

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

APPEAL NO. 404/ATMCD/2015

IN THE MATTER OF :-

**M/s Swain Advertising Pvt. Ltd.
Having its Registered Office at
3737, Netaji Subhash Marg,
New Delhi-110002
Through Its Managing Director**

... Appellant

Vs.

**1. South Delhi Municipal Corporation
Lajpat Nagar,
New Delhi-110024.**

**2. Monitoring Committee (MCD)
India Habitat Centre,
6-A, Lobby Office, India Habitat Centre,
Lodhi Road, New Delhi-110003.**

...Respondents

Date of Filing of Appeal	:	02.07.2015
Date of Order	:	07.11.2025

JUDGMENT

1. This is an appeal against the sealing action of the respondent in respect of the appellant's property bearing no. D-42, Second Floor, South Extension, Part-I, New Delhi.
2. The appellant is ready to pay the misuser charges of Rs. 5,83,230/- to the respondent/MCD along with an undertaking that the property shall not be used for any commercial or professional purposes and will only be used for residential purposes.
3. Ld. counsel for the respondent submitted that apart from this misuser charges, the appellant is also liable to pay charges of around Rs. 90 lacs as per the DDA notification dated 10.07.2012,

as per which, the residential floors of various markets are converted to commercial use subject to charging additional rates at 100% of the differences between the commercial rate and residential rate as one time conversion charges subject to building shall remain in the shape and structure as approved in the original sanction plan.

4. It is argued for the respondent that these charges @ 89,094/- per sq.mtrs are payable as per this Gazette Notification and further there is unauthorized construction in the shape of second floor which was only a *barsati* and unless and until the unauthorized construction exists and the charges are not paid, the property cannot be de-sealed.
5. Ld. counsel for the appellant has rebutted this argument by stating that the third floor also exists in the property and no action has been taken against the third floor and he has no objection, if the alleged unauthorized construction on the second floor is demolished. It is also argued that since the property shall be used only for residential purpose, the Gazette Notification dated 10.07.2012 does not apply to the appellant.
6. Record shows that the property was sealed in pursuance to the orders of Hon'ble Supreme Court of India passed in MC Mehta Vs. UOI on account of misuser in the property. The appellant has already stated that he is ready to give undertaking that same shall be used only for residential purposes. If the contention of the Id. counsel for the respondent is considered to be correct that every resident of Local Shopping Centre, is required to pay charges under this Gazette notification. The persons residing on the upper floors in every commercial market will be required to pay the conversion charges irrespective of the fact whether the same is used for residential purposes or for commercial purpose. This interpretation of this Gazette Notification cannot be said to be correct as it will imply payment of conversion charges irrespective of user. The appellant is therefore, not supposed to

pay the conversion charges under this Gazette Notification. He is however, is required to pay misuser charge of a sum of Rs. 5,83,230/- to the respondent.

7. Coming to the aspect of unauthorized construction in the property. Ld. counsel for the appellant has stated that even third floor in the property exists against the so-called sanction plan of ground, first and a *barsati* on the second floor. It has not been brought to my notice that any action has been taken against the said unauthorized construction on the third floor. The responded cannot be permitted to pick and choose and their action should be uniform against the unauthorized construction at least existing in that property. Otherwise, also the sealing was done on account of misuse and not the so-called unauthorized construction. In facts, this arguments of unauthorized construction cannot be entertained, which is beyond the scope of sealing order.
8. The appeal is allowed.
9. The sealing done in pursuance to the orders passed by Hon'ble Supreme Court of India in MC Mehta vs. UOI, is directed to be desealed subject the appellant to deposit the misuser charges of 5,83,230/- within 6 weeks from today and giving an undertaking to the respondent that property shall be used only for residential purposes. Thereafter, the property be desealed within 2 weeks.
10. 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 07.11.2025**

**(AMIT KUMAR)
District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi**