

# Daily Bread Bakers vs Monitoring Committee & Ors on 23 January, 2019

**Bench: S.Muralidhar, Sanjeev Narula**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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DAILY BREAD BAKERS

..... Appellant

Through:

Mr Neeraj Kumar Gupta, Advocate.

versus

MONITORING COMMITTEE & ORS.

..... Respondents

Through: Mr Mukesh Gupta, Standing Counsel  
for SDMC with Mr Sanjay Baniwal,  
Advocates.

Mr Ajay Verma, Senior Standing  
Counsel for DDA with Mr Sumit  
Mishra, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% 23.01.2019

1. A fairly detailed order was passed by this Court on 16th January, 2019 in the present appeal setting out the background facts and the issues involved. The said order reads as under:

"1. The present appeal is directed against an order dated 10 th September, 2018 passed by the learned Single Judge dismissing the Appellant s W.P. (C) No.2988/2018 challenging a sealing action undertaken on 5th January, 2018 by the Monitoring Committee appointed by the Supreme Court of India whereby the Appellant s premises run from Khasra No.1296 known as Baba Potteries, Arun Asaf Ali Marg, Vasant Kunj having a total area of 4.67 acres in Village Mehrauli was sealed.

2. The learned Single Judge declined to examine the petition by holding that in terms of an order dated 15 th December, 2017 passed by the Supreme Court in W.P.(Civil) No.4677/1985 (M.C. Mehta v. Union of India), the remedy for a person aggrieved by the action of the Monitoring Committee would lie only to the Supreme Court of India.

3. When this appeal was heard by this Bench on 9<sup>th</sup> January 2019, while directing notice to issue in the appeal, which was accepted by the learned counsel for the Delhi Development Authority („DDA ") and learned counsel for the South Delhi Municipal Council („SDMC "), the Court directed the notice to be issued to the Respondent No.1, viz., the Monitoring Committee "to appear before this Court on the next date together with whatever records available with it, which was relevant for the case in hand". The case was then listed for hearing on 14<sup>th</sup> January, 2019.

4. When the case was taken up next on 14<sup>th</sup> January, 2019, this Court passed the following order:

"1. Mr. Amit Singh Chauhan, learned counsel appearing for the Monitoring Committee states that he has sent an email to Mr. R.K. Nag, Coordinator of the Monitoring Committee and is still awaiting instructions.

2. Given the urgency of the matter, the Court directs that the copy of this order be delivered forthwith to Mr. R.K. Nag by a Special Messenger asking him to remain present in the Court on the next date with the relevant records and with a proper explanation on the issues raised in the petition.

3. Likewise, Mr. Rajiv, the concerned Officer of the SDMC will remain present in the Court with the relevant record and with a proper explanation on the issues raised in the petition. Copy of this order be delivered by Special Messenger to Mr. Rajiv forthwith.

4. List on 16<sup>th</sup> January, 2019. Order be given dasti."

5. Today, Mr Chauhan, learned counsel appeared for the Monitoring Committee has submitted a copy of a note dated 5<sup>th</sup> September, 2018 titled „Report No.128 " which had been submitted to the Supreme Court of India by the Three-Member Monitoring Committee comprising Shri Bhure Lal, Member, Shri K.J. Rao, Member; and Major General (Retd.) Shri S.P. Jhingan, Member.

6. In response to a pointed question, which arose from the submissions of learned counsel for the Appellant, whether the scope of the powers of the Monitoring Committee included sealing of the industrial premises where industrial activity is carried on, learned counsel for the Monitoring Committee referred to paragraph 2 of the said note which reads as under:

"The Monitoring Committee was constituted by the Hon ble Supreme Court vide its Orders dated 24.03.2006 with the primary task to oversee the implementation of law, namely, sealing of offending premises in terms of the letter and spirit of the Court s directions. Over the period, certain other tasks have also been assigned, these include all aspects of unauthorized construction, misuse, encroachment and allied illegal activities. The Monitoring Committee over its existence for the last 12 years, has been carrying out these tasks to the best of its ability and impartiality."

7. The Court then requested the learned counsel for the Monitoring Committee to substantiate the above submission and in particular the claim that "over the period, certain other tasks have also been assigned", including "all aspects of unauthorized construction, misuse, encroachment and allied illegal activities".

8. Learned counsel for the Monitoring Committee has referred to an order dated 24th March, 2006 passed by the Supreme Court in IA No.22/ in W.P.(Civil) No.4677/1985 (M.C. Mehta v. Union of India). By this order, the Supreme Court appointed the present Monitoring Committee comprising Shri Rao, Shri Bhure Lal and Shri Jhingan. The Court noted that following its earlier order dated 16th February, 2006, public notices dated 26th February and 2nd March, 2006 had been issued by the Municipal Corporation of Delhi („MCD ) setting out the names of the roads where the sealing process of the premises misused would commence in the first place. The order sets out the text of the public notice itself. A submission was made by learned Senior Counsel of MCD that the notice would apply "to all roads already notified on 26th February and 2nd March, 2006".

9. A reading of the said order shows that it was basically concerned with the misuse of premises on roads which had been notified either for residential use or partial commercial user/mixed lands use. A careful reading of the entire order would indicate that at this stage i.e. 24th March, 2006, the Supreme Court did not contemplate entrusting the Monitoring Committee with the task of sealing industrial premises where industrial activity was being carried on.

10. Learned counsel for the Monitoring Committee then next referred to an order dated 7th May, 2007 reported as M.C. Mehta v Union of India (2013) 16 SCC 351 where in paragraph 5, it was observed as under:

"5. We have considered Report No.34 dated 4th May, 2007 of the Monitoring Committee. In Para 3 of the Report, it has been stated that there are large-scale commercial activities being carried on, on public land meant for public utility services. There appears to be a difference of view as to how sealing can be carried out, in terms of the orders of this Court and whether sealing has to be done by DDA or MCD. To avoid any confusion, we direct that the Monitoring Committee shall carry on sealing in the presence of functionaries of MCD and DDA. To avoid any further confusion, which is appearing in the minds of the NDMC Authorities, we direct that the sealing shall also be carried out in the areas governed by NDMC.

11. Even the above observation does not indicate that the scope of the powers of the Monitoring Committee was extended by the Supreme Court to include the sealing of the industrial premises where industrial activity is undertaken.

12. A reference was thereafter made to an order dated 3 rd January, 2012 of the Supreme Court in the above matter where the following observation was made:

"The Delhi Development Authority, New Delhi Municipal Corporation and Municipal Corporation of Delhi are directed to ensure that no encroachment is made on any

public land, whether belonging to the Government or any public authority. They shall also ensure that no illegal construction is made on any of the properties which has been subject matter of scrutiny by the Monitoring Committee.

The Monitoring Committee shall be entitled to inspect the premises in which any illegal construction may have been made after this order or any encroachment on public land or regularization and if necessary submit report to this Court."

13. Even these observations do not indicate expansion of the scope of the powers of the Monitoring Committee beyond what was entrusted to it by the first order dated 24th March, 2006 of the Supreme Court.

14. Learned counsel for the Monitoring Committee also placed before the Court a copy of the order dated 15 th December, 2017 passed by the Supreme Court in the aforementioned matters recalling the earlier order dated 3rd January, 2012 "to the extent that the Monitoring Committee may continue its work as it was continuing prior to that date".

15. Lastly, a reference was made to an order dated 27 th November, 2018 where the Supreme Court s attention was drawn to the fact that petitions were being entertained by other Courts/Tribunals/Authorities including the State Consumer Commission and District and Sessions Judge despite the orders passed by the Supreme Court. The Supreme Court reiterated that "no Court or Tribunal or any other Authority shall look into these matters as well as the petitions which are pending before us."

16. It is in the above context that the learned counsel for the Monitoring Committee referred to the copy of the Report No. 128 submitted by it to the Supreme Court during the hearing that took place on 5th September, 2018 where reference, inter alia, was made to the sealing of certain industrial premises, including that of the Delhi Cloth Mills („DCM ") which formed subject matter of the decision in NDMC v. DCM Limited (2018) 3 AD (Del.) 323. The Court is informed that NDMC has filed an SLP in the Supreme Court against the above decision of this Court where, inter alia, the action of the Monitoring Committee issuing a communication dated 8th January, 2018 directing the NDMC to seal the flatted factory complex of the DCM and the consequent action of the NDMC of sealing the said premises was held to be "unjustified and illegal". Inter alia, this Court in the said judgment negated the plea of the NDMC that this Court could not entertain a challenge to the sealing action of the Monitoring Committee in view of the orders of the Supreme Court.

17. The first question that arises is whether the learned Single Judge was precluded from entertaining the Appellants petition in view of the following observations of the Supreme Court in paragraph 38 of its decision dated 15th December, 2017 in M.C. Mehta v Union of India (2018) 2 SCC 144 which reads as under:

"38. We make it clear that henceforth it will not be necessary for any person whose residential premises have been sealed for misuse for any commercial (other than industrial) purposes at the instance of the Monitoring Committee to file an appeal

before the appropriate statutory Appellate Tribunal. Instead, that person can directly approach the Monitoring Committee for relief after depositing an amount of Rs. 1,00,000/- with the Monitoring Committee which will keep an account of the amounts received by it. Any person who has already filed an appeal before the appropriate statutory Appellate Tribunal but would prefer approaching the Monitoring Committee may withdraw the appeal and approach the Monitoring Committee for relief on the above terms and conditions and on deposit of Rs. 1,00,000/- as costs with the Monitoring Committee, provided that the premises were sealed at the instance of the Monitoring Committee. Any challenge to the decision of the Monitoring Committee will lie to this Court only. We are constrained and compelled to make this order given the history of the case and the more than serious observations of this Court of an apparent nexus between some entities and the observations regarding corruption and nepotism."

18. It is plain from the opening line itself that the Supreme Court was considering the issue of sealing of „residential premises as a result of "misuse for any commercial purpose". The Supreme Court took care to exclude the use for industrial purposes because it used the expression "other than industrial".

Therefore clearly the above directions were not meant to apply to a challenge to a sealing action undertaken by the Monitoring Committee in respect of the industrial premises.

19. To the above extent, this Court is unable to sustain the conclusion reached by the learned Single Judge in the present case in the impugned order. Accordingly, this Court hereby sets aside the impugned order of the learned Single Judge and holds that the challenge by the Appellant to the sealing action of the Monitoring Committee undertaken on 5th January, 2018 could be challenged in a writ petition before this Court.

20. The further question that arises is whether the matter should be remitted to the learned Single Judge for a decision or whether this Court should proceed further in the matter on merits?

21. Considering that more than one year has elapsed since the sealing action was undertaken, this Court considers it appropriate to proceed further to examine the merits of the sealing action in the present appeal itself.

22. One of the questions that arises is whether the sealing action was within the remit of the Monitoring Committee considering that it was carried out in industrial premises wherein industrial activity was carried on. In response to the notice issued by this Court, two members of the Monitoring Committee (Shri K.G. Rao and Major General (Retd.) Jhingan) have submitted a report in this matter, which reads as under:

"1. That this Hon ble Court vide its order dated 09.01.2019, inter alia, issued Notice and directed Monitoring Committee to appear before this Hon ble Court together with whatever records are available with it which are relevant to the case in hand.

2. That in this regard, it is submitted that Monitoring Committee is not maintaining any record in respect of the present case or any other case. The record of the case is available with the concerned local body i.e. SDMC and DDA officials.

3. That any reference received used to be sent to the concerned local body or DDA for examination and the same is submitted back by them whereupon Monitoring Committee take cognizance and pass orders. Therefore the files are returned to Local Bodies and DDA.

In light of the above submissions, necessary directions may be issued to the SDMC and DDA to produce relevant record of the instant case."

23. Several questions arise as a result of the above status report. The first question is whether in fact the Monitoring Committee prepares any report of the inspection undertaken by it and whether on the basis of such a report, it issues written instructions to the concerned agencies, viz., the DMCs or the DDA to undertake the consequential sealing action.

24. The above question arises because when a pointed question was put to the learned counsel for the South DMC whether he has a record of the sealing action undertaken, he produced a single sheet which simply sets out in different columns the details of the premises and the factum of the sealing having been effected. The relevant entry concerning the premises in question at Serial No.37 reads as under:

S.No. Property Number Name of Shop Sealing Points / Unit

37. Baba Potteries Industries Gautam Bajaj 03 Points at Complex, Plot No.1 & 2.  
Office Globle Shutters Medi Care 02 Points at Adj. Narula s Kishan Shutters.

Garh, Vasant Kunt.

25. The other file that Mr Gupta has is the application filed by the Appellant for de-sealing of the premises and the response sent by the SDMC to the Appellant on 31st January, 2018. No other record was able to be produced by the SDMC.

26. When a pointed question was asked to Mr Gupta, learned counsel for the SDMC whether the sealing action was undertaken on the basis of any written instruction from the Monitoring Committee, his answer was in the negative. According to him, which, as per the instruction of Mr. M. Naeem, Assistant Engineer, the instructions were „oral . As far as DDA is concerned, Mr Verma stated that on the next date he will produce before the Court whatever record available with the DDA.

27. We direct the Monitoring Committee to file an affidavit in this Court at least two days prior to the next date of hearing with an advance copy to learned counsel for the Appellant and the other parties answering the following questions:

(i) Generally, before proceeding for sealing, does the Monitoring Committee prepare any written note on the information received by it regarding the alleged misuse of the premises? Particular to the case on hand, did it prepare a note prior to proceeding to seal the Appellant's premises?

(ii) In other words, on what basis does the Monitoring Committee decide to proceed with an inspection in relation to any premises where there is any alleged misuse?

(iii) Does the Monitoring Committee prepare a written note or report of the action taken by it on any given date and in particular in the case of the present Appellant, is there any written report prepared by the Monitoring Committee which would indicate:

(a) When it left for the sealing exercise.

(b) In what vehicle they travelled.

(c) Whether there were any independent witnesses to the inspection and/or the sealing action. Were their signatures taken on any written proceedings of the sealing action?

(d) Whom did it meet in the premises?

(e) What is the nature and extent of the misuse noticed?

Whether photographs were taken which would indicate the misuse and what has happened to those photographs?

(f) Whether there is a record maintained of handing over this written report of the Monitoring Committee to the agency (South DMC)?

(g) Whether there is a record of the written instructions issued by the Monitoring Committee to the South DMC and/or DDA to proceed to seal the premises?

(h) Whether the grounds on the basis of which sealing was advised were set either in the report of the Monitoring Committee or in the communication sent by it to the agency?

28. It must be mentioned at this stage that the learned counsel for the Monitoring Committee submitted that it might be able to answer the above questions only if it had access to the records of the SDMC and the DDA. The Court makes it clear that since the Monitoring Committee has been undertaking sealing actions for the last 12 years, it should be able to answer most of the above questions since it would obviously follow a certain pattern in many cases of sealing where it issues instructions to the agency to proceed with the sealing. It cannot be that only for the sealing in the present case that was undertaken on 5th January, 2018, the Monitoring Committee either did not

follow any written instructions whatsoever or departed from the procedure it would usually otherwise follow. We expect the Monitoring Committee to state on affidavit whether in fact it follows the above steps and if it does not follow any of the above steps, why it does not?

29. The records of the DDA be produced on the next date. The officer of the SDMC will continue to remain present in person in the Court on the next date as will the officer of the Monitoring Committee.

30. List on 23rd January, 2019."

31. Dasti under the signatures of the Court Master to the parties. "

2. Pursuant to the above order, the Monitoring Committee has submitted a „report dated 21st January, 2019.

3. At the outset, it requires to be noticed that although this Court had directed the Monitoring Committee to file an affidavit, it is stated in paragraph 4 of the report that "the Monitoring Committee is taking liberty to file the present report instead of an affidavit, as directed by the Hon ble Court".

4. The stand of the Monitoring Committee in response to the questions raised by this Court is made explicit in paragraph 3 of the report, which reads as under:

"3. The Hon ble Supreme Court of India has not laid down any procedure for the functioning of the Monitoring Committee. However, directions of the Supreme Court of India are being implemented in letter and spirit. It is further submitted that Monitoring Committee does not follow any fixed procedure and taken steps as mentioned in the order of this Hon ble Court."

5. Thereafter, the Monitoring Committee has enclosed a series of orders dated 23rd November, 2006, 12th February, 2007, 9th March, 2007, 10th April, 2007 and 19th February, 2009 of the Supreme Court in IA No.22 in W.P.(Civil) No.4677/1985 (M.C. Mehta v Union of India).

6. In referring to the order dated 19th February 2009, the Monitoring Committee points out that when an applicant in IA No.2719 in the above matter in the Supreme Court "raised similar issue regarding competency of the Monitoring Committee not following any set procedure or guideline", the Supreme Court had initiated a suo motu contempt notice "whereby on tendering the unconditional apology by the applicant, the contempt proceedings were closed".

7. In the penultimate paragraph of the report, the Monitoring Committee while not disputing that the property in question "lies under land use of industrial (manufacturing service and repair industry) as per Zonal Development Plan" and MPD-2021 states that there is no lay out plan for the impugned area approved by the local body and that "as such Monitoring Committee observed that the impugned area was being misused in violation of the MPD-2021".



8. In the last paragraph of its report, the Monitoring Committee asserts that in view of the orders of the Supreme Court, it has "complete jurisdiction in the areas which are not covered under MPD-2021".

9. The tone and tenor of the report submitted by the Monitoring Committee is a matter for some concern. The Monitoring Committee makes no bones about taking the „liberty“ of not filing an affidavit although directed by this Court to do so. This Court is guided by the judgment of the Constitution Bench in *L. Chandra Kumar v. Union of India* (1995) 1 SCC 400 where the Supreme Court held that the "power of judicial review exercised by a High Court under Article 226 of the Constitution, is part of the basic structure of the Constitution". What the Monitoring Committee appears to be telling this Court in a thinly veiled manner is that it is not required to answer the questions raised by this Court. The specific reference by the Monitoring Committee in its report to an earlier instance of an Applicant before the Supreme Court questioning the Monitoring Committee's competence being proceeded against for contempt, appears to this Court in the present context to be unfortunate. The response of the Monitoring Committee makes it impossible for this Court to proceed further in the matter.

10. In the considered view of the Court, given the facts and circumstances of the case, as detailed elaborately in the order dated 16 th January, 2019 which has been reproduced above, an important question of law arises: "Whether the Monitoring Committee appointed by the Supreme Court, even in respect of actions, that are prima facie beyond its powers, is answerable to a High Court exercising powers and jurisdiction under Article 226 of the Constitution?"

11. This Court would stand guided by the Supreme Court, and accordingly, while being unable to proceed further in the matter, grants leave to the parties to appeal to the Supreme Court under Article 134-A of the Constitution on the above substantial question of constitutional law which requires an authoritative pronouncement of the Supreme Court.

12. The Court would also like to be guided whether the tone and tenor of the report submitted by the Monitoring Committee at all calls for any action.

13. The appeal is disposed of in above terms.

14. Dasti under the signatures of the Court Master.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 23, 2019 rd