

IN THE SUPREME COURT OF INDIA

(CIVIL WRIT JURISDICTION)

I.A. NO. 1 OF 2006

IN

WRIT PETITION (CIVIL) NO. 266 OF 2006

IN THE MATTER OF:

CITIZEN'S VOICE & ANR

... Petitioners

Versus

UNION OF INDIA & OTHERS

... Respondents

AND

IN THE MATTER OF:

COMMON CAUSE

... Applicant

(A Registered Society)

5, Institutional Area, Nelson Mandela Road,

Vasant Kunj, New Delhi-110 070

ADDITIONAL AFFIDAVIT ON BEHALF OF THE  
APPLICANT IN PURSUANCE OF THE ORDER DATED  
1.8.2006 PASSED BY THIS HON'BLE COURT.

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I, P. K. Dave, aged about 83 years, having office at COMMON CAUSE  
HOUSE, 5, Institutional Area, Nelson Mandela Road, Vasant Kunj,  
New Delhi-110070, do hereby take oath and solemnly state as under:

- 1) That in its Order dated 01/08/2006 in the matter of challenge to the constitutional validity of the Delhi Laws (Special Provisions) Act, 2006, the Hon'ble Court has been pleased to grant the learned Solicitor General's request that the petitions be listed after approximately 10 days to enable the Government to consider the matter fully. The learned Amicus Curiae has also been requested to look into all aspects relevant to the issue of interim directions to be passed, after discussions, if considered appropriate, with the members of the Monitoring Committee constituted by the Hon'ble Court to implement the judgment dated 16<sup>th</sup> Feb 2006 and the various writ petitioners and the applicant herein.
- 2) That in light of the above Orders of the Hon'ble Court, COMMON CAUSE, which has filed Intervention Application being I.A.No.1 in W.P.( C ) No.266 of 2006 solicits permission to submit the following points for consideration while deciding on the issue of interim directions and/or the "middle path" with regard to the impugned Act and the implementation of the Order passed in I.A. No. 22 in W.P. ( C ) No. 4677 of 1985 of this Hon'ble Court dated 16.2.2006.
- 3) That in the face of the orders dated 16<sup>th</sup> February 2006, and various other directions for demolition of unauthorized and illegal constructions, encroachments on public land, and widespread commercialization of residential areas, issued by this Hon'ble Court and the Hon'ble Delhi High Court, frenetic

activity has been shown by the Government to prevent large-scale ongoing demolitions of unauthorized and illegal constructions, enact the impugned law in a great hurry preceded by the appointment of the so-called Expert Committee under Mr. Tejender Khanna, and also take action on the Report of that Committee without its proper publication or public debate, or even the submission of an Action Taken Report in Parliament.

- 4) That in the process, certain concessions given by the Court have been overtaken by notifications following one upon another in the name of complying with the recommendations of the Tejender Khanna Committee. The latest such substantive notification appears to be the Public Notice published on 23<sup>rd</sup> July, 2006 proposing to bring about fairly drastic changes in the governing principles for mixed land use i.e. non-residential activity in residential premises, inviting objections and suggestions within 30 days of the issue of the Notice. It is characteristic of the series of steps taken by the Government of India that the abovesaid Notice has been issued under the provisions of Master Plan-2001 that was already declared as out-dated earlier by the Government.
- 5) That, the applicant submits that in considering the various writ petitions challenging the constitutional validity of the impugned Act, only certain interim directions may be issued by this Hon'ble Court to give relief to the extent considered

feasible on the recommendations of the Monitoring Committee within the existing parameters and not give any consideration to the mixed land use Notice referred to above and the various other recommendations of the Tejender Khanna Committee. The latter, it is submitted, deserve a full public debate and consultation with experts of repute before the parameters of land-use and construction bye-laws can be prescribed by the Government so as to secure the much touted "no tolerance" regime. In the interim orders envisaged in this Hon'ble Court's order dated 01/08/2006, the applicant submits that the ongoing steps already underway according to the orders of this Hon'ble Court and the Hon'ble Delhi High Court and supervised by the Commissioners appointed for the purpose of ensuring compliance, may be maintained in the interest of the laws, bye-laws, regulations etc of the MCD, DDA, the Ministry of Urban Development and other authorities.

- 6) That the Encroachments on government/public land as well as unauthorized and illegal constructions etc. should be demolished, i.e. razed to the ground, in a well-conducted continuing process, in accordance with the orders of the Hon'ble Delhi High Court and under supervision of the Commissioners appointed by it. If the MCD/DDA find their resources for complying with this requirement in reasonable time insufficient, they may consider engaging competent private engineering entities to supplement these activities, so that the tempo of demolitions can be maintained. Clearly there is no

rationale or reason whatsoever for holding back on action against encroachments on government/public land.

- 7) That the applicant respectfully submits that in cases where misuse of land for commercial and other impermissible activities was established and affidavits furnished that the infractions shall be removed by 30<sup>th</sup> June 2006, such removal be enforced by MCD, DDA etc. under the supervision of the Court Commissioners. In such admitted cases of default, the violations need not await any changes to the Master Plan or Bye-laws. It may be appreciated that at the relevant time the persons who filed the affidavits of undertaking, did so to avail protection from immediate coercive action against their admitted misuse of property. Accordingly, such persons got reprieve which was conditional upon their abiding by such affidavits of undertaking furnished to the Hon'ble Supreme Court/the Monitoring Committee. It would be bad precedent and anathema to all recognized principles of justice, apart from being unjust and unfair, if such persons were now permitted to take advantage of the newly notified mixed land use norms and dispensations, in blatant violation of their own solemn undertakings given to this Hon'ble Court.
- 8) That the large-scale investigation and prosecution programme initiated by the CBI on the orders of the Hon'ble Superior Courts, to bring lawbreakers including builders and politicians to book, may not be allowed to be slowed down under the

misapprehension that all violations and illegal constructions etc. shall be given a reprieve by the actions of the Government. The CBI campaign for discovering and prosecuting defaulters regardless of personalities involved, must be continued and status reports submitted to the Hon'ble Delhi High Court. A direction to ensure compliance may be considered for issue to the Central Vigilance Commissioner.

- 9) That the Government of India should be asked to give due regard to the note of caution sounded by the Parliamentary Standing Committee on Urban Development which was placed before the Lok Sabha on 2.8.2006. A true copy of the excerpts of recommendations under para 10 of the 16<sup>th</sup> report of the Standing Committee on Urban Development (2005-2006) placed in the Lok Sabha on 2.8.2006 is annexed hereto and marked as Annexure A1.
- 10) That this affidavit has been filed bona fide and in public interest.
- 11) That the annexure annexed to this additional Affidavit is true copy of its original

  
DEPONENT

Solemnly affirmed by the  
deponent abovenamed on this  
the \_\_\_\_\_ day of August, 2006