M.C. Mehta vs Union Of Indi A & Ors on 1 March, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1544, 2001 AIR SCW 974, 2001 (2) COM LJ 236 SC, 2001 (2) SCALE 309, 2001 (2) LRI 704, 2001 (4) SCC 577, 2001 (4) SRJ 134, (2001) 2 COMLJ 236, (2001) 3 JT 207 (SC), (2001) 2 SCJ 286, (2001) 2 SUPREME 228, (2001) 2 RECCIVR 372, (2001) 2 SCALE 309

Bench: Umesh C. Banerjee, B.N. Agrawal

CASE NO.:
Writ Petition (civil) 4677 of 1985

PETITIONER:
M.C. MEHTA

Vs.

RESPONDENT:
UNION OF INDI A & ORS.

DATE OF JUDGMENT: 01/03/2001

BENCH:
G.B. Pattannaik, Umesh C. Banerjee & B.N. Agrawal

JUDGMENT:

With I.A.No. 1254 in I.A. No.22 I.A.NOS.153, 455, 1181, 451 & 441 in W.P.(C) No.4677/1985 And IA No.1328 in IA No.1254 in IA No.129 in WP© No.4677/85 Re: M/s. Swatnatra Bharat Mills & DCM Silk Mills IA No.1329 in IA No.1254 in IA No.129 in WP© No.4677/85 Re: Birla Textiles JUDGMENT BANERJEE, J.

L...I...T.....T.....T.....T.....T.....T.....T..J On 10th May, 1996, this Court on a petition filed as a public interest litigation directed surrender of plots upon relocation of H categories industries More than four years have passed since the date of the order but regrettably the purpose of the order, to wit, to provide some open space and green verge for the benefit of the people of the capital city, stands unfulfilled and thus resultantly deprivation of lung space in the city. Laws delay in this sub-continent is not unknown in the adversarial litigation, but the situation should not and ought not to be similar in a public interest litigation more so when the same concerns environmental degradation: A rather sad state of affairs. It is on this perspective, however, that the present Interlocutory Application taken out by the DDA for direction on six key questions as mentioned in

the petition shall have to be considered.

Incidentally, some entrepreneurs also moved certain other Interlocutory Applications, we do deem it fit however to record that the entrepreneurs application or any other matter or petition pending shall await the judgment and order in DDA's application. Before, however, proceeding with the matter further, a brief backgrounder seems to be rather indispensable having regard to the concept of sustainable development for the capital city. Needless to say while the Brundtland Report called out for adaptation globally of a strategy of sustainable development defining it as development that meets the need of the present without compromising the ability of future generations to meet their own needs, the initial linkage between the natural and man made environment and the critical relevance of both environment and development is generally attributed to the Stockholm declaration of 1972 which stands restated and reaffirmed by the UN General Assembly in December, 1986 specifying therein sustained and rapid development for developing nations.

Prof. Nico Schrijver of the Institute of Social Studies at Hague, in his paper on Legal Aspect of Sustainable Development and Protection of Environment has high-lighted this right to development or sustainable development and indicated that the same includes a healthy environment.

The controversy as regards Development or Environment vis- à-vis the society however persists and it is in this context a judgment of the Calcutta High Court, of which one of us (Banerjee, J.) was a party, in regard to Calcuttas Wetlands in the Eastern fringe of the city of Calcutta (see AIR 1993 Cal 215) may be noted: Relevant extracts whereof are noted hereinbelow:- While it is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation, though however, may not be felt in presenti but at some future point of time, but then, it would be too late in the day, however, to control and improve the environment. Nature will not tolerate us after a certain degree of its destruction and it will, in any event, have its toll on the lives of the people. Can the present-day society afford to have such a state and allow the nature to have its toll in future the answer shall have to be in the negative. The present-day society has a responsibility towards the posterity for their proper growth and development so as to allow the posterity to breathe normally and live in a cleaner environment and have a consequent fuller development. Time has now come therefore to check and control the degradation of the environment and since the Law Courts also have a duty towards the society for its proper growth and further development, it is a plain exercise of the judicial power to see that there is no such degradation of the society and there ought not to be any hesitation in regard thereto..

The Calcutta Wetland Judgment was pronounced on the apprehended danger of a severe bio-diversity crisis but the situation in the capital city of Delhi is rather pathetic:

> Non- availability of even the lung space has resulted in a very high degree of pollution as a matter of fact, this Court (vide: 1996 (4) SCC 351) while dealing with the issue at the instance of Mr. Mehta, the lawyer and social-activist had the following to state:

7. Delhi is one of the most polluted cities in the world. The quality of ambient air is so hazardous that lung and respiratory diseases are on the increase. The city has become a vast and unmanageable conglomeration of commercial, industrial, unauthorised colonies, resettlement colonies and unplanned housing . There is total lack of open spaces and green areas. Once a beautiful city Delhi now presents a chaotic picture. The most vital community need as at present is the conservation of the environment and reversal of the environmental degradation. There are virtually no lung spaces in the city. The Master Plan indicates the approximately 34 per cent of recreational areas have been lost to other uses. We are aware that the housing, the sports activity and the recreational areas are also part of the community need but the most important community need which is wholly deficient and needed urgently is to provide for the lung spaces in the city of Delhi in the shape of green belts and open spaces. We are therefore, of the view that totality of the land which is surrendered and dedicated to the community by the owners/occupiers of the relocated/shifted industries should be used for the development of green belts and open spaces.

The Court in discharge of its social duty and obligation as the guardian angel of the society further directed in the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ same decision as below:@@ JJJJJJJJJJJ

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:-

be Sl. Extent Percentage to be Percentage to by the N@@ IIIIIIIIIIIIIIIIIIIIIIIIIIII surrendered and developed Dedicated to the owner for his own@@ IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII benefit in accordance DDA for Development of with the user@@ IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII perm itted Master Plan Green belts and under the other@@ IIII IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII spaces@@ IIIII

1. Up to 2000 sq. mts. -

100% to be developed (including the first by the owner in 2000 sq.mts. of the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ accordance with the larger plot) zoning regulations of the Master Plan @@ IIIIIIIIIIIIIII

2. 0.2 ha to 5 ha 57 43

3. 5 ha to 10 ha 65 35

4. over 10 ha 68 32 The earlier paragraphs have been introduced in this judgment as a backgrounder and to emphasize the sensitivity of the issue since environmental degradation will have its toll and there cannot be any doubt or dispute therein, though may not be felt in presenti.

The directions as above in terms of the order dated 10th May, 1996 has however, led to some confusion at the time of@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ execution of this Courts order before the District Judge,@@ JJJJJJJJ Delhi since none of the industrial units which were closed down by the order of this Court, took any step whatsoever for surrendering the land on the pretended pretext of the order of this Court dated 4.12.1996.

Significantly, however, the order dated 4th December, 1996 of this Court came to be passed in an Interlocutory Application for directions filed by the Central Government wherein this Court was pleased to observe in paragraph 3 of the order as below (vide 1997 (11) SCC 327):

> 3. We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The existing hazardous industries having been closed, what remains is the plot, superstructure and the workmen.

The occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case. We make it clear that Government permission and the consent from the Pollution Control Board/Committee, if required under law, shall have to be obtained . Even fresh electric connection and water connection shall have to be applied for and obtained in the changed circumstances. We have no doubt when approached for necessary permission/licence/water/electric connections the authorities shall expedite in dealing with the applications.

The order of 4th December, 1996 though mainly pertain however to the compensation aspect to the workers of those industries which are not re-locating and which have been closed down but some variations were ordered having regard to the setting up of industries in accordance with Master Plan of Delhi. The order however was clear enough to indicate the intent of the order. In this Interlocutory Application, however, Delhi Development Authority said to have been confronted with various queries raised by the industries and upon consideration thereof prayed for issuance of appropriate directions in regard to the issues me ntioned hereinbelow:

> i) Land surrendered by the Industries as per order dated 10.5.1996 has to be on the total plot area in possession.@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ
>
> ii) Land offered for surrender should be directly approachable from the road, vacant and free from all encumbrances.

iii) From the land surrender cases in respect of plots leased by Delhi Development Authority, it is seen that out of 14 Industrial Units requiring to surrender the land, 7 have a plot area ranging between 8 sq.m to 100 sq.m. Honble Supreme Court is requested to give directions for minimum plot area to be surrendered by an Industrial Unit.

iv) Certain units have restarted their industries removing/modifying the objectionable use process and obtained clearances from various departments. Are such industries also liable to surrender land to Delhi Development Authority as per orders dated 10.5.1996, 8.7.1996 and 4.12.1996?

v) There are certain industries which were closed prior to the orders of Honble Supreme Court dated 10.5.1996 but their names appear in the list of H category industries to be closed as mentioned in the various orders of Honble Supreme Court. Are such industries liable to surrender land? There are other industrial units which closed pursuant to the Honble Supreme Courts orders dated 10.5.1996 and restarted the activities as per orders dated 4.12.1996 of Honble Supreme Court. Suitable directions may be given whether land surrender from such industries has to be effected.

vi) There are certain units which were running in rented premises from within plot located in an approved industrial area/non conforming area and whose name is got included in the list of 1328 industries released by Honble Supreme Court from time to time. After the orders of Honble Supreme Court dated 10.5.1996, the tenant has closed down the industry and has handed over the rented premises to the original owner. In such cases is the original owner required to surrender land if the total plot area is more than 2000 sq.m.?

Adverting to the records at this juncture, be it noted that after the judgment of this Court on 10th May, 1996 as above, three Interlocutory Applications, having more or less similar prayers were dismissed: Delhi Development Authority also filed the IA No.139 for clarification of order dated 10.5.1996, 8.7.1996 and 4.12.1996 with a prayer that the units required to surrender land are now closed down as being a hazardous large scale industry and do not wish to relocate but to start units which are permitted in the Master Plan and in compliance with the pollution control norms. This Court however dismissed the Interlocutory Application on 1st October, 1997.

Significantly, the interlocutory application No.139 was filed on behalf of Delhi Development Authority and the prayer therein not only bears a similarity with the prayer in this application but more or less the same has been couched in the exactly similar language and for convenience sake the same is set out hereinbelow:-

> (a) Whether the order dated 10.5.1996 passed by the Honble Court in so far as it require the units to surrender land would apply to such units which after having closed the hazardous large scale industries do not wish to relocate but to start units which are permitted under the Master Plan and which also comply with Pollution Control Rules.

It is on this prayer this Court passed an order of dismissal though however without recording any reason.

Mr. Ranjit Kumar, the learned amicus curiae appearing in the matter contended that by reason of rejection of such a prayer, resulting in the dismissal of the application, question of further consideration of the issue as is proposed in question No.IV hereinbefore would not arise. Undoubtedly, there is some substance in such a contention but the factum of non-availability of

reasons in the order has rendered the situation slightly more flexible so as to afford a further opportunity to this court having regard to the concept of justice to consider in some detail the order dated 4th December, 1996 in I.A. No.36 accepting the contention of the learned Additional Solicitor General. The clarificatory order of 4th December, 1996 did in fact grant a liberty which would be dealt with in detail while answering the issues raised in the application.

Another redeeming feature which ought also to be noticed pertains to the desire of the Delhi Development Authority to move the Court once again after having failed in such an attempt earlier. We are at a loss to find a further attempt on the part of the Delhi Development Authority. The reasons obviously there would be some: but apparently nothing was forthcoming.

Subsequently, Swatantra Bharat Mill and DCM Silk Mills also moved I.A.No.425 with a prayer to direct DDA to acquire the land required to be surrendered under the DDA Act or the Land Acquisition Act and to restrain DDA for trying to expropriate the land of the petitioner : This prayer also was turned down by this Court and hence the application was dismissed as withdrawn. Be it noted that the learned amicus curie with his usual eloquence contended that review applications against the order passed on 10th May, 1996 numbered 36 in the year 1996, 55 in the year 1997, 3 in the year 1999 and 2 petitions in the year 2000, as the records depict, were all dismissed and on the wake of the same, Mr. Ranjit Kumar addressed us in detail that the present petition said to be for clarification cannot but be attributed to be a further attempt to review of the order dated 10.5.1996 which, in fact, does not call for any review nor does it call for any further order substituting the earlier order dated 10th May, 1996.

Mr. Rawal, the learned Additional Solicitor General however, contended that while submission of Mr. Ranjit Kumar may have some substance pertaining to some of issues as raised herein but that cannot said to be applicable in regard to all the issues. Mr. Additional Solicitor General made it quite categorical that the application as filed by DDA is not for circumvention of compliance of the order of this Court but only to act in terms therewith. The instant petition, Mr. Rawal contended has been initiated as a necessity and DDA had to move this Court for certain clarification since there have been large scale unscrupulous withholding of delivery of possession. The necessity also said to be by reason of proposed transfer to land-locked areas which cannot possibly be utilised even as a lung-space by reason of non- availability of an entry thereto. It has been contended further that since a large number of proposed surrender, if not in its entirety, are with encumbrances, question of obtaining possession thereof upon clearance of the encumbrances by the DDA would not arise since that would foist an additional financial burden or liability beyond the capacity of the DDA to meet.

Mr. Rawal contended that transfer also should be effected without any superstructure on the land as otherwise, it would be a near impossibility for DDA to take possession thereof. Be it noted that the order dated 10th May, 1996 specifically directed that H category industries are required to surrender the land to the DDA. We may note here that this order of surrender was passed by reason of the fact that the pollution level has reached its optimum in the city of Delhi affecting the entire society H category industries were directed to close down and to surrender the land so as to make available some green belt and open space popularly ascribed to be lung space for the city. Industries might

have closed in terms of the order of this Court and the compliance to the order was to this limited extent only. Structures are still lying there and no surrender has yet taken place. Majesty of law demanded compliance in observance rather than in its breach it is for the society only that this Court thought it fit to pass order to the extent as indicated above the capital city of the country ought not to be termed as the most polluted city in the world: It is with this spirit that the public interest litigation was filed and this Court also maintained the same by directing the shifting of H category industries Five years have passed by and not one industry has surrendered though of course, by reason therefore, show-cause notice to these industries were issued by the order dated 21st September, 1999 and the public notice was directed to be issued by an order dated 12th October, 1999. The matters are pending in Court but there has not been any change of situation. Significantly by reason of a specific situation this Court in the case of Hindustan Vegetables passed an order on7th December, 1999 directing the Hindustan Vegetables Oil Corporation to hand over 2 acres of the land only on which the factory premises stood and not the land measuring about 1.20 acres belonging to the factory and situated just abutting the other side of the road: As a matter of fact the land stands bifurcated by the road - one for the factory use and the other for the residential purposes and it is by reason of the peculiar factual elements, that this Court passed an order directing only the factory area to be surrendered Thus the order as passed on 7th December, 1999 in Hindustan Vegetables case cannot be termed to be of general application for surrender of all factory lands Any interpretation which runs counter of the above would also be opposed to the true spirit of the order and there would be a total failure of the avowed objects of social welfare and social benefit which has prompted this Court to pass the order dated 10th May, 1996.

Mr. Venugopal and Mr. Shanti Bhushan, learned Senior Counsels appearing for the entrepreneurs however, complained of violation of fundamental rights under Article 14. Mr. Shanti Bhushan contended that factum of surrender would not arise since the industries which he represents are prepared to restart and relocate the industries within the ambits of the Master Plan and Zonal Development Plans and this Court ought in the fitness of things grant necessary clarification in regard thereto. In the similar vein Mr. Venugopal also submitted that light and service industries and household industrial units stands permitted in terms of the Master Plan for Delhi and the Zonal Development Plan does not contain any bar for their continuance in the event the same falls within the ambit of the Master Plan. Mr. Venugopal contended that though hazardous and noxious industrial units are not permitted in Delhi and existing heavy and large scale industrial units both in terms of this Courts order and in terms of the Master Plan are required to be relocated and shifted but the land which would become available on account of such shifting ought to be used for making up the deficiency as per the needs of the community based on norms given in the Master Plan. Mr. Venugopal contended that as a matter of fact in the event any land or part of the land so vacated is not needed for the deficiency of the community service the Master Plan for Delhi itself records that the same would be used as per prescribed land use. Strong emphasis has been laid on Master Plan for Delhi Perspective, 2001 in particular the chapter on Work Centres industry. Relevant extracts of which are set out herein below for ready reference:-

Heavy and Large Industries Refer Annexure III H(b) a.

b..

(c) The land which would become available on account of shifting as administered in (b) above, would be used for making up the deficiency, as per the needs of the community;

based on norms given in the Master Plan; if any land or part of land so vacated is not needed for the deficiency of the community services, it will be used as per prescribed land use; however the land shall be used for light and service industries, even if the land use according to the Master Plan/Zonal Development Plan is extensive industry (emphasis supplied).

(d) Modernisation of heavy and large scale industrial units shall be permitted subject to the following conditions:

(i) it will reduce pollution and traffic congestion.

(ii) Whenever the unit is asked to shift according to the policies of the plan, no compensation shall be paid for assets attained because of modernisation.

Much emphasis has been laid on the word however (as emphasised above) and relying thereon it has been contended that user of land, in the event the same is not needed for deficiency of community services, can thus be had for light and service industries even if the Master Plan or Zonal Development Plan depicts its user as extensive industry. Further reliance was also placed on paragraph (d) of the Master Plan that even modernisation of heavy and large scale industrial units is permitted though subject to the conditions specified in (i) and (ii) above. It is in this context also our attention has been drawn to the Zonal Development Plan in particular the existing land use and the proposed land use in sub-zone G. In reference to the same Mr. Venugopal contended that existing land use totals 5456.32 hectare whereas the proposed land use is identical in area No doubt the submission at the first blush seems to be rather attractive but when read in the light of the decision of this Court as recorded in the judgment dated 10th May, 1996 we are afraid that the same pales into its insignificance since the submission cannot be countenanced at this juncture and after the expiry of five years. There were altogether in the records of this Court 96 Applications for Review which had the fate of dismissal by this Court from time to time as detailed herein before in this judgment

- it is thus probably a bit too late in the day to contend and take recourse to the rules to avoid surrender of land. This Courts order has been categorical and it is only expected that the entrepreneurs would act in terms therewith and not de hors the same. Needless to dilate that in the case of Swatantra Bharat Mills and DCM Silk Mills, the learned District and 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 superstructures 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.

Mr. Gopal Subramaniam, learned senior counsel appearing for the entrepreneurs also contended in the same vein that as a matter of fact, the Master Plan and the Zonal Development Plans having statutory recognition in terms of the Delhi Development Act, 1957, paragraphs © and (d) as noticed above under the title Work centres industry ought to be given its full play and the order of this Court, thus should be modified to incorporate the same. Incidentally, it has been contended rather strongly that the Master Plan being the golden thread in the orders passed by this Court from time to time, and since there is available under the Master Plan some relief the same ought to be made available to the entrepreneurs. In this context paragraph 11 of the judgment dated 10th May, 1996 (supra) may be noticed and which reads as below:-

> The DDA has suggested that it may be necessary to amend the Master Plan for regularising the land use as directed by us. We do not agree with the suggestion. The totality of the land made available as a result of the relocation/shifting of the industries is to be used for the community needs. The land surrendered by the owner has to be used for the development of green belt and open spaces. The land left with the owner is to be developed in accordance with the user permitted under the Master Plan. In either way the development is to meet the community needs which is in conformity with the provisions of the Master Plan.
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> We would also deem it fit to quote paragraph 12 as below for consideration of this aspect of the matter: We are, therefore, of the view that it is not necessary to amend the Master Plan.
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> While it is true that this Court has directed user of land left with the owner to be developed in accordance with the user permitted under the Master Plan but the whole aim, object and spirit of the order was to meet the community need and it is in this context also that Mr. Gopal Subramaniam drew our attention to the Appendix to the Zonal Development Plan pertaining to area G. We are however unable to accede to such a submission since time has not come as yet in any event to assess the situation in its entirety. The Zonal Development Plans produced before the Court has not been finalised as yet since it is presently in the draft stage and as such no reliance can be placed by this Court on the data and the materials available thereon. A proposal cannot be said to be a final declaration of the community need. We are thus unable to record our concurrence therewith for the reasons noticed above. The order of this Court dated 4th December, 1996 in the matter in issue (1997 (11) SCC 327) was passed in an interlocutory application for directions filed by the Union of India wherein in paragraphs 2 and 3 this Court observed as below:
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> 2. So far as the first contention is concerned, learned Additional Solicitor General has taken us through the order of this Court in M.C. Mehta v. Union of India (1996 (4) SCC 351) regarding land-use along with the order dated 8.7.1996 (M.C. Mehta v. Union of India (1996) 4 SCC

> 750) regarding relocation of 168 industries. The intention of this Court is clear that the order regarding land re-use was both for relocating industries as well as those which decide to close down and not to relocate. (Emphasis supplied) The learned counsel for the industries have not disputed this interpretation. We, therefore, accept the contention of learned Additional Solicitor General. Nothing more need be said on this point.
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> 3. We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The existing hazardous industries having been closed, what remains is the plot, superstructure and the workmen.

The occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case. We make it clear that Government permission and the consent from the Pollution Control Board/Committee, if required under law, shall have to be obtained. Even fresh electric connection and water connection shall have to be applied for and obtained in the changed circumstances. We have no doubt when approached for necessary permission/licence/ water/electric connections the authorities shall expedite in dealing with the applications.

The order as above thus unmistakably depicts the intention of this Court to rely on its order dated 10th May, 1996 though with certain variations as noticed herein before in this judgment. Setting up of industries was expressly authorised, upon compliance with all regulatory requirements, unfortunately however though certain advantages has been made available, but not one of the learned Advocates could respond in the affirmative even on a specific enquiry from the Court.

The issues are long pending- the issues are urgent since the entire society is impaired no exception can be taken to the legal battles involved in an adversarial litigation this is not one such instance: It is a true public interest litigation for the protection of the society and to avoid a deliberate peril arising out of entrepreneurial failure and total apathy and non-concern for social good and benefit. The Delhi Development Act of 1957 envisaged preparation of Master Plan for Delhi with a definite statutory direction to define various zones into which Delhi may be divided for the purposes of development and the manner in which the land in each zone is proposed to be used and the stages by which such development shall be carried out. As a matter of fact the Master Plan came into existence in 1962 and H category industries ought to have shifted out of the area specified therein by 1962 itself. Then came the Master Plan of 1990 to combat the existing situation with a specified period of shifting within three years i.e. there was an obligation to the H category industries to shift and relocate in terms of the Master Plan by the year 1993 and the social activist by reason of the failure of the entrepreneurs, moved this Court in 1995 whereupon after allowing all possible opportunities to all entrepreneurs and upon assessment of the situation through the appointments of Commissions and obtaining various reports on these aspects, passed the order on 10th May, 1996 which has till date not been complied with an indeed a sorry state of affairs and a total neglect and apathy towards the society, new and novel submissions are advanced as in any adversarial litigation

but unfortunately as noticed above it is too late in the day to contend otherwise apart from what the order contains as of 10th May, 1996. Needless to record that as late as April last year (28th April, 2000) this Court issued a direction to the affect that within one month all the industries which are required to surrender land in terms of this Courts order dated 10th May, 1996 should voluntarily surrender the same to the Delhi Development Authority and if the same has not been done the DDA will be duty bound to file an application for execution of this Courts order before the District Judge, Delhi and the District Judge shall thereupon execute this Courts order and report compliance within four weeks of the filing of the execution application. Be it noted that by the order last referred, this Court further directed that the execution application to be filed by DDA not later than 8 weeks from the date of the order the entrepreneurs should have some regard and sanctity for the orders of this Court rather than pleading anew before the Court for further clarification [if assuming we ascribe the same to be clarification rather than review] can this be termed to be in consonance with the law or is it a deliberate attempt to ridicule the Courts order? We will not be very wrong if we answer the same that probably the second alternative is the answer. The DDA also has raised certain inquiries before this Court again after the specific direction of this Court in 28th April, 2000s order. We are at a loss as to why after the specific order of the learned District Judge instead of relying thereon, a further application has been filed before this Court in July, 2000. DDA is expected to act in terms of the order expeditiously rather than with the delayed whip in its hands. In any event we answer the inquiries raised in the manner following:-

> Re (i).. So far as the first issue is concerned, we make it clear that the order dated 7.12.1999, in the case of vegetable oil was in the peculiar facts of that case and is not of universal application, nor does it in any way dilute the mandate of the order of this Court dated 10.5.1996 directing surrender of entire land subject to the extent of availability to the owner as per order dated 10.5.1996 reported in 1996 (4) Supreme Court Cases 351.
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> Re (ii). So far as the second issue is concerned, if the owner has the land which is approachable from the road, then he must surrender with the approach, so that the surrendered land can be utilised for the community. If, however, he is himself not the owner of the approach road, then question of his providing an approach road does not arise and as such surrender shall take effect on as is where is basis. On the question as to the land to be surrendered should be free from encumbrance, we are of the view, if the land is already encumbered, then a direction to release it from encumbrance and surrender will be a great burden. At the same time, such land will be of no use to the society unless released from encumbrance. In the circumstances we direct that the owner cannot utilise the land available to him by virtue of order of this Court dated 10.5.96, until he releases the surrendered land from encumbrance. Further if it is not made free from encumbrance within five years, then he will not get the benefit of the order dated 10.5.96 and after five years even the land which the owner was otherwise entitled to retain would stand vested with DDA for the use and the need of the society.

Re(iii) So far as the third issue is concerned, those who are required to surrender upto 100 sq. meter after that extent of land becomes available to them under the order of this Court dated 10.5.96 they need not surrender, since such a tiny bit of land cannot be utilised for any need of the society.

Re(iv) So far as the fourth issue is concerned, it is to be noted that on the application of the Union of India, this Court by order dated 4.12.96 in IA No.36 in Writ Petition No.4677 of 1985, accepting the 2nd contention of the learned Additional Solicitor General, held that the occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry and such industry can be established if permissible under the Master Plan. The Court also observed that when approached for necessary permission/license/water/ electric connections, the authorities shall expedite in dealing the applications. (See 1997 (11) SCC 327). In view of the aforesaid clarificatory order of the Court on the application of the Union Government, it would not be necessary for those units who have started new industries after obtaining clearances from various departments, provided that the Master Plan permits establishment of such industries, to surrender the land. But those who have not started such industries with appropriate clearance from the competent authority, they cannot be permitted to take the stand that they intend to start such industry nor such a plea will entitle them to retain the land. They must be bound by the earlier direction of the Court requiring them to surrender. This will apply to those industries which have not relocated the hazardous industries elsewhere. But if they have relocated, they cannot get the benefit, as has been held by the Court in the order dated 28.4.2000, reported in 2000 (4) SCALE 267, Re(v). So far as the fifth issue is concerned, if the names of the industries appear in the list of H categories in various orders of the Court, and they have not appeared or put any objection, then it would not be permissible for them to put up the plea that industries were closed down prior to order dated 10.5.96 and claim an equitable right of not surrendering.

Re(vi) So far as the sixth issue is concerned, it is apparent that the order of the closure was on the industries which were found injurious, irrespective of the fact whether it was being carried on by the owner of the land or the tenant. This being the position, the subsequent direction of surrender also is in relation to the land on which such industries were being carried on and were ordered to be closed down. Consequently, it is irrelevant where tenant after closing down the industries, handed over the premises to the owner. The owner in such case would be bound by the order for surrender, and will have to surrender.

Interlocutory application filed by the DDA thus stands disposed of as above.

The other IAs. Shall be dealt with separately.