

# Shiv Kumar vs Union Of India And Ors on 22 February, 2019

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

\$~40

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 1867/2019  
SHIV KUMAR ..... Petitioner  
Through : Mr. Mohit Arora, Advocate.

versus

UNION OF INDIA AND ORS. .... Respondents  
Through : Ms. Anam Ahmad, Advocate for  
Ms.Nidhi Raman, Advocate for R2 &  
6.  
Mr. Ajjay Aroraa, Mr.Kapil Dutta,  
Advocates for R3,4,5/SDMC.

CORAM:  
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 22.02.2019 W.P.(C) No. 1867/2019 & CM APPL. No. 8772/2019 (for interim relief) This petition has been listed by way of a supplementary list upon being mentioned to Hon'ble the Chief Justice.

2. The petitioner, who is a retired citizen, is resident of property bearing No. 136-B DDA Flats, Shahpur Jat, where he resides with his wife and a 35 year old son. The son suffers from severe mental retardation and epilepsy, requiring constant monitoring and assistance.

3. Vacation notice dated 15.02.2019 was issued by respondents Nos. 3, 4 and 5/SDMC to the petitioner, which notice, the petitioner states, was served upon him on 18.02.2019. The petitioner seeks protection against the vacation notice, especially in the dire circumstances in which the petitioner finds himself.

4. Mr. Ajjay Aroraa, learned standing counsel appears on behalf of respondents Nos. 3, 4 and 5/South Delhi Municipal Corporation on advance copy; and points-out at the outset, that action against the petitioner's property being flat No. 136-B is part of the action initiated against the property of respondent No. 7 which is flat No. 136-A; and such action has been initiated under directions of the Monitoring Committee appointed by the Supreme Court in Writ Petition (Civil) No. 4677/1985 titled M.C. Mehta vs. Union of India & Ors.

5. Mr. Aroraa has handed-up a copy of order dated 30.01.2019 made by the Monitoring Committee, whereby the SDMC has been directed to initiate action for demolition of flat No. 136-A as well as

other flats in the block, which Mr. Aroraa states is a reference only to the petitioner's flat No. 136- B.

6. A perusal of order dated 30.01.2019 shows that a report on action against the subject property is to be placed before the Monitoring Committee on 06.03.2019.

7. To be sure, when the Monitoring Committee was constituted by the Supreme Court vide order dated 24.03.2006 made in W.P. (C) No. 4677/1985 titled M.C. Mehta vs. Union of India & Ors., its primary task was to oversee implementation of the law relating to misuse of premises, that would culminate in sealing of such premises.

8. Over a period of time however, other tasks relating to implementation of Master Plan for Delhi-2021, Unified Building Bye-Laws and other municipal legislations have also come to be entrusted and assigned to the Monitoring Committee, including all aspects of unauthorised construction, misuse of premises, encroachment on public land and allied illegal activities. This has been acknowledged by the Monitoring Committee inter alia in its report No. 128 dated 05.09.2018 submitted to the Supreme Court. The said report has been cited by the Supreme Court in order dated 07.09.2018 made in W.P. (C) No. 4677/1985, whereby the Court has also noted the Monitoring Committee's submission that it is doing its best to comply with the orders passed by the Supreme Court to ensure 'that there are no encroachments or unauthorised constructions or misuse of property in Delhi'; with the Monitoring Committee lamenting however that it is not getting adequate support from executing agencies such as MCD, NDMC, DDA and the Police. In the said order, the Supreme Court has further requested the Monitoring Committee to continue with its onerous task and has observed that it expects statutory bodies and the police to render all necessary assistance to the Monitoring Committee in carrying out its task.

9. In various orders made by the Supreme Court in W.P. (C) No. 4677/1985 aforesaid, the Supreme Court has mandated that no court, including the High Court, shall entertain any matters in which the action impugned has been initiated at the instance of Monitoring Committee. It is inter-alia so mandated in order dated 15.12.2017, the relevant portion of which is extracted below:

"37. 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."

(Emphasis supplied) In its report No. 128 dated 05.09.2018 rendered by the Monitoring Committee, it was stated as follows:

**"CHANNEL OF COMMUNICATIONS FOR REDRESSAL BY THE AGGRIEVED/DEFAULTING PUBLIC ON SEALING MATTERS:**

The Monitoring Committee would like to submit that despite clear orders from the Hon'ble Court with respect to the chain of communication for appeal against the sealing actions to be only addressed to this Hon'ble Court, it has been seen that in a number of cases, the parties concerned have approached other Courts i.e. High Court, District Court and surprisingly in one case, Consumer Court with the sole purpose of delaying the process of sealing ordered under the orders of the Hon'ble Court. The Monitoring Committee has come to the conclusion that all these dubious deviations in redressal appeals are primarily to gain time and delay the process. Some examples of this unfair practice are highlighted in the succeeding paragraphs."

Whereupon the Supreme Court made order dated 07.09.2018 in which it said:

"Channel of communications for redressal by the Aggrieved/Defaulting Public on sealing matters It is stated that some of the defaulting individuals/organizations are approaching the Courts - whether it is the High Court or the District Court and even in one case the State Consumer Disputes Redressal Commission.

It is submitted by the Monitoring Committee that these Courts and the Commission do not have any jurisdiction over these issues in view of the order passed by this Court. The learned Amicus will bring it to the notice of the Courts and the Commission that prima facie jurisdiction does not lie with them leaving it for the Courts to take a decision in the matter."

(Emphasis supplied) In a recent order dated 27.11.2018, the Supreme Court has further observed as under:

"Petitions being entertained by other Courts/Tribunals/Authorities The Monitoring Committee has brought to our notice that other Courts/Tribunals/Authorities including the State Consumer Commission and District and Sessions Judge are entertaining the petitions despite order passed by this Court. We have requested Mr. A.D.N. Rao to look into these cases. We reiterate that no Court or Tribunal or any other Authority shall look into these matters as well as the petitions which are pending before us."

(Emphasis Supplied)

10. In view of the above, it is clear that any action taken at the instance of Monitoring Committee - be it action relating to unauthorised construction, encroachment or misuse of premises - would be covered by the mandate of Supreme Court in the foregoing orders; and accordingly this court is mandated not to intercede in any such action.

11. Accordingly, as per the mandate of the Supreme Court, this court ought not to entertain the present petition.

12. It will of course be open to the petitioner to approach the Monitoring Committee and/or the Supreme Court to seek remedy in accordance with the orders made by the Supreme Court.

13. The writ petition is accordingly dismissed.

14. The pending application is also disposed of accordingly.

ANUP JAIRAM BHAMBHANI, J FEBRUARY 22, 2019 j