

**2000 AIR SCW 3386**

**B. N. KIRPAL AND Mrs. RUMA PAL, JJ.**

Interlocutory Applications Nos. 1243, 1246, 1247, 1248 and 1259 In I.A. 129 in I.A. 22, In Writ Petn. (C) No. 4677 of 1985, D/- 29-8-2000.

Petitioner : M.C. Mehta

v.

Respondents : Union of India and others.

**Environment Pollution Act (29 of 1986), S. 3 — Constitution of India, Art. 32 — Hazardous, noxious industries — Brick kilns in NCT of Delhi — Direction to close or shift and surrender land given by orders in 1996 AIR SCW 2621 and (1998) 9 SCC 149 — Modified so far they related to requirement of surrender of land.**

The brick kilns were situated on agricultural land, no construction of the type which has been permitted to industry can be done on the said land. When the Supreme Court, in the order dated 10-5-1996, had required the surrender of the certain percentage of land, it had at the same time permitted additional F.A.R. to the land owners for construction on the land, that was by way of compensation. That situation cannot apply insofar as agricultural land is concerned on which the brick kilns were situated. That being so it was clarified that with the closure of the brick kilns or the change in use to fly ash technology, the owners of the land on which they were situated would not be under any obligation to surrender land. To that extent the order dated 26-11-1996 stands modified.

(Paras 5, 6)

**Cases Referred : Chronological Paras**

M.C. Mehta v. Union of India, (1998) 9 SCC 149 : (1998) 7 JT (SC) 460

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M.C. Mehta v. Union of India, 1996 AIR SCW 2621 : AIR 1996 SC 3311 : (1996)

4 SCC 351 .....2, 3

K. N. Raval and Mukul Rohtagi, Addl. Solicitor Generals (Ranjit Kumar), Advocate (A.C.) M.C. Mehta, (Vijay Panjwani) Advocate, for (C.P.C.B.) C. V. Subba Rao, R. N. Verma, (S.K. Dwivedi), for Union of India, K.C. Kaushik (S.N. Terdol) Advocate, for (Min. of U.D.) V. B. Saharya, Advocate, for (D.D.A.), D.N. Goburdhan, Ms. Geeta Luthra, (Ms. Pinky Anand, Advocate, for NCT Delhi), (Ms. Sheil Sethi) Advocate, for N.C.R.P.B. (R.C. Verma, C. Siddharth), Advocates, for (DPCC) E.C. Agarwala, Rishi Agarwal, Ashwini Kumar, Dhruv Mehta, S. K. Mehta, Ms. Shobha, Surya Kant, R.S. Suri, Advocates with them, for the appearing parties.

**ORDER** :— These applications are filed by the erstwhile brick kiln owners who had their brick kilns in the NCT of Delhi. A prayer in these applications is for the modification of the order dated 10-5-96 and 26-11-96 passed by Court in I.A. 22 in W.P. (C) No. 4677/85 so as to delete the direction by which the applicants had been directed to surrender the land without being paid any compensation.

2. This Court was dealing with industrial pollution in Delhi. As per the Master Plan 1990, industries had been placed into different categories. Those industries which were placed in category — H were required to close down and/or to be shifted out of Delhi within three years of the Master Plan coming into effect. When the said industries did not shift or close, writ petition was filed which led to the passing of the order dated 10th May, 1996 reported as (1996) 4 SCC 351 : (1996 AIR SCW 2621 : AIR 1996 SC 3311). This order specifically dealt with the case of hazardous, noxious industries and the directions which were given therein inter alia required certain percentage of land which was being used by those industries being surrendered and at the same time the Court permitted fifty per cent extra F.A.R. on the **page3387** remaining land. The land was required to be utilised in the manner indicated in the Master Plan.

3. In the Master Plan of 1990, brick kilns were not shown as a category — H industry. It is only after Report was submitted by the Delhi Pollution Control Committee that by an order dated 26-11-96 (1998 (9) SCC 149) this Court came

to the conclusion that 246 brick kilns operating in various zones of the N.C. Territory of Delhi were category — H industries and as such could not operate as a said industry. While ordering their closure and shifting from Delhi it was observed in paragraph 6 of the directions that the use of the land which would become available on account of shifting/relocation of the brick kilns shall be permitted in terms of the order of this Court dated 10th May, 1996 in *M.C. Mehta v. Union of India*, (1996 AIR SCW 2621 : AIR 1996 SC 3311). It was also stated that the shifting brick kilns shall be given incentives and the brick kilns should shift to fly ash technology.

4. It is not in dispute that large number of these brick kilns owners were occupying land which they had taken on licence/lease. It is also not in dispute that prior to the passing of the aforesaid order dated 26-11-96 no notice had been issued to the owners of the land who were the landlords of the brick kiln owners. Their rights were vitally affected and the principle of natural justice would have required an opportunity of hearing being given to them. This was denied.

5. We also find that the brick kilns were situated on agricultural land, no construction of the type which has been permitted to industry can be done on the said land. When this Court, in the order dated 10-5-96, had required the surrender of the certain percentage of land, it had at the same time permitted additional F.A.R. to the land owners for construction on the land, that was by way of compensation. That situation cannot apply insofar as agricultural land is concerned on which the brick kilns were situated. It is obvious that the position of the brick kilns qua other category — H industries is not identical. These two types of ventures could not be similarly treated. Whereas brick kilns were not, as we have already noticed, a category — H industry, the other units in respect of which orders were passed on 10th May, 1996 did fall in that category. No construction is normally permitted on the agricultural land if it is less than a hectare and if it is more than a hectare only a fraction of the same can be used for construction. The situation of the agricultural land is very dissimilar to industrial land or land on

which industries had been erected. This being so, there is merit in the contention of the applicants that they should not be under an obligation to surrender the land. It is however, undertaken by the learned counsel that the agricultural land or the land on which brick kilns were situated would continue to be used in accordance with the provisions of the master Plan and as of today all the 246 brick kilns have been shut down. We are informed at the bar that the land in question is now being used mostly for agricultural purposes, though in the case of two erstwhile brick kiln owners fly ash technology is sought to be used for the manufacture of brick which is enviro-friendly.

6. For the aforesaid reasons, these applications are allowed and it is clarified that with the closure of the brick kilns or the change in use to fly-ash technology, the owners of the land on which they were situated would not be under any obligation to surrender any land. To that extent the order dated 26-11-96 stands modified. It is made clear that this order will not apply to those brick kiln owners who have availed of this Court's order dated 26-11-96 and have benefited under the same in the matter of relocation. The applicants before this Court state that none of them have got any assistance with regard to relocation or availed of any such benefit. As a result of this order, the land will revert to the original owner.

Order accordingly.

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