

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

Petition No.06/ATMCD/SCM/2013

STEELCO (INDIA) PVT. LTD.

Through its Director

S.N. Aggarwal

“Sales Depot” 218/4-5,

Gulabi Bagh, Sadhora Kalan

Sanjay Nagar, Delhi-110007

..... Appellant

Vs

North Delhi Municipal Corporation of Delhi

(Through its Commissioner)

SPM Civic Centre,

Near Minto Road,

New Delhi.

..... Respondent

Date of Filing receiving of petition 16.08.2012

Date of Judgment 14.07.2025

JUDGMENT

1. In present case an interim application bearing I.A.No. 2276 of 2007 was filed in W.P.(C) 4677 of 1985 titled M.C. Mehta Vs Union of India by appellant company through its authorized representative Mr. S.N. Aggarwal. The appellant was aggrieved from the sealing of property bearing No.218/4 and 218/5, Gulabi Bagh Sadhora Kalan, Delhi-7. It is stated in the application that sealing was done by the MCD on 08.01.2007 without providing any opportunity of hearing. It is stated that the appellant is carrying out permissible business activity from the property and desealing of the premises was prayed for.

2. The Hon'ble Supreme Court of India vide order dated 30.04.2013 in all interim application including IA No.2276 in WP(C) No.4677 of 1985 issued the following directions:

“.....(iv) These IAs which are pending before this Court for desealing of premises , on one ground or the other, will be treated as appeals under Sections 347B, 254 and 31C of the respective Acts (NDMC Act/MCD Act/DDA Act) before the respective Appellate Tribunal constituted under Sections 347A of the MCD Act, Section 253 of the NDMC Act and Section 31B of the DDA Act. The Registry will transmit all these IAs (including objections, if any) to the respective Tribunals under the MCD, NDMC and DDA Acts. The above Tribunals shall then hear these applications, as appeals preferred against an order of sealing, and decide the same on their own merits, in accordance with law. Parties will be at liberty to file additional affidavits/counter-affidavits and additional documents with the leave of the concerned Tribunal.”

3. In compliance of the directions issued by the Hon'ble Supreme Court the present case was received and registered in the Tribunal on 16.08.2013. Ld. counsel for appellant has made the following submissions:

- a. The sealing was carried out without serving any show cause notice and the sealing order was also not provided.
- b. It is submitted that the property in question was in commercial use prior to September 1962. He submits that till December, 1962 M/s. Minda Industries were using the property in capacity of a tenant and the appellant has filed documentary evidence in that regard. He submits that the development control norms are applicable after implementation of Master Plan of Delhi. The Master Plan was introduced w.e.f. 01.09.1962. He submits that as the property was in commercial use prior to the implementation of the Master Plan therefore, the same is exempted as per Section 14 of DD Act, 1957 and clause 15.3 .1 (iii) MPD-2021 . He submits that the MPD-2021 clearly states that commercial activities existing from prior to 1962

in residential area is permitted for mixed use subject to production of documentary proof.

- c. He submits that MCD in its report dated 06.03.2025 also confirmed the said legal position wherein it was clarified that commercial activities existing prior to 1962 in residential areas are permitted and exempted from payment of conversion charges or misuse charges, parking charges, penalty etc subject to documentary proof thereon.
- d. It is argued by Ld. counsel for the appellant that in view of the status report dated 06.03.2025 filed by the MCD there is no confusion regarding the legal position that the property which were mixed use/commercial use in residential areas prior to 1st September 1962 falls in the exempted category subject to production of documentary proof regarding its continuous commercial usage. He submits that in respect of documentary proof they have filed on record the affidavit of Mr. Mohan Chander Joshi authorized representative of M/s. Minda Industries who has confirmed that they were in the tenancy and commercial use of property bearing No.218/4 and 218/5 during the year 1962 and has also endorsed the authenticity of rent receipt dated 03.02.1962, 07.03.1962, 15.09.1962 and 15.12.1962.
- e. It is submitted by Ld. counsel for appellant that the property i.e. 218/4 & 218/5 is owned by Kesar Kanwar Memorial Trust who initially inducted M/s Minda Industries as their tenant and therefore Mr. Sant Lal Kanhiya Lal was their tenant. It is submitted that they have filed on record the compilation of total 394 rent receipts and affidavit dated 12.12.2014 of Mr. Suraj Mal Surana who is trustee of Kesar Kanwar Memorial Trust. He submits that in his affidavit the trustee of the landlord trust has admitted that 394 number of rent receipts and has stated that these receipts are issued by the trust. He submits that the trustee in his affidavit has further clarified

that the godown was in continuous commercial use before the year 1962. He submits that from the aforesaid rent receipt it becomes amply clear that the property was in continuous commercial use prior to 01.09.1962.

- f. It is submitted by Ld. counsel for the appellant that the Monitoring Committee in their status report No.312 dated 14.07.2014 has taken an objection regarding the authenticity of rent receipts as it bears revenue receipts of different denominations. He submits that the revenue receipts of different denominations is merely an irregularity and needs to be ignored especially under the circumstances when the trustee as well as the tenant M/s Minda Industries have filed their affidavit confirming the authenticity of these receipts. He submits that no additional construction is done by the appellant and the temporary shed made for Chowkidar is already removed.
- g. Ld. counsel for the appellant submits that the objections raised by the Monitoring Committee in respect of registration of Special Area under Clause 16.2 of MPD-2021 is no more tenable. He submits that the registration provided in clause 16.2 of MPD-2021 was for an interregnum period till the time the regulations for special area were to be framed. He submits that Special Building Area regulations 2011, have been notified on 17.01.2011 wherein the cutoff date of protection is prescribed and therefore, in view of the said regulations the formality of regulations has become redundant. He submits that as on date the protection is available even to the properties which are not registered.
- h. Ld. counsel for appellant admits that the road which abuts to the property in question is proposed or recommended to be notified as commercial road. He submits that notification of commercial road is irrelevant because they are placing reliance on the continuous

commercial uses prior to the year 1962 and their case is exempted under clause 15.3.1 (iii) of MPD-2021.

4. Ld. counsel for the appellant submits that Hon'ble Supreme Court of India in W.P.(C) 4677/1985 M.C. Mehta Vs Union of India & Ors vide order dated 11.04.2022 has directed that the appeal in respect of desealing of the property prior to 15.12.2017 can continued to be heard by ATMCD. He submits that the present appeal was transferred by the Hon'ble Supreme Court and received in this Tribunal in year 2013 and therefore there is no embargo on jurisdiction of this Tribunal to hear and decide this case. Ld. counsel for MCD concurs to the aforesaid legal position and submits that this Tribunal has jurisdiction to adjudicate this matter.
5. Ld. counsel for MCD confirms the legal position as stated in the status report dated 06.03.2025. He confirms that the property which was continuing in commercial use prior to 01.09.1962 in residential area is exempted as per clause 15.3.1 (iii) of MPD-2021. He submits that the rent receipts relied upon by the appellant are doubtful because it bears revenue stamps of different denominations and the Monitoring Committee in their report No.312 dated 14.07.2014 has also observed that the appellant may be directed to produce the rent receipt to confirm their genuineness.
6. Ld. counsel for DDA submits that the khasra where the property in question is situated was never acquired by the DDA. He submits that the property in question was sealed by the MCD as per the directions of the Monitoring Committee and therefore, MCD is a necessary party to reply and address the Court in respect of the appeal.
7. I have heard the arguments and perused the record. In present case the appellant is aggrieved from the sealing of property in question by the Monitoring Committee. Appellant preferred an application for desealing before the Hon'ble

Supreme Court of India. The said application was transferred to this Tribunal pursuant to the directions issued by the Hon'ble Supreme Court. Both the parties have clarified that this Tribunal has jurisdiction to adjudicate the sealing matter wherein the appeal filed before this Tribunal prior to 15.12.2017.

8. Before proceedings further to appreciate facts in the matter it will be relevant to sum up the legal position which is applicable in the present case.

Clause 15.3.1

15.3 IDENTIFICATION OF MIXED USE AREAS IN EXISTING URBAN AREAS AND URBANIZABLE AREAS

The identification of mixed use areas / streets in both the urbanized / urban as well as urbanizable areas of Delhi would be as follows:

15.3.1. In already urbanized / urban areas, mixed use shall be permissible in the following areas:

i. On all streets / stretches already notified by the competent authority. ii. Residential areas and streets / stretches earlier declared as commercial areas / streets or where commercial use was allowed in MPD-1962 shall continue such use at least to the extent as permissible in MPD-1962.

iii. Commercial activity existing from prior to 1962 in residential areas, subject to documentary proof thereof.

iv. Identification and notification of mixed use streets in future shall be based on the criteria given in para 15.3.2 and as per procedure prescribed in para 15.3.3, and given wide publicity by the local bodies concerned.

v. Plotted development in pre-1962 colonies listed in Annexure I shall be treated as rehabilitation colonies in their respective categories (A to G) for the purpose of this Chapter.

9. The relevant extract of the status report dated 06.03.2025 filed by the MCD is also reproduced below :

“....2. That this Hon'ble Tribunal vide order dated 14.02.2025 had directed the respondent MCD to file the status report to clarify the status of protection, if any, available to the commercial activity

in properties which was being carried out prior to year 1962 and also clarify, whether the conversion charges, misuse charges, penalty and the parking charges etc. are application to the commercial activities which was being carried out prior to year 1962.

3. In this regard, it is submitted that as per clause 15.3.1 (iii), commercial activities existing prior to 1962 in residential areas are permitted and exempted from payment of conversion charges, misuse charges, parking charges penalty, etc. subject to documentary proof therefore. It is further submitted that commercial activities running prior to 1962 in residential areas i.e. much before the provisions of Mix Use Regulations in Master Plan, 2021.”

10. From the status report filed by the MCD as well as the clause 15.3.1 (iii) of MPD-2021 it is amply clear that the commercial activity existing prior to 1962 in residential areas shall be permissible subject to the production of documentary proof thereon. In view of the aforesaid legal position the notification in respect of proposed commercial road become irrelevant in cases where the commercial activity is continuing prior to 1962.
11. In respect of the documentary proof of continuous commercial activity the appellant has relied upon the rent receipts of the property in question. Appellant has filed on record 394 rent receipt starting from the years 1962. It is case of the appellant that initially the property was given on rent to M/s Minda Industried thereafter to M/s Sant Lal Kanhaya Lal and the appellant become the tenant in the property in year 1978. The Monitoring Committee in thie report No.312 dated 14.07.2014 and MCD in their status report dated 06.03.2025 have questioned the authenticity of these rent receipts on the basis of different denominations of revenue receipts pasted thereon.
12. Ld. counsel for the appellant during the course of the arguments have admitted the fact that the rent receipts bears different denominations revenue stamps. However, he clarified that the denomination and revenue stamp is a mere irregularity which does not eclipse the authenticity of a document. He submits that the Monitoring Committee in their report No.312 has recommended that the appellant be directed to produce the documents in respect of genuineness of rent

receipts. He submits that the author of these rent receipts is the owner of the property M/s Kesar Kanwar Memorial Trust. He submits that Mr. Suraj Mal Surana who is trustee of his trust has filed his affidavit dated 12.12.2014 before this Tribunal admitting the issuance of 394 rent receipts which are filed on record by the appellant. He submits in his affidavit Mr. Suraj Mal Surana deposed that the godown were in commercial use before 1962 and no new structure has been built except the tin shed for chowkidar. He submits that tin shed for chowkidar is already removed. He submits that in order to corroborate and strengthen the documentary evidence, Mr. Mohan Chander Joshi authorized representative of the then tenant M/s Minda Industries also filed his affidavit confirming that they were in the tenancy of the property No.218/4 and 218/5 owned by Kesar Kanwar Memorial Trust.

13. The relevant extract of affidavit filed by Mr. Suraj Mal Surana and Sh. Mohan Chandra Joshi is re-produced below:

AFFIDAVIT DATED 29.11.2007

AFFIDAVIT

I, Suraj Mal Surana S/o Lt. Sh. Norat Mal Surana R/o 3/4 Basti Harphool Singh, Delhi 110006 do hereby solemnly affirm and declare as under:-

- 1.. That I am trustee of the Kesar Kanwar Memorial Trust. Being the trustee the deponent is well conversant with the facts as well as the property held by the above noted trust. Hence competent to swear this affidavit.
2. That the above noted trust holds property no. 218/5, Gate No. (5) Gulabi Bagh, Sadhora Kalan, Sanjay Nagar, Delhi-110007.
3. That to best knowledge of the deponent, the above noted godowns bearing no. 218/5, Gate No. (5) Gulabi Bagh, Sadhora Kalan, Sanjay Nagar, Delhi-110007, has been constructed prior to the year 1962. There had not been any new construction since September 1962 to the best of my knowledge and belief, except repairs and a temporary tin SHED (HUT) for chowkidar.

Deponent

Verification:

Verified at Delhi on this 29th day of November 2007, that the contents of above affidavit are true and correct to the best of my knowledge.

deponent

AFFIDAVIT DATED 12.12.2014

AFFIDAVIT

I, Suraj Mal Surana S/o Lt. Sh. Norat Mal Surana R/o 3/4 Basti Harphool Singh, Delhi 110006 do hereby solemnly affirm and declare as under:-

1.
2.
3.
4.
5.

6. That I say that the receipts from serial no. (1) To (394) have been seen by me. These have been issued by the trust and it bears the signatures of the authorized trustee/ authorized signatory of the trust. I identify the signatures of the trustee/authorized signatory on the receipts mentioned above, these receipts are genuine and have been issued by the trust.

7. That to the best knowledge of the deponent some of the godowns have been continuously in commercial use before Sept. 1962 and one such godown is in use by Steelco India Pvt. Ltd.

Deponent

AFFIDAVIT DATED 23.02.2024 OF SH. MOHAN CHANDRA JOSHI

AFFIDAVIT i.

Affidavit of Mohan Chandra Joshi S/o Late Shri Bhola Dutt Joshi aged about (58) years presently residing at Moga Devi Minda Memorial School, Bagla Road, Bagla Block Adampur, Hissar 125001. Permanent Address E-2/2/72 Sector 15, Rohini, Delhi 110089.

I have been associated with Minda Industries (a Partnership firm) from 1991 to 1996.

I am duly authorized to solemnly affirm and declare as under.

From 1962 to 1964 Minda Industries (partnership firm) occupied two godowns for storage of its products at Property No. 218/4 & 218/5 Gate No. 5, Gulabi Bagh Sadhora Kalan Delhi-110007, which was owned by Kesar Kanwar Memorial Trust Delhi.

We have seen/examined the Photocopies of Rent Receipts 03.02.1962, 07.03.1962, 15.09.1962 and 15.12.1962 issued by Kesar Kanwar Memorial Trust in the name of Minda Industries.

These rent receipts are genuine.

We have been told that the originals of these Rent Receipts have already been placed on record of this Hon'ble Tribunal.

deponent

Verification

Verified at (Delhi) on this 23rd FEB 2004) that the contents of the above affidavit are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed there from.

Deponent"

14. From the rent receipts as well as the affidavit of Mr. Mohan Chander Joshi and Mr. Suraj Mal Surana it is clear that the property in question had been constructed prior to 1962. M/s Minda Industries were the tenants in the property in the year 1962 and they have admitted and confirmed the rent receipts which are on record. Mr. Mohan Chander Joshi as well as Mr. Suraj Mal Surana in their respective affidavit has confirmed that the property in question was in commercial use prior to year 1962. Merely because there are revenue stamps of different denominations on the rent receipts, it cannot be concluded that their

authenticity is dented especially in circumstances when the trustee as well as the then tenant have endorsed their authenticity.

15. From the rent receipt on record it is clear that the property in question was in commercial use prior to year 1962. As per the legal position admitted by the MCD in their status report dated 06.03.2025 as well as the mandate given in clauses 15.3.1 (iii) of MPD-2021 the commercial activities existing from prior to 1962 in residential area is permissible subject to documentary proof. Appellant has been able to tender necessary documentary evidence to discharge their burden. In view of the aforesaid discussion the appeal is allowed. The property be desealed within two weeks from the date of this judgment. Appellant shall be allowed to carry on the activities as are permissible under MPD-2021 subject to legal compliances as per law.
16. Appellant shall furnish an affidavit/undertaking before this Tribunal with one copy to the concerned Dy. Commissioner that he will use the premises in question for or those activities which are permitted in the MPD-2021 and shall not raise any unauthorized construction in the same. The violation of any such undertaking will give full liberty to the MCD to reseal the property without any further notice to the appellant. Further, respondent MCD shall have liberty to take action against unauthorized construction in the property in question, if any, as per law.
17. Record of the respondent, if any, be returned along with copy of this order. One copy of the order be sent to Dy. Commissioner concerned for information and necessary compliance. Appeal file be consigned to record room.

**Announced in the open Court
today i.e. on 14.07.2025.**

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