

IN THE COURT OF SH. ABHILASH MALHOTRA :
ADDL. DISTRICT & SESSIONS JUDGE-CUM-PRESIDING
OFFICER,
APPELLATE TRIBUNAL, M.C.D., DELHI.

APPEAL NO. 409/ATMCD/2022

1. Mr. Ankit Madan
S/o Sh. Vinod Kumar Madan
R/o 11A/19, Channa Market,
WEA Karol Bagh, Delhi -110005.

2. Sh. Rohit Gakhar
S/o Sh. Bharat Bhushan
R/o 196, Harsh Vihar, Shakur Basti,
Saraswati Vihar, Delhi -110034.

3. Smt. Chand Madan
W/o Sh. Vinod Kumar Madan
R/o 11A/19, Channa Market,
WEA Karol Bagh, Delhi -110005.

..... Appellants

Versus

Municipal Corporation of Delhi
Through its Commissioner,
Dr. SPM Mukherjee Civic Centre,
Minto Road, New Delhi-110001

..... Respondent

Date of Filing of Appeal : 19.07.2022
Date of Judgment : 19.11.2024

APPEAL NO. 503/ATMCD/2022

1. Mr. Ankit Madan
S/o Sh. Vinod Kumar Madan
R/o 11A/19, Channa Market,
WEA Karol Bagh, Delhi -110005.

2. Sh. Rohit Gakhar
S/o Sh. Bharat Bhushan
R/o 196, Harsh Vihar, Shakur Basti,
Saraswati Vihar, Delhi -110034.

**3. Smt. Chand Madan
W/o Sh. Vinod Kumar Madan
R/o 11A/19, Channa Market,
WEA Karol Bagh, Delhi -110005.**

..... Appellants

Versus

**Municipal Corporation of Delhi
Through its Commissioner,
Dr. SPM Mukherjee Civic Centre,
Minto Road, New Delhi-110001**

..... Respondent

**Date of Filing of Appeal : 22.08.2022
Date of Judgment : 19.11.2024**

JUDGMENT

1. This common judgment will decide the Appeal Nos. 409/2022 & 503/2022 as both the appeals pertain to same property and issues are intertwined.
2. In Appeal No. 409/2022 order under Section 345-A was passed against the property in question on the following grounds:

Details of Unauthorized Construction: “Unauthorized construction in the shape of deviation/ excess coverage at ground floor, first floor and second floor against the sanction building plan booked vide file No. 314/B/UC/RZ/04 dated 02.09.2004”.
3. In Appeal No. 503/2022 sealing order under Section 345-A was passed against the property in question on following grounds:

Details of Unauthorized Construction: “Unauthorized construction in the form of change of use from sanctioned use i.e. residential use to running of an office”.
4. It is submitted by Ld. Counsel for the appellant that the property in question is lying sealed since 20.07.2006. Ld. Counsel for the appellant

submits that they are not contesting the appeal on merits of unauthorized construction and misuse, as appellants have already filed an affidavit before the Court that they want demolish the property in question completely. He submits that the MCD in the status report dated 31.07.2023 has already confirmed that part of the property was already demolished and due to sealing further demolition could not be carried out. He submits that once the property will be demolished, the question of misuse or unauthorized construction does not arise and the alleged illegality, if any, will stand vanished.

5. It is submitted by Ld. Counsel for the appellant that MCD in their status report dated 08.04.2024 has calculated the demolition and penalty charges. He submits that the penalty / misuse charges are not applicable in their case as the sealing order was passed in July 2005 and 19th July, 2006 and sealing of the property was done on 20.07.2006. He submits that initially the misuse / penalty charges were not part of Master Plan 2001 and Chapter 10 regarding provision of mixed use was introduced for the first time w.e.f. 28.03.2006 vide Notification S.O 425 (E). The said Notification did not contain any provision regarding penalty. In furtherance to said Notification, a Notification dated 07.09.2006, S.O No. 1456 (E) was notified. The penalty for misuse charges under Clause 10.9 (V) was introduced for the first time with effect from the date of Notification i.e. 07.09.2006. He submits that the penalty amount cannot be imposed retrospectively on the property and has relied upon the judgment in the case titled as *M/s Mahanivesh Oils & Foods Pvt. Ltd. Vs. Directorate of Enforcement*, W. P. (C) 1925/2014 dated 25.01.2016 of Hon'ble High Court of Delhi.
6. Ld. Counsel for the respondent MCD does not oppose the request in respect of demolition of the building and confirms that during the pendency of the present appeals, part of the building has been already

demolished. He submits that the appellant is liable to pay penalty / misuse charges as per law. In respect of the demolition charges for 60 working days, he submits that those were the proposed charges and appellant is required to pay previous demolition charges of Rs.1,05,092/-, processing charges / administrative of Rs.10,000/-, penalty / misuse charges of Rs. 38,67,759/-.

7. Arguments heard and record perused. Perusal of the impugned sealing order in both the appeals show that those orders have been passed on the premise of misuse and unauthorized construction in the property. Part of the property has been already demolished and the MCD has confirmed the same in their report. The appellants have filed an affidavit / undertaking to demolish the remaining structure and is not contesting the appeal on merits. As the appellants have undertaken to demolish the whole structure, therefore, the issue of misuse as well as unauthorized construction in the property in question stands mitigated.
8. In view of the undertaking given by the appellant in the Court, both the sealing orders are set aside with direction to de-seal the property. The appellant is directed to demolish the property within a period of three months from the date of lifting of GRAP restrictions imposed vide Notification No.120017/27/GRAP/2021/CAQM dated 17.11.2024 and the Executive Engineer concerned is directed to monitor the same and file a status report before this Tribunal upon demolition of structure. In case of any delay due to GRAP restrictions, the Executive Engineer is at liberty to extend the period for demolition.
9. So far as the question regarding payment of misuse charges / penalty as stated in the report dated 08.04.2024 is concerned, before proceeding further, it will be relevant to reproduce the relevant extract of report filed by the MCD which is as under:-

That as per the above Para 3 and its sub-paras, the above charges are required to be paid by the appellant. The total amount/charges comes as under:-

Previous Demolition Charges	:	Rs. 1,05,092/-
Demolition charges for 60 days	:	Rs. 83,08,440/- (Revised)
Processing Charges/Administrative Expenses for Temp. Desealing	:	Rs. 10,000/-
Penalty/Misuse Charges	:	Rs. 38,67,759/-
TOTAL (Revised)	:	Rs. 1,22,91,191/-

10. The appellant during the course of arguments have undertaken to pay previous demolition charges of Rs. 1,05,092/- as well as processing charges / administrative expenses for temp. desealing of Rs.10,000/-. Ld. Counsel for the respondent informed that the demolition charges for 60 working days were proposed charges as per the relevant Circular. He submits that those charges were required to be paid in case demolition was carried out by the MCD and as such no demolition is carried out by the MCD and appellant is not required to pay the same.

11. In respect of the penalty / misuse charges, a bare perusal of the Notification No. S.O 425(E) dated 28.03.2006 shows that the misuse charges were implemented w.e.f. the date of publication of said Notification i. e. 28.03.2006. The said Notification did not contain any provision regarding the penalty charges. The penalty charges were introduced for the first time vide Clause 10.9 (v) of Notification No. S.O 1456 (E) dated 07.09.2006. Para No. 4 of the said Notification clearly states that the Notification have come into force with effect from the date of publication of the said Notification i.e. 07.09.2006. The sealing orders have been passed in the present case prior to the said Notification and the property was sealed on 20.07.2006. From perusal of the aforesaid Notifications, it becomes amply clear that the penalty charges have been implemented w.e.f. 07.09.2006 with prospective effect and in the absence

of any specific provision, the said penalty charges cannot be implemented retrospectively.

12. Accordingly, demand of penalty charges of Rs.38,67,759/- in the present case is unjustified and appellants are not liable to pay the same. The property be de-sealed after payment of other remaining dues in respect of the property in question as stated in the status report dated 08.04.2024. Executive Engineer concerned shall file a report before this Tribunal after demolition of structure in question.

The appeals stand disposed off.

Record of the respondent, if any, be returned along with copy of this order and appeal file be consigned to record room.

**Announced in the open Court
Today i.e. on 19.11.2024 (s)**

**(ABHILASH MALHOTRA)
AD&SJ-cum-P.O.
Appellate Tribunal : MCD Delhi**