

SADF FOCUS

06 June 2018

Issue n° 38

ISSN 2406-5633

Between law and practice: Reflections from the sealing drive across Delhi

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Abstract

This paper provides a brief coverage of the on-going sealing drive in Delhi which massively disrupted the trading activities of small and medium scale businesses across different parts of the capital city. A sealing drive is the process of removal of unauthorised establishments by (civic) authorities. This paper starts by tracking down the legal history of the controversy, from 1992 to the developments in the case since then. The purpose of this reflective study is to present an overview of the ground situation in Delhi's 'sealed markets' while explaining the legal nuances of the Supreme Court order. A short-hand ethnographic method has been used by authors in primarily documenting the perspective of traders affected by the sealing drive in the Southern parts of Delhi (including Amar Colony and Defence Colony area). Towards the end of the paper, the authors conclude with a brief proposal on legal remedies available to traders (and other stakeholders) affected by the drive.

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¹ Shivkrit Rai and Purvi Kaya conducted the primary interviews and authored the paper. Deepanshu Mohan has been acknowledged in conceptualising the study and reviewing the paper.

1. Legal history

The recent sealing drive in Delhi's commercial areas has brought to light the constant violations of multiple statutory provisions. These relate to the Master Plan under the Delhi Development Authority Act, 1957, and Delhi Municipal Corporation Act, 1957. However, the origin of this case was never related to commercial properties. This section focuses on how the issue of sealing came up in a writ petition filed in the Supreme Court of India in 1985. It tracks the evolution of the case from the mechanical stone crushing industry to commercial establishments in residential areas.

1.1. Tracing back from 1985 – M.C. Mehta land use case (1985-1992)

The issue regarding land use came up in 1985, in a writ petition filed by Mr M.C.Mehta (M.C. Mehta v. Union of India, Writ Petition (Civil) 4677/1985, Supreme Court). The petition initially focused only on unauthorised land use by stone crushers and the subsequent violation of multiple statutes. It was found that several areas in Delhi, which were designated as residential areas, were being used for industrial purposes. The Supreme Court perused multiple statutes and documents which included the Delhi Development Act, 1957, the Master Plan for Delhi published in the Gazette of India dated August 1, 1990, the Delhi Development Authority (Zoning) Regulations, 1983, the Delhi Municipal Corporation Act, 1957, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act 1986, the National Health Policy, 1985, the Ancient Monuments Act, 1958, the National Capital Region Planning Board Act, 1985 etc.

The Court, in its 1992 judgment, held that environmental changes are inevitable consequence of industrial development in the country. However, industrial growth cannot be promoted at the cost of environmental degradation. It was found that these industrial setups were polluting the air, water and land to such an extent that it was becoming a health hazard for the residents of the area. The Court further went on to state that the concerned authorities had been wholly remiss of their statutory duty, and had failed to protect the environment and control the air pollution in Delhi.

In its 1992 judgement, the Supreme Court ordered that all mechanical stone crushers operating without licences or in residential areas in the Union Territory of Delhi had to stop operating. A new crushing zone was established in Haryana, for the same reasons, to accommodate the stone

crushers who had been stopped from operating. The Director of Town Planning was later asked to send a progress report. The Court did not dispose the petition.

1.2. Changes in narrative (1992-2004)

The narrative after 1992, was focused on calling industries in residential or non-conforming areas to shift to industrial estates. The focus was, therefore, not on a specific industry but on all the industries in the region of the Union Territory. In the 1996 judgment (M.C.Mehta v. Union of India, (1996) 4 SCC 750) given by the Supreme Court, 168 industries were identified as noxious and hazardous. Subsequently, the Court ordered the shifting of these industries to other industrial estates in the National Capital Region. It was noticed that the Municipal Corporation of Delhi (MCD) was granting licenses even for industrial units in non-conforming and residential areas (Verma, 2004). The Supreme Court directed the MCD to stop granting any licenses. The 2004² judgement (M.C. Mehta v. Union of India, 2004) given by the Court expresses the anguish towards the State government and highlights the beginning of conflict between the executive and the judiciary. The Court, in its judgment, blames the executive for the implementation of law. The Court referred to the second Master Plan, which came in effect in August 1990. In respect of F category industries which were already existing in non-conforming areas, it ordered them to be shifted to the permissible industrial use zone within a maximum period of three years after the allotment of plots by various government agencies. The 2004 judgment³ (M.C. Mehta v. Union of India, 2004) also led to the introduction of the Monitoring Committee which was supposed to inspect the compliance of the mining industry in the area of Aravalli Hills. The 2004 judgement restricted itself to raising the issue of misuse of land by unauthorised industries. The unauthorised industries are therefore prioritised. The 2006 judgment (M.C. Mehta v. Union of India, 2006) became an extension to the 2004 judgment. The difference, then, was that the Court focused on residential areas. In fact, the 2006 judgment also discusses how the question of land use of residential premises initially came up in the 1994 petition in News Item AQFMY v. Central Pollution Control Board (AQFMY v. Central Pollution Control Board, Writ Petition no 725 of 1994, Supreme Court). Finally, the controversy evolved in 2002, when a status report stated that Green Park Main had approximately 667 properties and Green Park Extension had 407 properties which were being used for commercial purposes.

² The 2004 judgment was again specific towards mining in areas of Aravalli Hills and its effect on ground water.

³ Initially the Monitoring Committee was introduced by a notification of the Ministry of Environment and Forests dated 1999-11-29 and later by the order of the Supreme Court dated 2002-05-06, which was finalised by the judgement of 2004.

1.3. The coming of Delhi Laws (Special Provisions) Act, 2006

Upon the establishment of the Monitoring Committee and the Supreme Court's unhinged stance on continuing with the sealing process (thus expecting compliance from the Delhi police), the government modified the Master Plan for Delhi on 28 March 2006. By this amendment, the government had also modified the chapter on mixed land use in order to grant relief. Moreover, the Delhi Laws (Special Provisions) Bill, 2006 was pending in Parliament at this time, which would provide a moratorium on all sealing activity, by providing status quo with effect from 1 January 2006. This bill was notified on 19 May 2006.

The very next day, the government issued a notification that placed a moratorium on all notices issued by any authority, and the provisions of the Act were to be applied. But by the time this Act was implemented and the notification issued, the magnitude of misuse of residential property had already come to notice, as 5006 establishments had already been closed and 40,814 affidavits, claiming the same, had come before the Monitoring Committee. Due to the same notification, various petitions were filed, requesting a temporary stay of the Act in the case of Delhi Pradesh Citizens Council v. Union of India (Delhi Pradesh Citizens Council v. Union of India (2006) 6 SCC 305). This case granted partial stay related to the 5006 establishments and the 40,814 affidavits.

Meanwhile, the Master Plan had been amended on 7 and 15 September 2006, due to which 2002 patches/streets were notified for mixed use. The Supreme Court has described these events as a 'cat and mouse game', and in its decision of 29 September 2006 (M.C. Mehta v. Union of India, 2006) noted that the authorities were exercising judicial functions by overruling the Supreme Court's orders. In view of this, it passed various orders, ordering continuance with the sealing drive, and restrained the government and other authorities from issuing any further notifications for conversion of residential premises to commercial use, without the consent of the Court (M.C. Mehta v. Union of India, 2006).

In its recent orders, it is evident that the Supreme Court is wary of the actions of the authorities and is mainly concerned about removing all forms of unauthorised establishments from Delhi. The bench of Justices Madan B Lokur and Deepak Gupta has been recently quoted on this matter, "Dharnas by the traders are admission of their guilt. Innocent people do not go on Dharnas That is why they are doing Dharnas" (Anonymous, 2018, April 3). Dharnas are peaceful

demonstrations. The Supreme Court wants to avoid a situation like that of the Kamla Mills fire tragedy in Mumbai and wants to control environmental hazards of these unauthorised establishments. The apex court has also said that, “this is not a political issue” and, therefore, this must be kept in mind while dealing with this case (Anonymous, 2018, April 9).

Legal case overview

1985 - Writ petition filed by M.C. Mehta - on unauthorised land use by stone crushers;
1990 - Second Delhi Master Plan was introduced;
M.C. Mehta v. Union of India (1992) - Industrial growth to not be permitted at the cost of environmental degradation and, therefore, all mechanical stone crushers without licenses were made to stop;
Narrative post 1992 - Industries in residential/non-conforming areas were to be shifted to industrial estates;
1996 judgment - Noxious and hazardous industries were shifted to NCR;
2002 - According to a status report here was a significant number of properties being used for commercial purposes in Green park;
2004 judgment - Highlights the beginning of the conflict between the executive and the judiciary, where the Court dealt with issue of misuse of land by unauthorised industries. The Monitoring Committee was introduced;
2006 judgment - Issue of land use of residential areas was dealt with (in consonance with the 2002 report);
28 March 2006 - Master Plan for Delhi was amended;
19 May 2006 - Delhi Laws (Special provisions) Bill, 2006, was notified;
20 May 2006 - Via a notification by the government, a moratorium was placed on all notices issued;
7 and 15 September 2006 - Master Plan was amended to notify patches/ streets for mixed use;
Delhi Pradesh Citizens Council v. Union of India - a partial stay of the Delhi Laws Act was granted;
29 September 2006 judgment - Supreme Court noted that authorities were exercising judicial functions.

2. Documenting narratives of traders (Southern parts of New Delhi)

This section of the paper focuses on the field visits made in the sealing affected areas. The researchers have only focused on the Southern part of Delhi primarily Amar Colony and Defence Colony. These markets offer a variety of products and cater to different customers. Moreover, these areas generate heavy tax revenue which makes them important focus points. A total of twelve interviews were conducted in the two markets with various members of the community. These included affected traders, unaffected traders and employees working in these two markets. For the purpose of the study an Opportunity Sampling Mechanism was undertaken. Such a mechanism is characterised by individuals from the sample target set, voluntarily agreeing to be active as per their convenience. An advantage of such a mechanism is that it permits the traders to participate when they are relatively less occupied, thus permitting a more detailed interview and greater compliancy in the interview process. Moreover, a Semi-Structured Interviewing Process was undertaken where only the most basic questions were prepared beforehand. The interviewers (researchers) asked the questions as the conversation progressed.

2.1. Defence Colony Market

Defence Colony Market was one of the first affected market areas when the sealing drive started. Unlike Amar Colony, the market is smaller. The total number of shops that were sealed were between 50 and 60. Even in Defence Colony, no notice was given to the traders for the sealing. Most of the shops which had been sealed by the authorities were either in the basement of the establishment or on the first floor. Moreover, some shops which were sealed had not paid conversion charges and were using residential areas for commercial purposes.

The market accommodated various stores, which included restaurants, clothing stores, and general grocery stores. This market was not selling goods specific to one category; therefore, a general estimate on loss of revenue was difficult to establish. While interviewing a worker at a stationery store, it was found that there was an estimated loss of revenue by 70,000 to 100,000 Indian rupees (€ 900 to 1,270) a month. On interviewing another member of the community, it was found that some restaurants have permanently shut their establishment and are finding new places to reopen.

It was also contended by a shop seller that he had all documents and approvals of the government, nonetheless, the SDMC had sealed his shop. It was stated by him that he had paid the conversion charges from time to time, as required. Even after four months of sealing, no remedy was provided to these shopkeepers. One of the shop owners stated they were constantly in touch with the traders association and political party leaders. A few of them also consulted with lawyers to seek legal remedies. However, due to lack of information they were unaware about the possible remedies they can avail.

2.2. Amar Colony, Lajpat Nagar

On 8 March 2018, the ladies garments market of Amar Colony, which has around 800 shops in total, saw one of the biggest sealing drives in Delhi's history. In a span of 6 hours, around 450 shops were sealed by the authorities. The traders were not given any proper notice or any order by the authorities at the time of sealing or even after the sealing was completed. Some traders were informed by the police about the drive the previous night, because of which they were able to remove their goods. The police even warned them to cooperate and, in case of non-cooperation, they were threatened with frivolous legal action against them. Whoever did not comply was beaten up in the process.

The part of Amar Colony where the shops were sealed consisted of streets which were commercial in nature and a road which was in the list of 351 roads that have not been notified as mixed or commercial by the government. The reason given by the authorities for the sealing was that of wrongful encroachment. On a general basis, in cases of encroachment, the encroachment itself is destroyed, instead of sealing the shops. Even after constant Dharnas and protests, there is no one who is on the side of these shopkeepers.

The shopkeepers had not taken any legal recourse and relied on support from various political parties. One of the common views was that they were depending on the orders of the Supreme Court, not realising that the Supreme Court, with its persistence for sealing to be carried on, has taken a stance which does not favour them.

As far as the effect on business and markets in general is concerned, the traders stated that everything was at a halt. With more than 500,000 people associated with this market, there has been a loss of approximately ten million Indian rupees (approximately € 128,000). This is not a

general retail market, but a wholesale one. A sizable sum of tax used to be paid from this market every year. Such actions of the authorities have made the people wary about doing business in Delhi in general. The association of traders is trying to exhaust all possible political efforts and push for a Bill that would stop the sealing drive and would provide relief to these traders.

Conclusion

Although there have been various contentions regarding the serving of notice to these vendors, it has been held that a valid notice was served by the Supreme Court in its 2006 judgment. A connecting thread between the judgments passed since 1992 up to 2004 was that the Supreme Court acknowledged the freedom to trade, guaranteed under Article 19 of the Indian Constitution, 1950. In these judgements, the Court ordered the removal of noxious and hazardous industries, but at the same time provided relief through rehabilitating them. The same has not been granted here. There is a dire need for the Court to offer remedies to these shopkeepers considering that the subject matter for the previous sealing drive and the current sealing drive is based on similar lines.

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