

**Amit Gupta and Others Vs. Mcd and Others**

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**Court :** Delhi

**Decided On :** Feb-21-2012

**Judge :** The Honourable Acting Chief Justice Mr. a.K. Sikri & Rajiv Sahai  
Endlaw

**Appeal No. :** W.P.(C) No.7085 of 2011

**Appellant :** Amit Gupta and Others

**Respondent :** Mcd and Others

**Judgement :**

**RAJIV SAHAI ENDLAW, J.**

1. The 44 petitioners claim to be owners in possession of various shops in the building known as Diamond Mall constructed over three plots of land bearing No.2679, 2680 and 2691 Gali No.1-2, Beadon Pura, Karol Bagh, Delhi. They claim to be carrying on trade / sale of jewellery items from the said shops. They further claim to be subsequent purchasers of their respective shops and not the owners of the plot or developers of the construction on the said plot. They claim the following reliefs in this writ petition:-

“(a) Writ in the nature of CERTIORARI quashing the Clause 3(x) of “The Building Regulations for Special Area, Unauthorized Regularized Colonies and Village Abadis, 2010” as notified on 17th January, 2011 to the extent the same permits the respondents to frame required Redevelopment Scheme at leisure; (b) Writ in

the nature of MANDAMUS directing the respondents to forthwith frame and issue the Redevelopment Scheme in relation to the Commercial Area of Metropolitan City Centre in Karol Bagh (Ajmal Khan Road and adjoining area) identified as Beadon Pura in the approved Land use Plan of Zonal Development Plan of Zone B as notified in the Gazette of India; (c) Writ in the nature of CERTIORARI quashing the impugned order(s) dated 10.08.2011 issued by the Dy. Commissioner (Karol Bagh Zone) under Section 345-A read with Section 347 of the D.M.C. Act, 1957; (d) Writ in the nature of MANDAMUS directing the respondent to immediately de-seal the commercial properties of the petitioners wrongly sealed under mistaken belief of Residential User;"

2. Notice of the petition was issued. Though the writ petition was accompanied with an application for interim relief claiming de-sealing of their shops and seeking maintenance of status quo with respect to the aforesaid properties but no interim relief was granted to the petitioners.

3. The respondent MCD in its counter affidavit has inter alia stated that,

(i) that building plans for construction over the three plots aforesaid were sanctioned in the year 2004;

(ii) that the property No.2679 was sanctioned for basement, ground, first and second floor with only the ground floor being sanctioned for commercial purpose; that the building plans for plots No.2680 and 2691 were sanctioned for residential purpose only comprising of basement, ground, first and second floors; (iii) however unauthorized construction in the shape of deviations / excess coverage at basement, ground, first, second and third floors with projections on municipal land in property No.2679 was booked on 11.10.2004, 21.10.2004 and 29.10.2004 and in the action taken on 29.11.2004 and 05.02.2005, the construction raised on fourth floor was demolished and sealed; however the said seal was tampered with and fourth floor found to have been again constructed; that sealing action was again taken on 27.08.2010 and the entire fourth floor sealed; that demolition action with respect to the fourth floor was also taken on 10.05.2011; that it was also found that the three properties namely properties Nos.2679, 2680 and 2691 had been illegally amalgamated; (iv) With respect to the property No.2680, it is stated

that unauthorized construction therein was booked on 16.07.2004, 23.08.2004 and 02.11.2004 and sealing action also taken;

(v) With respect to property No.2691, it is pleaded that the unauthorized construction therein was booked on 16.07.2004, 23.08.2004 and 02.11.2004 and sealing action initiated with respect to deviations / excess coverage from basement to second floor and sealing order passed on 29.11.2004 and the third floor of the property booked; (vi) It is reiterated that properties Nos.2680 and 2691 were sanctioned for residential purpose only and property No.2679 as commercial-cum-residential being on a mixed land use road and which was subsequently declared as commercial as per MPD-2021; (vii) It is yet further pleaded that the three properties have been amalgamated and 90 shops are running therein.

4. The aforesaid position, as pleaded in the counter affidavit of the respondent MCD, is not controverted by the petitioners.

5. The petitioners however in the petition have pleaded that in terms of the provisions of MPD-2021 as well as the Zonal Development Plan for Zone-B in which properties aforesaid are located, the respondent MCD is required to frame Re-development Plans and Schemes for said areas which include commercial areas within Karol Bagh; however, neither any Re-development Plan nor any Scheme has been prepared by the respondent MCD; that respondent MCD cannot be permitted to on the one hand not frame the Scheme and on the other hand resort to punitive action when there is a mandate of status quo to be maintained in terms of the provisions of MPD-2021. It is further pleaded by the petitioners that the respondent MCD cannot be permitted to take undue advantage of its own wrong; that the respondent MCD on account of its own failure to frame and issue the Re-development Plan and Schemes for the said areas including Karol Bagh has prevented the petitioners from applying for availing the benefits of such re-development; that the guidelines for Re-development Schemes shall necessarily include amalgamation and re-construction of plots.

6. The respondent MCD in its counter affidavit in response to the aforesaid pleas of the petitioners has pleaded that the Re-development Plan for the said area is still under preparation and yet to be approved / notified by the competent authority.

7. The respondent No.2 DDA in its counter affidavit has pleaded that Karol Bagh area is yet to be declared as Metropolitan City Centre and thus the petitioners cannot take any benefit thereof. It is pleaded that Clause 6.2.1 of the Zonal Development Plan of Zone-B merely states that Karol Bagh has all the necessary ingredients to emerge as Metropolitan City Centre; that the Re-development Scheme prepared by the respondent MCD is yet to be notified by the respondent MCD and also requires the approval of the Central Government; that presently commercial activities are permitted only on streets which have been declared as commercial by the respondent MCD.

8. The petitioners in their rejoinder to the counter affidavit of the respondent DDA have reiterated that extension of time for framing of Guidelines / Scheme is contrary to the Master Plan; that the Zonal Development Plan clearly mentions Karol Bagh as the District Centre and declares the area in Beadon Pura as commercial zone. The petitioners in rejoinder also rely on the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 to contend that they are entitled to protection thereunder.

9. The counsel for the MCD has during the hearing invited attention to the order dated 11.05.2006 of the Apex Court in I.A. No.22 in W.P.(C) No.4677/1985 titled **M.C. Mehta Vs. UOI** directing sealing and de-sealing to continue notwithstanding any order passed by any Court and also reiterating that no court other than the Supreme Court will have any jurisdiction to make an order of de-sealing of premises sealed under the orders of the Apex Court. It is also contended that sealing action against the unauthorized construction in the property aforesaid and for misuse in violation of MPD-2021 was taken at the instance of the Monitoring Committee appointed by the Supreme Court which on 10.08.2010 concluded that owing to amalgamation and construction of the building without any set back and encroachment on public road, the property should be sealed. Attention is also invited to the judgment of the Supreme Court in **M.C. Mehta's** case reported as (2006) 3 SCC 399 issuing directions to the respondent MCD for sealing of properties. Attention is yet further invited to another order of **M.C. Mehta's** case reported as (2006) 3 SCC 429 regarding appointment of the Monitoring Committee. It is stated that at the time of coming into force of the Master Plan-

2021, the property was lying sealed and for this reason also even if the status quo is to be maintained that also requires the properties to remain sealed.

10. The senior counsel for the petitioners has invited attention to the noting dated 30.09.2011 of the Assistant Town Planner (Special Area) describing Beadon Pura as retail business under the head "Commercial". Attention is also invited to the list of commercial streets to show that Gurdwara Road from Padam Singh Road to Pusa Road is commercial. The counsel for the respondent MCD has controverted the same by showing that Gurdwara Road from junction with Deshbandhu Gupta Road to junction with Padam Singh Road only is commercial. It is thus contended that the property is situated on a commercial street. Attention is also invited to documents showing that most of the occupants of the property have paid up the charges for commercial use.

11. The counsel for the respondent DDA has contended that there is no declaration as commercial as yet and there is only a proposal. It is stated that the areas are yet to be identified and delineated during the preparation of Re-development Plan.

12. The petitioners even though claim themselves to be subsequent purchasers of the respective shops in their possession and being not concerned at all with the unauthorized construction / development of the Mall in which the shops are situated, the fact remains that the claim of the petitioners is steeped in illegality. The said illegality cannot be ignored and eyes cannot be shut thereto merely for the reason of the persons seeking the relief from the Court being themselves not the perpetrators of the illegality. The petitioners even as subsequent purchasers owed a duty to satisfy themselves of the illegality of the title which they were seeking to require. The said illegality would include an investigation into the fact that the construction which they were purchasing was authorized and in accordance with law.

13. The present is a clear case where the entire construction of Diamond Mall by illegally amalgamating three distinct plots is unauthorized. Not only so, the plan sanctioned of only one of the three properties was for commercial purposes and that too only qua the ground floor. The plans for construction of other two

properties were only for residential purposes. As such, the petitioners cannot be granted any relief whatsoever in the equity jurisdiction of this Court. The menace of unauthorized construction is eating into our city and cannot be tolerated. Merely because the petitioners claim to be innocent subsequent purchasers cannot be a ground for this Court to allow them to retain the illegality. Moreover, the Monitoring Committee appointed by the Supreme Court being seized of the matter and having directed action to be taken and the Supreme Court as aforesaid having prohibited all other Courts from interfering therewith, it is not for this Court to grant any relief to the petitioners. The remedy if any of the petitioners is before the Supreme Court only. The petitioners admit having on an earlier occasion approached not only the Supreme Court but also the Monitoring Committee but subsequently withdrew their claim / representations. Though the senior counsel for the petitioners has sought to carve out a distinction by contending that the Monitoring Committee is concerned only with the misuse and not with the unauthorized construction and is seeking to exercise powers over the subject property by claiming misuse of unauthorized construction which cannot be permitted but all such pleas are to be raised before the Apex Court and not before this Court.

14. We therefore do not find any merit in the petition and dismiss the same. Since no interim relief was granted to the petitioners, we refrain from imposing any costs.

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