead of going before the appellant Tribunal was provided so that this Monitoring Committee could be approached directly and the decisions of the Monitoring Committee would lie only to this Court.

The litigation in this process has been going on but considering the legal concerns to be addressed by this Court, the pendency of the applications increased as sufficient time was not found to address the issues. The matter is largely factual as even after the applications are filed for de-sealing, the two authorities have expressed different concerns. The result is that this Court becomes the first judicial Court of fact finding over the report of the Committees, not an advisable scenario as we have found. It is in these circumstances that on the last date of hearing on 24.08.2022, this Court explored the aspect of setting up of an independent judicial body to look into the concerns of the applicants to be presided over by retired Judges. We have opined that once the Judicial Committee so appointed directs de-sealing or rejects the same, the application would lie to this Court and we would be adopting the SLP approach. This would facilitate a quick disposal of almost 150 applications pending which continue to rise and it is extremely essential that people who are compliant get the remedy at the earliest.

Such a Judicial Committee is necessary to be empowered to analyze all aspects of the matter, i.e., what is the nature of allotment, whether there is any change of the policy of that allotment, what according to the norms prevalent is permissible and what are the nature of violation and in view thereof pass necessary orders. The power to direct compounding on payment of charges, if compliance is possible under existing norms, is also an aspect which must vest with the Committee.



xxxxx

xxxxxx

xxxxxx

We appoint a Judicial Committee of two hon'ble Judges: 1) Justice Pradeep Nandrajog, retired Chief Justice of the Bombay High Court and 2) Justice G.S. Sistani, retired Judge of the Delhi High Court who would take a call on all these applications keeping the aforesaid conspectus in mind.

The Judicial Committee will have jurisdiction to hear a challenge to these orders, decisions and recommendations of both the Monitoring Committees constituted by this Court vide orders dated 24.03.2006 and 07.05.2004 resulting in action by the Municipal Corporations and Regulatory Committees in respect thereof. The subject matters are as under:

- "i) Sealing and de-sealing of properties;*
- ii) Regularization and/or levy of penalties or conversion charges;*
- iii) Demolition of unauthorized construction; and*
- (iv) Directing the removal of encroachment."*

Any person aggrieved by such an order decision or recommendation as already set out above after scrutiny by the Judicial Committee would have a remedy only by filing an application in the present proceedings.

In order to facilitate the disposal of these applications, all pending applications before this Court, challenging the orders passed by the Monitoring Committee in respect of these issues, shall stand referred to the Judicial Committee for consideration and passing orders. A list of these applications have been annexed to the note as Document No. 1. The applications listed today also would stand transferred to the Committee and if some applications have been missed out, the applicants may approach the learned Amicus Curiae who would inform the Judicial Committee accordingly.

xxxx

xxxxx

xxxxx

As to what is the prerequisite of approaching the Committee, we may only say that such of the persons who have deposited the charges with the Monitoring Committee would not be required to pay another set of charges but such of them who have not paid would be required to pay the charges with the Committee pari materia to what others have paid to the Committee. We are saying so at the moment because there are adequate funds available for working of the Judicial Committee as deposited with the Monitoring Committee which funds will be made available for the



benefit of the Judicial Committee. The Judicial Committee will fix its own remuneration which can be drawn from the amount lying with the Monitoring Committee as also for any other expenses relatable to the sitting of the Judicial Committee.

Insofar as the making arrangements for the sitting, for infrastructure and personnel required for the working of the Judicial Committee are concerned, learned ASG submits that the Municipal Corporation of Delhi would make necessary arrangements at its costs.

16. After passing of the directions by the Supreme Court in the orders dated 24.08.2022 and 13.09.2022, this Court has not been apprised with any final adjudication on merits by this Court with respect to the similar controversy. Moreover, the order dated 18.12.2019 passed by this Court in W.P.(C) 8647/2017 also follows the same recourse as has been observed by the Supreme Court.

17. In normal parlance, there has to be same dispensation for adjudication of similar controversy. If the argument of the petitioners is to be accepted, the same would tantamount to creation of two separate avenues for redressal of same controversy. It suggests that sealing action pre 15.12.2017 would be subject to scrutiny by this Court and post 15.12.2017 should be subject to adjudication by Judicial Committee. Such an approach cannot be countenanced. Such a pedantic approach has to be avoided in order to ensure consistency in decision making process and upholding judicial discipline and propriety.

18. Even otherwise, there is nothing on record to clearly suggest that the Judicial Committee is not entertaining the adjudication against the orders passed by the AT-MCD, rather an unequivocal statement has been made by learned counsel for respondents that the Judicial Committee is entertaining all such grievances and is currently seized with almost similar matters.



19. Taking into consideration the overall facts and situation, this Court is unable to accede to the prayer made by the petitioners and instead, deems it appropriate to relegate the petitioners before the Judicial Committee constituted in terms of the observations made by the Supreme Court, so as to ventilate all their grievances before the said Committee against the impugned order. All other rights and contentions are left open.

20. With aforesaid observations, the petitions stand disposed of. Pending applications are also disposed of.

PURUSHAINDR KUMAR KAURAV, J.

SEPTEMBER 3, 2024

p'ma