

IN THE SUPREME COURT OF INDIA

(CIVIL WRIT JURISDICTION)

I.A. NO.

OF 2006

IN

CIVIL WRIT PETITION NO. 266 OF 2006

IN THE MATTER OF:

CITIZENS' VOICE & ANR

...

Petitioners

Versus

UNION OF INDIA & OTHERS

...

Respondents

FOR INDEX KINDLY SEE INSIDE

DRAWN BY :

FILED BY :

MADHUMITA BHATTACHARJEE

AVIJIT BHATTACHARJEE

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(CIVIL WRIT JURISDICTION)

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I N D E X

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ADVOCATE FOR THE APPLICANT :

MR. AVIJIT BHATTACHARJEE.

IN THE SUPREME COURT OF INDIA
CIVIL EXTRAORDINARY JURISDICTION

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WRIT PETITION (CIVIL) NO. 266 OF 2006

IN THE MATTER OF:

CITIZEN'S VOICE & ANR

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Versus

UNION OF INDIA & OTHERS

...

Respondents

AND

IN THE MATTER OF:

COMMON CAUSE

...

Applicant

(A Registered Society)

Through its -

Chief Executive

APPLICATION FOR INTERVENTION UNDER SECTION 151 OF THE
CIVIL PROCEDURE CODE READ WITH ORDER 47 RULE 6 OF THE
SUPREME COURT RULES

To

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

The Applicant abovenamed

MOST RESPECTFULLY SHEWETH:

- 1) That the Applicant is a Society duly registered under Societies Registration Act, 1860 and is engaged in taking up various common problems of the people for securing redressal thereof. The Applicant Society has also brought to this Court various constitutional problems. The Applicant has an established locus standi in its capacity as a bonafide public interest organization for taking up matters of general public importance.
- 2) That the Applicant, being a public spirited organization, has been closely following the developments and pronouncements of this Hon'ble Court that were passed in the matter relating to misuse of lands for commercial purposes, encroachments and illegal constructions etc. In the recent past, in view of the Hon'ble Supreme Court's and the Delhi High Court's passing orders regarding misuse of lands, there has been an out-cry among the law breakers and the vested interests against the sealing, misuse of residential properties, encroachment on government land and roads, illegal constructions etc. This out-cry is mainly of those who are more concerned with the vote banks and do not care much about the larger interests of the implementation of laws and the planned development of the National Capital. It would appear that virtually all political parties in Delhi find themselves cornered and fear the loss of vote banks built over long years mainly by promoting and supporting law breaking and violation of the building laws. Several such cases have been noticed by the MCD.

and publicized in the media where prominent law-makers, some of them holding public offices and their relatives were themselves gross violators.

3) That this Hon'ble court taking a serious note of this situation and to enforce the law, passed various orders in the past also but unfortunately no heed was paid to them. This Hon'ble court, therefore, seeing alarming rise in the number of law-breakers, has on 24.3.2006 pronounced an order on the issue of misuse of residential premises for commercial purposes all over Delhi. It held that offenders who would file Affidavit by 28th of March, 2006 to shut down their non-conforming commercial establishments will be spared and will be given time till June 30th, 2006 to close down their business units. A true copy of the said order dated 24.3.2006 is annexed hereto and marked as Annexure A1.

4) It is most respectfully submitted that while this Hon'ble court and the Delhi High Court were considering violations of the law and issuing detailed directions for timely compliance of MCD and DDA and furthermore when this Hon'ble Court was considering the vires etc. of the hastily enacted Delhi Laws (Special Provisions) Act, 2006, the DDA which is one of the parties to this litigation announced a change in the policy which it was not empowered to do, and the Ministry of Urban Development announced specific modifications, proposed in the land use policies using quite inappropriately and illegally the provisions of Delhi Master Plan 2001, that the Respondents have themselves termed "outdated".

- 5) That it is submitted that Section 11 A of the Delhi Development Act lays down the detailed procedure for any modification to the Master Plan and the Zonal Development Plan. Sub-Section 3 of Section 11A of the said Act states that DDA, and not the Central Government has to first issue a Public Notice seeking suggestions and objections. The Act gives 90 days (against the one month given in the latest notification published in the newspapers on 23.7.2006) to the public to voice their opinion. A Board comprising the members of the DDA and the Ministry then hold public hearing on the issue. Amendments are then made and placed before the Authority's meeting of the DDA. Finally, these are sent to the Union Urban Development Ministry for formal notification. All these legal provisions are sought to be short circuited in the latest notification, obviously to interrupt and negate this Hon'ble Courts' orders enforcing the bye laws and Master Plan provisions even while the matters are under consideration of this Hon'ble Court.
- 6) It is further submitted that sub-section (1) of Section 11(A) gives the DDA very limited authority for modifications. It is stated in very clear terms that modifications can be allowed to the extent that it does not affect important alterations in the character of the Plan and which do not relate to the extent of land user or the standards of population density. Even these minor modifications are required to be published for public information and the objections duly taken into account before making changes.
- 7) In this context it may be pertinent to refer to Section 3 of the Delhi Laws (Special Provisions) Act, 2006.

“Section 3: Enforcement to be kept in abeyance – 1)

Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall within a period of one year of the coming into effect of this Act, take all possible measures to finalise norms, policy guidelines and feasible strategies to deal with the problem of unauthorized development with regard to the under-mentioned categories, namely:-

- a) mixed land use not conforming to the Master Plan;
- b) construction beyond sanctioned plans; and
- c) encroachment by slum and Jhuggi-jhompri and hawkers and street vendors,

so that the development of Delhi takes place in a sustainable and planned manner.

“2) Subject to the provisions contained in sub-section(1) and notwithstanding any judgment, decree or order of any court, status quo as on the 1st day of January, 2006 shall be maintained in respect of the categories of unauthorized development mentioned in sub-section (1).

“3) All notices issued by any local authority for initiating action against the categories of unauthorized development referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken during the said period of one year.

- 4) Notwithstanding any other provision contained in this Act, Central Government may, at any time before the expiry of one year, withdraw the exemption by notification in the Official Gazette in respect of one or more of the categories of unauthorized development mentioned in sub-section (2) or sub-section (3), as the case may be."
- 8) A plain reading of this Section makes it evident that it has been enacted to declare a moratorium on the sealing and demolition drive initiated by the authorities in view of the directions issued by this Hon'ble Court in I.A. 22 in W.P.(C) No. 4677 of 1985. This Act is a clear attempt to shield the offenders who have acted in violation of the building laws. It is also violative of Section 345 of the Delhi Municipal Corporation Act and is also violative of the Constitutional provisions guaranteed under Article 14 of the Constitution. This Act has also rendered Section 345A of the DMC Act infructuous as the power to seal unauthorized constructions given to the Commissioner has been impliedly withdrawn.
- 9) Through this Intervention Application, the Applicant COMMON CAUSE seeks to present before this Hon'ble Court certain aspects relevant to the consideration of the matter of illegal constructions under review.
- 10) That consequent to the preliminary observations of this Hon'ble Court in the hearing on 17.7.2006 that the Act may be declared ultra vires, there has been frantic activity in the political circles and in Government. The respondents have come up with the

notification for mix-land use policy. It was published on 21.7.2006 in haste by the Respondents to convince the Hon'ble Court that they will implement the various measures necessary to deal with law-breaking that has occurred on a vast scale. It may be pointed out that this notification has been issued under the Master Plan 2001, declared by the Respondents as "outdated". This is obviously another red-herring to detract from the firm action that the superior courts had ordered to rectify infringements.

- 11) That it indicates conclusively that it is pure political expediency which necessitated the govt's hasty decision, and that this action is actuated by mala fides and is highly contemptuous.
- 12) It is submitted that with the promulgation of the said Act it seems to have been assumed by the Urban Development authorities, the DDA, MCD and NDMC, that not only the sealings and demolitions are to remain at a standstill, but that they are free to remove the seals and allow the activities to continue or even to permit the alleged illegal constructions to be pursued. As a result the law-breakers have started to de-seal and restart their illegal commercial activities and to construct illegal structures at the highest speed possible before any definite ruling is given by this Hon'ble Court.
- 13) The Applicant takes leave to submit that this has created a situation of "free for all" that disrupts the decisions of this Hon'ble Court so far taken, obstructs the ongoing proceedings and also negates action on the recommendations of the Court

Commissioners. This has been adversely noticed in a stern observation of the Hon'ble Delhi High Court that the Municipal Corporation of Delhi should not de-seal unauthorized constructions under the garb of new Act and allow illegal constructions to proceed in light of the fact that the MCD has given an undertaking to the Court to demolish these illegal constructions. The Hon'ble High Court has observed "unauthorised constructions are going on in full swing after the passage of law. It is a jamboree and a period of festivity for uauthorised constructions" as reported by 'The Hindu' on 22.7.2006. A true copy of the said report is Annexed hereto and marked as Annexure A2.

- 14) While the Applicant will consider very carefully the Notification for mixed land use published by the Ministry of Urban Development on 23.7.2006 and offer its comments within the time prescribed, it wishes to submit that this Notification again is an attempt to prevent and interrupt the proceedings and enforcement of orders of this Hon'ble court and the Hon'ble Delhi High Court. A situation is sought to be created where the law-breakers may rightly assume that their cases will only be reviewed when the abovesaid Notification is finally implemented and the various regulating authorities established. This seems to have been the objective of the law-breakers supported by political parties and apparently even of the Central Government.

In light of the above submissions the Petitioner wishes to submit that the Hon'ble Court may lay down specific directions to the

Government and the authorities implementing the bye-laws to comply in detail with the instructions and directions issued by the Hon'ble superior courts. The Court Commissioners appointed by the Hon'ble Courts may supervise the implementation of these orders.

- 15) That this application is made bonafide and in public interest.
- 16) That the applicant states that the applicant has not preferred any other similar application before this Hon'ble Court or any other court.
- 17) That unless this application is allowed it would cause irreparable loss and injury to the public at large and the society in general and it would also erode the faith of the citizenry in the rule of law.

PRAYER

From the circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) allow the applicant to intervene and make its submissions;
- b) declare the Delhi Laws (Special Provisions) Bill, 2006 as unconstitutional;

And

c) Pass any other order or orders as deemed fit by this Hon'ble
Court in the interest of justice;

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY
BOUND SHALL EVER PRAY

ADVOCATE FOR THE APPLICANT

Filed by

DRAWN BY:
MADHUMITA BHATTACHARJEE

AVIJIT BHATTACHARJEE

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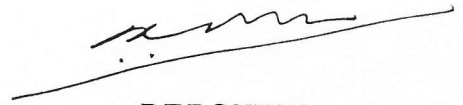
AFFIDAVIT

I, Shri P. K. Dave, aged about 83 years, having office at COMMON CAUSE HOUSE, 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi-110070, do hereby take oath and solemnly state as under:

- 1) That I am the Chief Executive of the Applicant Society and is well conversant with the facts of the case and, therefore, competent to swear this affidavit.
- 2) That I say that the contents of the accompanying application, from Para 1 to 14 are true to my knowledge and the contents of para 15 to 17 are legal submissions and the last para being prayer to this Hon'ble Court.

3) That the Annexures annexed to this Application are true copies of their originals.

4) That the contents of this Affidavit are true to the best of my knowledge and belief.



DEPONENT

Verified by the Deponent
abovenamed on this the
day of July, 2006