SIEL FOODS & FERTILIZERS IND. Versus UNION OF INDIA

Review petitions — re-location/shifting of the polluting industries outside Delhi — surrendering of excess land by industries for community purposes — broad Scheme framed by this Court that - (i) the land which becomes available on account of an industry being shifted out of Delhi would be divided equitably into two portions. The one portion to be retained by the land owner for development for his own benefit and the other portion to be surrendered to DDA for community use for development of green belts, open/lung spaces; (ii) the land owners surrendering and dedicating a part of the land for community use, they (land owners) will be entitled to an additional 50% FAR in regard to the land permitted to be retained by them for their benefit; (iii) such dedicated land will be used only for such dedicated purpose and not any other purpose; (iv) no question of DDA paying any compensation to the land owners — petitioners filed several interlocutory applications and petitions to review the orders of this Court — the order clearly intended that the land to be surrendered would vest in trust in DDA for the benefit of the community and the additional FAR was the only compensation for such surrender land for community benefit and there would be no further compensation — this Court clarified that where the land is acquired or used (other than as green belt and open lung space) for any other purpose under extreme necessity the land owner would be entitled to get 50% of the compensation or consideration for the use of such land — interlocutory applications and petitions dismissed.

Supreme Court of India
REVIEW PETITION (C.) NO. 1200 of 2002
Judge(s): K.G. BALAKRISHNAN, R.V. RAVEENRAN, J.M. PANCHAL
Date of Judgment: Thursday, March 25, 2010
SIEL FOODS & FERTILIZERS IND.
Versus
UNION OF INDIA

J U D G M E N T

K.G. BALAKRISHNAN, CJI:

In the city of Delhi, there were several hazardous and noxious industries, as also several large and heavy industries, causing extensive pollution. The Master Plan for Delhi - Perspective 2001, which was published in the Gazette of India on 01.08.1990, did not permit any of these industries to operate in Delhi. In a Public Interest Litigation i.e. M.C. Mehta v. Union of India & Others, [IA No.22 in W.P. (C) No. 4677/1985] the question of shifting these polluting industries from Delhi and relocating them outside the city of Delhi and other related issues were considered and a series of orders were passed regarding shifting and relocating the industries.

The polluting industries were notified through individual notices, public notices in newspapers and electronic media. This Court monitored the matter from

January, 1995 and all stake holders, including Union of India, Delhi Administration, Central Pollution Control Board, National Capital Region Planning Board, Delhi Development Authority, and the polluting industries were heard/consulted during several hearings. The Delhi Development Authority [for short "DDA"] was also directed to frame suitable schemes regarding the utilization of land which would become available after the relocation of the hazardous/noxious/heavy/large industries from Delhi. DDA constituted a Committee with Mr. K.J. Alphons, Commissioner, Land Management, DDA, as Chairman for this purpose. The said Committee examined the question regarding the utilization of land made available as a result of the re-location/ shifting of the industries and submitted detailed proposals. Views of other experts were also considered.

2. After hearing the parties including the affected industries, ultimately an order was passed on 10.05.1996 (reported in 1996 (4) SCC 351) relevant portions of which are extracted below:

"6. We have given our thoughtful consideration to the point at issue before us. We have had elaborate discussion with the learned counsel representing various industries which are to be relocated/shifted. The basic charter for the land use in the city of Delhi is the Master Plan. The provisions of the Master Plan are statutory and binding. The relevant provisions regarding hazardous/noxious/heavy/large industries under the Master Plan are as under:

"HAZARDOUS AND NOXIOUS INDUSTRIES

Refer Annexure III H(a).

(a) The hazardous and noxious industrial units are not permitted in Delhi.

(b) The existing industrial units of this type shall be shifted on priority within a maximum time-period of three years. Project report to effectuate shifting shall be prepared by the units concerned and submitted to the authority within a maximum period of one year.

(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 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.

(d) HEAVY AND LARGE INDUSTRIES Refer Annexure III H(b)

(a) No new heavy and large industrial units shall be permitted in Delhi.

(b) The existing heavy and large-scale industrial units shall shift to Delhi Metropolitan Area and the National Capital region keeping in view the National Capital Region Plan and National Industrial Policy of the Government of India.

(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.

(d) It is thus obvious that the land which would become available on account of shifting/relocation of the industries can only be used for making up the deficiency, as per the needs of the community, based on the norms given in the Master Plan. If any land or part of the land, so vacated is not needed for community services it can be used as per the prescribed land use. To appreciate the concept "need of the community" under the Master Plan, it would be useful to have a look at the following provisions of the Master Plan :-

"In general it would be desirable to take up all the existing developed residential areas one by one for environmental improvements through (i) plantation and landscaping (ii) provision of infrastructure - physical and social and proper access where lacking (iii) possibility of infrastructure management of the last tier through the local residents.

Conservation and revitalization is required in case of traditional areas and environmental upgradation and improvement is needed in other old built- up areas.

LUNG SPACES x xxx xxxx xxxx

Further conversion of recreational areas to other uses should be permitted only under extraordinary circumstances. Areas in lieu of such conversion may be provided elsewhere in order to maintain the overall average for the city. xxxx xxxx"

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, unauthorized 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.

8. The core question for consideration, however, is how much of the total land which would become available from each of the industrialists is to be taken

away by the community for its use and how much is to be left in the hands of the industrialists for the community use. The suggestions given by Alphons Committee in this respect have been noted by us in the earlier part of the order. Mr. Omesh Sehgal, Mr. P.C. Jain and Justice Khanna by and large agree with the suggestions of the Alphons Committee. We are of the view that no useful purpose would be served by maintaining two categories as suggested by Alphons Committee in columns 3 and 4. After leaving a part of the land with the owner for developing the same in accordance with the surrender to the Delhi Development Authority [DDA] for developing the same to meet the community needs, it obviously means that the land has to be surrendered and dedicated to the community. While meeting the community needs it is necessary to make a suitable provision for the owner to enable him to meet the expenses of relocating/shifting the industry. It would, therefore, be in conformity with the broader concept of "community need" under the Master Plan, to permit the owner to develop part of the land for his own benefit and surrender the remaining land for the use of the community at large.

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:

S.No. Extent Percentage to be Percentage to be surrendered and development by the dedicated to the owner for his own DDA for benefit in accordance development of with the user permitted green belts and under the Master Plan other spaces

(1) (2) (3) (4)

1 Up to 2000 sq. - 100% to be developed by mts. (including the the owner in accordance first 2000 sq. mts. with the zoning regulation of the larger plot) of the Master Plan

2 0.2 ha to 5 ha 57 43 3 5 h to 10 ha 65 35 4 Over 10 ha 68 32

10. We do not agree with the learned counsel for the industrialists that Floor Area Ratio [FAR] be permitted to them on the total area of the plot. We, however, direct that on the percentage of land as shown in column 4 the owners at Serial Nos. 2, 3 and 4 shall be entitled to one and a half times of the permissible FAR under the Master Plan

11. The DDA has suggested that it may be necessary to amend the Master Plan for regularizing the land use as directed by us. The totality of the land made available as a result of the relocating/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."

(emphasis supplied) 3. This was followed by another order dated 8.7.1996 (reported in 1996 (4) SCC 750) wherein this Court observed :

".... The allotment of the plots shall be made on priority basis. We have no doubt that reasonable incentives, which are normally provided to new industries in new industrial estates, shall be extended to the shifting industries. This Court by the order dated 10.5.1996 in M.C. Mehta v. Union of India [1996 (4) SCC 351] has already directed and laid down the manner in which the land which would become available on account of shifting of H(a) and H(b) industries is to be used. In view of the huge increase of prices of land in Delhi, the reuse of the vacant land is bound to bring lots of money which can meet the cost of relocation."

"The use of the land which would become available on account of shifting/relocation of the industries shall be permitted in terms of the orders of this Court dated 10.5.1996 in M.C. Mehta."

(emphasis supplied) 4. By order dated 4.12.1996 (reported in 1997 (11) SCC 237) several clarifications were issued. One of the clarifications was that the order dated 10.5.1996 regarding land use - that is utilization of land available as a result of shifting/relocation/closure of hazardous/noxious/heavy/large industries from Delhi - are applicable both for relocating industries as well as those which decide to close down and not to relocate.

5. While most of the industries, shifted or relocated, there were delay and obstacles in surrendering the land for community purposes as per the order dated 10.5.1996. The District court, Delhi was authorized to implement the directions issued by this Court. The High Court has been monitoring the progress of the surrender of the lands as a consequence of such re-locations.

6. Some of the industries including Swatantra Bharat Mills and DCM Silk Mills filed interlocutory applications praying for a direction to DDA to acquire the land required to be surrendered under the DDA Act or Land Acquisition Act and to restrain DDA from trying to expropriate their lands. The request was turned down and IAs were dismissed as withdrawn.

7. Thereafter, M.C. Mehta, the petitioner in the public interest litigation moved an application (IA No.129 in IA No.22) making a grievance that though the industries were closed, they had not surrendered the excess land to DDA, in pursuance of the orders dated 10.5.1996 and 8.7.1996. Notices were issued to the defaulting industries. A large number of industries appeared through counsel and the matter was heard at length. Mr. K.K. Venugopal, learned senior counsel appearing on behalf of a group of industries contended that this Court had never contemplated that the land should be surrendered free of cost. He further contended that when this Court directed that their land should be surrendered, it was clearly implied that the DDA would have to acquire the land under Section 15 of the Delhi Development Act, 1957 and pay compensation for the land. After considering the contentions, this Court by order dated 28.4.2000 (reported in 2000 (5) SCC 525), categorically rejected the said contention by holding as follows:

"When this Court first passed the order on 10.05.1996, it had before it the report of Mr. Justice D.R. Khanna and had the advantage of hearing several counsels over a period of six months as is evident from the order itself. It will be difficult to believe or accept that the Court was not aware of the provisions of the Delhi Development Authority Act which, inter alia, provides in Section 15 that the Authority could acquire the land for the purposes of the Act. The Court nevertheless directed the surplus land not to be acquired by DDA but to be surrendered by the owners. With regard to the balance of land, it was to be retained by the owner. The Court directed that FAR would stand increased to "one-and-a-half times of the permissible FAR under the Master Plan". It is true that the Court did not direct any compensation, but this element of compensation was clearly present in the mind of the Court when it increased FAR and permitted the owner to build more than what was permissible under the Master Plan. It is not possible, therefore, to accept the contention that DDA is bound to acquire the land under Section 15 after paying compensation.

Be that as it may, there is nothing to indicate in the order nor has our attention been drawn to any affidavit that there was, at any point of time, a contention raised or a demand made that cash payment should be made for the land required to be surrendered or that DDA should be asked to acquire the land under Section 15. Mr. G.L. Sanghi, learned Senior Counsel submits that in a matter like this where a public interest litigation is filed, the principle of res judicata does not strictly apply. Even if this be so, we would have expected the owners to have raised this contention if they had genuinely felt that there was a need for compensation to be awarded for the land which was to be surrendered. Perhaps they were happy to have an increased FAR which would have enabled them to construct more and would have offset the loss of land without payment of money. In fact, by the order dated 08.07.1996 reported as M.C. Mehta Vs. Union of India [see : 1996 (4) SCC 750 at page 762, para 15], it was observed as follows:

`In view of the huge increase of prices of land in Delhi, the reuse of the vacant land is bound to bring lots of money which can meet the cost of relocation'

Be that as it may, we do not think that it is appropriate at this juncture to permit the erstwhile owners of the land to raise the contention that they should be paid compensation.

It has to be borne in mind that the Master Plan of 1990 made it obligatory on the hazardous industries to shift within three years. No time limit was stipulated with regard to the existing heavy and large industries, but the spirit clearly was that they should shift within a reasonable period of time. If the industries continued to use the land in violation of and in disregard of the Master Plan and then have had to lose some parcels of land, they have to blame themselves for it. It was contended before us by Mr. K.K. Venugopal that if the industry had shut before 1996, it would have been entitled to retain all the land, but because the closure has been effected as a result of the order of this Court, the owners have

had to surrender part of the land free of cost. This is undoubtedly, true but as we have observed above if the owners had cared to obey the law then, as is always the case, would have been more profitable."
(emphasis supplied) 8. Another attempt was made by a group of industries by raising this issue regarding compensation for land surrendered, when DDA filed an interlocutory application for various directions. The industries also filed several applications. All those interlocutory applications came up before a three Judge Bench of this Court and this Court disposed of the matter by judgment dated 01.03.2001 [reported in (2001) 4 SCC 577]. It was contended by the industries that their industrial units which had been ordered to re-locate were not bound to surrender their freehold land free of cost and that the DDA had to acquire the land under Section 15 of the Act. The matter was elaborately argued by eminent counsel and their arguments were discussed in detail, and all their pleas were rejected. This Court also noticed that the Master Plan came into existence in 1962 and that `H' category industries ought to have shifted out of the area in 1962 itself; that the subsequent Master Plan in 1990 directed shifting the industries within a specified period of within three years; that there was an obligation on the `H' category industries to shift and relocate in terms of the Master Plan by the year 1993; and that all possible opportunities were given to the industries and upon assessment of the situation through the appointments of commissions and obtaining the consent of various parties on these aspects, the Court passed the order on 10.05.1996. This Court issued specific directions on several issues raised by DDA. This Court directed that even industries which closed prior to the order dated 10.5.1996 (whose names appeared in the list of `H' category industries to be closed) are liable to surrender land as per order dated 10.5.1996. The relevant portions of the order are extracted below :-
"Be it noted that the learned Amicus Curiae with his usual eloquence contended that review applications against the order passed on 10.5.1996 numbered 36 in the year 1966, 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 in 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 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 10.5.1996.
Be it noted that the order dated 10.5.1996 specifically directed that `H' category industries are required to surrender the land to 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 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 with the order was to this limited extent only. Structures are still lying there and no surrender has yet taken place. The 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 .....

..... 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 directing surrender of entire land subject to the extent of availability to the owner as per order dated 10.5.1996.

..... 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 utilize the land available to him by virtue of order of this Court dated 10.5.1996, 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 10.5.19996 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. "

9. The petitioners in these Review Petitions and Interlocutory Applications seek a review of the orders dated 10.5.1996 8.7.1996, 4.12.1996 and 28.4.2000 passed by this Court. We have heard Sri Harish Salve, Sri Mukul Rohatgi, Dr. A.M. Singhvi, Sri Dushyant Dave, Mr. Jaideep Gupta, Mr. M.L. Lahoti, and others for the land-owners (erstwhile industries in Delhi) as also the learned Additional Solicitor General on behalf of the Union Government, and Mr. D.N. Goburdhan, on behalf of the Delhi Development Authority. Mr. Ranjit Kumar rendered able assistance as amicus curiae.

10. The petitioners/ applicants contended that the findings of this Court in the earlier judgments and orders dated 10.5.1996, 8.7.1996 and 28.4.2000 regarding the element of compensation are ex facie incorrect and the judgment and order dated 10.05.1996 is liable to be reviewed. It was urged that the increased FAR mentioned in the Order is illusory and that there were restrictions on the permitted height of construction and many of the owners of freehold land had not been able to use the increased FAR. They contended that if any land is required for the purpose of development or for any other purpose, DDA should resort to compulsory acquisition under section 15 of the Delhi Development Act, 1957. It was contended that no land can be taken over or required to be surrendered without compulsory acquisition under Section 15 of the Delhi Development Act, 1957 and payment of market value as compensation. It was contended that transfer of ownership of freehold land otherwise than by acquisition or by conveyance or by inheritance was not known to law; and Article 300A of the Constitution barred any person being deprived of his property save by authority of law. It was further contended that the mere fact

that this court did not want the Government to undertake the time consuming process of acquisition under Section 15 of the Delhi Development Act would not in any way detract from the rule of law which requires the land owners of Delhi Industries to be treated on par with owners of land in other parts of the country which are acquired for the purposes of urban development. It was submitted while Section 15 deals with compulsory acquisition of land where the land is required for the purpose of development or any other purpose under the DD Act, Section 55 of the said Act dealt with modification of the Master Plan or zonal development plan in certain cases. The said section provided that where any land is required by the Master Plan or a zonal Development Plan to be kept as an open space or un-built upon or is designated in any such plan as subject to compulsory acquisition, then if at the expiration of 10 years from the date of operation of the plan under section 11 or where such land has been so required or designated by any amendment of such plan, from the date of operation of such amendment, the land is not compulsorily acquired, the owner of the land may serve notice on the Government requiring his interest in the land to be so acquired; and if the Government fails to acquire the land within a period of six months from the date of the said notice, the Master Plan or the Zonal Development Plan, shall have effect, as if the land were not required to be kept as an open space or un-built upon or were not designated as subject to compulsory acquisition. It is submitted this provision was completely ignored by this Court, while passing the order dated 10.5.1996. It was argued that as relevant constitutional and statutory provisions had not been taken note of by this Court, and as there is an apparent error on the face of the record, the impugned order dated 10.05.1996 should be reviewed. Another argument put forth by some of the owners is the word `surrender' used in the order dated 10.5.1996 would apply only to leasehold land and not to freehold land.

It was further submitted that physical surrender of land to DDA in pursuance of the order dated 10.5.1996 being for the limited purpose of maintaining green belt and lung spaces, DDA cannot claim any ownership right nor commercially exploit the same. It was lastly contended that the rule of `res judicata' would not apply in this case to prevent the Court from entertaining the grievance and giving appropriate directions.

11. The learned Amicus Curiae pointed out that despite the fact that the Master Plan for Delhi was published as early as in 1990, these hazardous, noxious, large and heavy industries did not take steps to shift their premises out of Delhi and these industries had been causing severe pollution for a long period thereby violating the Master Plan as well as damaging the environment and it was at this juncture that this Court had passed the order and directed all these industries to be re-located outside Delhi and issued categorical directions regarding surrender of portions of the land cleared by shifting of industries for community use; and that the landowners were not entitled to any compensation in regard to such surrender except the additional FAR granted under the decision. The learned

Additional Solicitor General and the learned counsel for DDA also took the same stand. They further pointed out that all the above-mentioned pleas had been raised before this Court and had been considered in detail on more than one occasion and that they had been rejected and many of these petitioners have repeatedly filed review petitions, curative petitions and writ petitions and some of these petitions have been filed much after the original order that was passed on 10.05.1996. Therefore, it was urged that there is no merit in the contentions advanced by the petitioners.

12. There is no question of acquisition and/or compensation in regard to the lands to be surrendered, is also evident from the categorical directions given in the order dated 10.5.1996. The surrender of lands by the industries was under a broad scheme framed by the court after assessment and consideration of the then existing situation, the reports of various committees, the grievances and contentions of various industries and the consensus arrived at on certain issues, and the findings on several other issues. This Court categorically stated :

"After leaving a part of the land with the owner for developing the same in accordance with the permissible land use under the Master Plan, the remaining land should be surrendered to Delhi Development Authority for developing the same to meet the community needs."

In para 10 of the order dated 10.5.1996, this Court held that in respect of the land which was to be retained by the owner for its own benefit and to be developed in accordance with the permitted use, the owner will be entitled to one and half times the permissible FAR under the Master Plan. The scheme contemplated not merely surrender of a part of the land but "dedication" of such surrendered land to the DDA for development of green belts and open spaces. The land that was to be surrendered had to be retained as green belt and open spaces and not to be sold, constructed or developed by DDA.

13. We have carefully considered the various review petitions and other applications filed in this regard. We have extracted the relevant portions of the orders dated 10.5.1996, 8.7.1996, 4.12.1996 and 28.4.2000 which clearly demonstrate that the owners of land/industries were given a fair hearing before passing the order on 10.5.1996. The petitioners had now raised these very contentions that their lands will have to be acquired and that they are entitled to get reasonable compensation when their land was taken over. All these pleas had been repeatedly rejected by this Court. The Scheme evolved by this Court in its order dated 10.5.1996 is clear :

(i) The land which becomes available on account of an industry being shifted out of Delhi would be divided equitably into two portions. The one portion to be retained by the land owner for development for his own benefit and the other portion to be surrendered to DDA for community use for development of green belts, open/lung spaces. The land to be surrendered and dedicated for community use was 57% (where the size of the plot was 0.2H to 5H), 65% (where the size of the plot was 5H to 10H) and 68% (where the plot was over

10H). The balance was to be retained by the landowner. The percentage was to be calculated after deducting first 2000 sq.m. for development by the owner.
(ii) In consideration of the land owners surrendering and dedicating a part of the land for community use, they (land owners) will be entitled to an additional 50% FAR in regard to the land permitted to be retained by them for their benefit. That is, the FAR would stand increased to one and a half times of the admissible FAR under the Master Plan. The landowners will not be entitled to any other consideration/compensation for the land surrendered and dedicated to the community.
(iii) The portions of land surrendered to DDA and dedicated for community purposes, that is only for being used as green belt or open `lung spaces' for the city. Such dedicated land will be used only for such dedicated purpose and not any other purpose.
(iv) The land will be at the disposal of the community at large and the DDA shall not exploit it for either commercial use or construction of residential flats. As DDA is not going to derive any benefit by exploitation thereof, and was to only hold it in trust for and on behalf of the community, there was no question of DDA paying any compensation therefore to the land owners.
It therefore, follows that such land dedicated by private owners to the community, is acquired for any other purpose, or is diverted to any other use by DDA (as for example for putting up constructions or for sale or lease for development or construction), the land owner will be entitled to compensation. But so long as the land remained as lung space/green area, there is no question of any payment to the owner, as compensation or otherwise.
14. The order dated 10.5.1996 was passed to get effect to the Master Plan, to save the city and in public interest. Therefore by surrendering a part of the land, the owners were not only benefiting the community but themselves. The records clearly show that before the order dated 10.5.1996 was passed, the question what should be the compensation for the surrendered lands was specifically raised and considered. It was made clear that additional FAR will be in lieu of any monetary compensation for the land to be surrendered and dedicated to DDA for community use, for development green belts and lung spaces. Therefore, it is evident that the order dated 10.5.1996 clearly intended that the land to be surrendered would vest in trust in DDA for the benefit of the community and the additional FAR was the only compensation for such surrender land for community benefit and there would be no further compensation. Contentions similar to the contentions now raised were rejected by this Court by order dated 28.4.2000. Therefore, it is not possible for this Court to again review all these orders or take a different view. Therefore, all these review petitions, applications for directions and clarifications are without any merit.
15. We may note that some of these review petitions have been filed after dismissal or withdrawal of the earlier petition by the very same petitioners

seeking almost the very same reliefs. Therefore, such petitions are prima facie not maintainable and the pleas raised by these petitioners to review the earlier order passed by this Court cannot be considered. Be that as it may. As the contentions raised by others have been considered, this issue loses relevance.

16. One aspect requires clarification, particularly in view of some of the surrendered land being acquired or taken perpetual lease by Delhi Metro Rail Corporation from DDA. The landowners surrendered and dedicated portions of the land as shown in Column III of the Table contained in Para 9 of the Order dated 10.5.1996 exclusively for the purpose of development of green belt and open spaces. Therefore wherever such open lung space is created, it shall be shown in the Municipal/DDA records as `DDA land - dedicated by xxxxxxxx'. The DDA shall maintain a Trust Account of such surrendered lands. This would mean that the DDA which holds the surrendered and dedicated land in Trust cannot use it for any purpose other than as green belt or other spaces for the benefit of the community. This will be necessary to identify if the land held by DDA in trust for the community is not lost and is not treated as DDA owned lands which can be dealt with by DDA as absolute owner. In the event of any acquisition or development of such surrendered land, the owner- dedicator will have the benefit of compensation on account of land ceasing to be `land dedicated to the community purpose of lung/open space". As the owner has already received some consideration in the form of 50% additional FAR, we are of the view that when such acquisition/alienation takes place, DDA and the land owner will be entitled to share the compensation at 50% each. The second aspect is where the land surrendered is very small (say on account of 57% of 0.2 Hectare that is 1140 sqm being surrendered) or being of an irregular shape, and DDA finds that it is not feasible or practical to maintain any small areas as independent green belt or park or playground or lung space or to safeguard any such area from encroachers, DDA can take steps to consolidate several smaller areas into larger blocks in the same locality so that they can be used effectively. For that purpose, DDA may also enter into suitable arrangements by way of exchange or otherwise. But any such consolidation or exchange shall be only with the sanction of the District Court, Delhi, after notice to the Landowners - Dedicators. Any change in use of such surrendered land held in trust by DDA or any transfer by DDA shall be only after securing prior permission from the High Court of Delhi.

17. M/s SIEL Ltd., the applicant in IA No. 1914/2006 and IA No. 2205/2007 (SIEL Ltd.) submitted that DDA, out of 18.854 Hec. surrendered by it though it did not have either ownership or right of commercial exploitation had transferred 7.5 Hec. plus 1.21 Hec. to DMRC on payment of a premium of 1,55,33,213/- plus others amounts. It is contended that such transfer was impermissible and the monetary gain should be paid over to the owner of the land. It is also contended that the land should be used only in accordance with the order dated 10.5.1996.

18. The land surrendered by SIEL Ltd. as per the order dated 10.5.1996 to DDA could be used only for community purposes and cannot be used for any private purpose. In circumstances where the land is acquired or used (other than as green belt and open lung space) for any other purpose under extreme necessity the land owner would be entitled to get 50% of the compensation or consideration for the use of such land. We make it clear that the owner of such land would be entitled to get 50% of the amount received by DDA as consideration/compensation. If DDA fails to pay the same, such persons would be entitled to take appropriate legal action. We again reiterate that any such diversion of use by DDA shall henceforth be only with the permission of the District Court, Delhi, after notice to the landowners concerned. I.A. 1850/2003 and IA 1914/2006 with IA No.2205/2007 are disposed of accordingly.

19. All review petitions, interlocutory applications and other petitions are dismissed, subject to the clarification contained in paras 13, 16, 17 and 18 above.

http://www.legalserviceindia.com/articles/greeneco.htm

Green Belt As A Mode Of Maintaining Ecological Balance

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Green Belt in India refers to a buffer zone created beyond which industrial activity may not be carried on. This concept has developed through a long line of cases and today, green belts are present not only for the purpose of protecting sensitive areas to maintain ecological balance, but are also be found in urban areas so as to act as a sink for the harmful gases released by vehicles and industries operating in the city area. In this regard, comprehensive Guidelines for Developing Green Belts have been compiled by the Central Pollution Control Board [Refer Probes/75/1999-2000].

Though the exact delimitation of the area to be left as constituting green belt varies from case to case on the type of industrial activity carried out, an inference can be drawn by analogy from case laws that at least minimum of 1 km has to necessarily be left as the green area from the outer periphery of the protected region.

The same is highlighted through the following cases:

Karnataka Industrial Areas Development Board v. Sri. C. Kenchappa & Ors. (2006) 6 SCC 371

Facts: The respondent agriculturists, who possessed certain gomal lands (grazing lands for cattle), were affected by the acquisition of lands by KIADB. These lands were part of the green belt in the comprehensive development plan and also included lands reserved for the residential purposes.

Judgment:

The Karnataka High Court had held that for maintaining ecological equilibrium and pollution free atmosphere of the villages, KIADB is to leave land of 1 km. as a buffer zone from the outer periphery of the village in order to maintain a green area towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry. This measure would preserve the ecology without hindering the much needed industrial growth, thus striking a balance between the industrial development and ecological preservation. The Court had also directed that whenever there was an acquisition of land for industrial, commercial or non-agricultural purposes, except for the residential purposes, the authorities must leave 1 km. area from the village limits as a free zone or green area to maintain ecological equilibrium.

The Supreme Court, in addition to dealing at length with the principles of sustainable development, polluter pays, precautionary principle, public trust doctrine, also emphasized on the requirement of carrying on an impact assessment and obtaining necessary clearance from the State Pollution Control Board and the Department of Ecology and Environment before execution of an industrial activity.

M.C. Mehta v. Union of India & Ors. [Mining Activities near lakes in Haryana] (2004) 12 SCC 118

Facts: The Haryana Pollution Control Board was directed by orders of the Supreme Court dated 20th November, 1995 to inspect and ascertain the impact of mining operation on the Badkal Lake and Surajkund, certain ecologically sensitive areas falling within the State of Haryana.

Judgment:

It was held that the Environmental Management Plan should be prepared by mine lease holders for their mines and actual mining operation be made operative after obtaining approval from the State Departments of Environment or HPCB. The report submitted by NEERI recommended stoppage of mining activities within a radius of 5 kms from Badkal Lake and Surajkund. It was also stated that mining leases were not to be renewed without prior no objection certificate from HPCB and also from CPCB. The Haryana Government, has on the basis of the recommendations made in the report, stopped mining operations within the radius of 5 kms of Badkal Lake and Surajkund.

M.C. Mehta v. Union of India & Ors. M/s. Delhi Development Authority [Surrender of Industrial lands to DDA] (2001) 4 SCC 577

Facts: This case was in the nature of a PIL directing surrender of plots upon relocation of 'H' categories industries. More than four years had passed since the date of the order, but the purpose of the order, which was to provide some open space and green verge for the benefit of the people in Delhi, stood unfulfilled, thus resulting in deprivation of lung space in the city.

Judgment:

It was held that on one hand housing, sports activity and recreational areas are also part of the community need, but the most important community need that is wholly deficient and urgently needed is to provide for the lung spaces in the city of Delhi in the shape of green belts and open spaces. Therefore, the bench took the view that the total land, which has been surrendered and dedicated to the community by the owners/occupiers of the relocated/shifted industries, ought to be used for the development of these green belts and open spaces.

T.N. Godavarman Thirumulkpad v. Union of India & Ors. (1997) 2 SCC 267

Amongst the several orders passed pertaining to the felling of trees in forest areas, Court held that all saw mills, veneer mills and ply-wood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms, from its border, in Assam, should also be closed immediately. Moreover, for Jammu & Kashmir, it was held that these operations would be permitted at a distance of less than 8 kms from the boundary of any demarcated forest areas. Thus, in this case too without direct reference to green belts, Court delimited the area of industrial operations.

M.C. Mehta v. Union of India & Ors. [Taj Trapezium case] (1996) 8 SCC 462

Facts: Petition for the relocation of industries from Taj Trapezium (TTZ) to prevent damage to Taj from air pollution through emissions generated by coke

or coal consuming industries. It is contended that these air pollutants and have damaging effect on Taj and people living in TTZ.

Judgment:

The Court took into consideration the recommendations of the Varadarajan Committee. Amongst its several recommendations, it stated that studies should be undertaken by competent agencies to explore the possibility of protecting the Taj monuments by measures such as provision of a green belt. Even NEERI, in its report, suggested the setting up of a green belt around the Mathura Refinery. It is to be noted that this was the first time, that the Court conceptualized a green belt as an effective mode of environmental protection. Through its final judgment in this case, the green belt became a reality. However, it was only in its subsequent orders that the Court was able to draw up the exact framework i.e. in terms of area to qualify within the green belt.

M.C. Mehta v. Union of India & Ors. [Follow up of Taj Trapezium case I] (1998) 9 SCC 93

This was an application seeking various directions pertaining to taking action against the authorities responsible for damaging and destroying the green belt within 500 metres of Taj Mahal, use of vehicles, generators or sound equipments within 500 metres etc. As a result of this order, presently there is no access into the green belt for the visitors.

M.C. Mehta v. Union of India & Ors. [Follow up of Taj Trapezium case II] (2002) 9 SCC 534

This order given by the Court pertained to the maintenance of cultural heritage and historical importance within the Taj trapezium. It was found that despite the presence of monitoring stations, the air quality had still not improved. In consequence with this, a direction was given to State Govt. to find out whether unauthorized factories were still functioning within 20 kms radial circle of Taj monuments. Though there was no direct reference to ?green-belt?, this case marked an attempt to curb encroachment and illegal construction which had still not stopped, resulting in serious damage to the ecology and cultural heritage of the place.