

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

- | | |
|-------------------------|-------------------------------------|
| 1. Appeal No. 78/22 – | Vijay Kumar Dhingra Vs. MCD |
| 2. Appeal No. 91/22 – | Keshav Kumar Bansal Vs. MCD |
| 3. Appeal No. 106/22 – | Inder Kumar Gupta Vs. MCD |
| 4. Appeal No. 107/22 – | Vikas Chawla And ANR. Vs. MCD |
| 5. Appeal No. 108/22 – | Harsh Manchanda Vs. MCD |
| 6. Appeal No. 109/22 – | Rajesh Kohli And ANR. Vs. MCD |
| 7. Appeal No. 110/22 – | Kailash Mehendiratta Vs. MCD |
| 8. Appeal No. 111/22 – | Gulshan Manchanda Vs. MCD |
| 9. Appeal No. 112/22 – | Vikas Chawla And ANR. Vs. MCD |
| 10. Appeal No. 113/22 – | Deepak Bansal And ANR. Vs. MCD |
| 11. Appeal No. 114/22 – | Rajesh Kumar Yadav Vs. MCD |
| 12. Appeal No. 115/22 – | Mahesh Kumar Ahuja AND Ors Vs. MCD. |
| 13. Appeal No. 116/22 – | Rahul Khanna and ANR. Vs. MCD |
| 14. Appeal No. 117/22 – | Sanjeev Sharma Vs. MCD |
| 15. Appeal No. 118/22 – | Mitter Bhushan Wadhwa Vs. MCD |
| 16. Appeal No. 119/22 – | Deepak Bansal And ANR Vs. MCD |
| 17. Appeal No. 120/22 – | Rajesh Kumar and Ors. Vs. MCD |
| 18. Appeal No. 130/22 – | Devesh Verma Vs. MCD |
| 19. Appeal No. 135/22 – | Trilok Chand Goyal Vs. MCD |
| 20. Appeal No. 136/22 – | Seema Verma and ANR. Vs. MCD |
| 21. Appeal No. 137/22 – | Mahesh Kumar Jain And ANR. Vs. MCD |

JUDGMENT

1. These are 21 appeals questioning sealing order dated 29.10.2021 in 06 appeals bearing no. 110/22, 107/22, 137/22, 91/22, 136/22 and 135/22 and the remaining 15 appeals questioning the sealing order dated 13.01.2022 in appeals bearing no. 118, 117, 112, 115, 106, 130, 120, 78, 111, 108, 113, 114, 116, 109 and 119, all of the year 2022. All these sealing orders are in respect of shops in Gali Ghanteshawar, Katra Neel, Chandni Chowk, Delhi. All the sealing orders of these 21 appeals were passed in pursuance to common show cause notice dated 20.09.2021. The appellants have challenged these sealing orders relating to their

different shops stated to be existing on notified pedestrian shopping street. It was also claimed that they have deposited conversion charges as required under DMC Act, yet sealing orders were passed without considering their documents and in some cases, without even serving the show cause notice.

2. It was argued on behalf of the appellants that the sealing order dated 29.10.2021 relating to 06 appeals has been passed on the ground of non-payment of conversion charges, whereas the sealing order dated 13.01.2022 in remaining 15 appeals have been passed on the ground of misuse of property as it does not fall on the stretch of notified pedestrian street from Katra Neel to the end. It was argued that the six sealing orders passed on the ground of non-payment of conversion charges of the similar situated shops clearly show that the shops exist on notified Pedestrian Street and therefore, the sealing orders on the ground of misuse passed in other 15 appeals are liable to be set-aside.
3. It was argued that all the properties are existing on the notified pedestrian street from Katra Neel to Gali Ghanteshwar having width from .80 mtr to 3.60 mtr. All the properties of these appeals are situated on the notified pedestrian street of this length and the respondent malafidely started describing the subject properties in gali Mandir Wali Gali Ghanteshwar only to distinguish that the subject shops are not situated in Gali Ghanteshwar. It was argued that all shops are situated in Gali Ghanteshwar itself where the last end of the gali is 0.8 mtr wide as notified by the respondent and therefore the sealing orders are liable to be set-aside. MCD claims that the shops are on non-notified road but they cannot be permitted to improve the grounds mentioned in the show cause notice. There are documents to show that all these subject properties exist prior to 08.02.2007 and are entitled to protection under National

Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The properties lie in special area i.e. Walled City and the activities carried out by the appellants are permitted being on pedestrian shopping street. The area falls in re-development area and no policy has yet been framed for this area and therefore, the status quo is required to be maintained qua these properties. It was also stated that in some of the cases, even the show cause notice was not served on the appellants.

4. The intervener argued that the conversion charges taken by the respondent from the appellants in itself was wrong. Katra Neel is a residential area and no commercial activity can be permitted in Katra Neel. The properties are Heritage Properties and cannot be used for commercial purposes. The notified street is only Gali Ghanteshwar whereas these subject properties are not situated in Gali Ghanteshwar. There is some collusion between MCD and the builders who changed the structure of the building and started carrying out commercial activities unlawfully and therefore, the appeals should be dismissed.
5. Ld. counsel for the respondent on the other hand argued that the unauthorized development does not include misuse. The power to seal came to the respondent from the order of Hon'ble Supreme Court dated 16.02.2006 and power to seal under Section 345A DMC Act in the cases of misuse was given by Hon'ble Supreme Court. The notification of Special Protection Act was challenged before Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 10.08.2006 passed in the case of Delhi Pradesh Citizen Council Vs. Union of India stayed the operation of this notification dated 20.05.2006. The Master Plan was amended by DDA in March 2006 and the notification came on 07.09.2006 but the same was kept in abeyance by Hon'ble Supreme Court. MPD-2001 provides that all requirements are to be complied for

availing protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The misusers are required to register and pay charges and adhere to Chapter 10 of MPD 2001. Sanction of revised building plan is mandatory under Clause 10.9 (iii) and (v) of MPD 2001. Further, as per Clause 15.6.3 of MPD 2021, there can be maximum four shops on ground floor only, of maximum 20 sq. mtr. and properties should be on notified street. The Special Protection Laws will not prevail over MPD 2001 and 2021. The appellants are required to make property in consonance to MPD 2001 and 2021. MPD 2021 has been made applicable to the Special Areas and Chapter 15 is applicable with retrospective effect. The properties are situated on inner road and not on notified pedestrian shopping street. The payment of conversion charges does not entitle the appellants to run their shops in contravention to MPD 2021 and the appeals are liable to be dismissed.

6. Ld. counsel for respondent relied upon the judgment of Hon'ble Delhi High Court passed in Writ Petition No. 13402 of 2009 titled as Ramesh Prashad Seth Vs. MCD dated 15.03.2017.

7. Ld. counsel for the appellants on the other hand relied upon following judgment:

1. Masonic Club v. MCD &Anr., 2000 (55) DRJ 602.
2. CCE v. Brindavan Beverages (P) Ltd., (2007) 5 SCC 388.
3. M/s Kolmet Enterprises v. New Delhi Municipal Council, W.P.(C) 4041-42/2006 dated 10.04.2017 (Delhi High Court).
4. Board of Technical Education, U.P. v. Dhanwantri Kumar, AIR 1991 SC 271.
5. Municipal Corporation, Ludhiana v. Inderjit Singh &Ors.
6. Mahinder Singh &Ors. v. MCD, 1987 SCC OnLine (Del) 441.
7. Nirmala J. Jhala v. State of Gujrat, (2013) 4SCC 301.
8. Rachna Jain &Anr.v. NDMC, Appeal No. 285/2017 & 193/2019 of ATMCD.
9. Mohinder Singh Gill and Ors. V. The Chief Election Commissioner, New Delhi and Ors.,(1978) 1 SCC 405.
10. T Takano v. Securities & Exchange Board of India &Anr.(2022) 8 SCC 162.
11. Neelima Srivastava v. State of U.P. & Ors., 2021 SCC Online SC 610.

12. J.T.(India) Exports & Anr v. Union of India & Anr,2001 (60) DRJ 651 (FB)
13. M/s Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr., (1975)1 SCC 70.
14. Ahuja Property Developers (P)Ltd. V. MCD, 42 (1990) DLT 474.
15. Chandni Chowk Sarv Vyapar Mandal v. MCD, MANU/DE/1556/2005.

8. I have perused the record. The show cause notice in two sets of appeal i.e. the one challenging the sealing order dated 29.10.2021 and the other challenging sealing order dated 13.01.2022 is common which is a show cause notice dated 20.09.2021. The relevant part of this show cause notice is reproduced for the sake of convenience:

“Whereas, it has been brought to my notice that the premises/shop no. ----- Gali Mandirwali (Ghanteshwar), Katra Neel, Chandni Chowk, Delhi-06 at the instance of owner/occupier is being used in violation of provisions as contained under clause 15.6.2 (a) and also running a trade non-notified road of MPD 2021 in the name and style of shop/business establishment”.

9. The basis of this show cause notice was violation of provisions of clause 15.6.2 (a) of MPD 2021. The respondent as per this show cause notice claimed violation of this clause.

10. In 15 appeals where the sealing order dated 13.01.2022 is in under challenge, the quasi judicial authority mentioned in para 2 that the show cause notice was issued for violation of clause 15.6.2 (a) of MPD 2021. Even in this sealing order, this clause was relied. Thereafter, it was observed that the property does not fall on notified pedestrian street namely Gali Ghanteshwar stretch i.e Katra Neel to end and therefore, is liable to be sealed.

11. Clause 15.6.2 (a) of MPD 2021 in this regard becomes relevant. Same is reproduced for the sake of convenience:

“15.6.2 the following activities shall not be allowed under mixed use:

- (a) Retail shops of building material [timber, timber products (excluding furniture), marble, iron & steel, (gravel, cement & sand 2)], firewood, coal and any fire hazardous and other bulky materials”.

12.This clause prohibits only these activities under mixed use. Neither the show cause notice nor the impugned sealing order states that appellants are carrying any of these prohibited activities. The show cause notice and the sealing order only says shops/business establishment. The sealing order therefore is silent as to which activity, the different appellants, were carrying out of these prohibited activities mentioned in clause 15.6.2 (a).

13.The other important aspect is that the property was directed to be sealed in 15 appeals challenging sealing order dated 13.01.2022 on the ground that these properties do not fall on the notified pedestrian street namely Gali Ghanteshwar. In this regard, the notification of the list of such streets along with the width of such streets available at page number 77/C of the office record of appeal no. 78/22 is relevant. The street in question is mentioned at Serial No. 85 i.e. Gali Ghanteshwar, Katra Neel to end having width of 0.80 to 3.60 mtr.

14.Ld. counsel for the appellant has placed on record the Layout Plan of Gali Ghanteshwar which shows that .80 mtr. width exist in the end where the gali ends. The subject shops however are on a much wider gali having width of 1.52 mtr. to 1.34 mtr. If the respondent notified only the street from Katra Neel to end, then it was not required to mention the minimum width as 0.80 mtr. as the straight street from Katra Neel in the end has width of 2.05 mtr. The respondent mentioned the minimum width of this street to be 0.80 mtr. only after realizing that the shortest width of Gali Ghanteshwar is 0.8 mtr. and thereafter, notified it as pedestrian shopping

street. The streets were notified only after physical verification as different streets have separate widths.

15. It is also relevant to note that in all the 15 appeals challenging sealing order dated 13.01.2022, the appellants have already deposited conversion charges and are running their shops on different floors. The respondent accepted the conversion charges and permitted commercial use of the property.

16. The judgment of Hon'ble Delhi High Court titled as Ramesh Prashad Seth (Supra) is relevant. In para 13 of this judgment, the Hon'ble High Court held that bye-law 16.2 (5) of MPD 2021 specifies that on re-development plan, a scheme for special area should be prepared by Local Bodies within 03 years of approval of MPD 2021, till such time status quo has to be maintained. Admittedly, no such re-development plan for special area where the subject properties are situated has been prepared till date by the Local Bodies. The Hon'ble High Court, however, held that the conversion charges, sought to be levied by the Corporation, are payable and status quo qua a property would not prevent from the levy of such a demand. This clearly shows that status quo is required to be maintained till Re-development Plan and Scheme for Special Area is prepared.

17. It was also argued for the respondent as to whether misuse shall fall in the definition of unauthorized development. In this regard, the definition of unauthorized development is relevant. The said definition is provided under section 2 (i) of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The same is reproduced for the sake of convenience:

Section 2 (i) “unauthorized development” means use of land or use of building or construction of building or development of colonies,

village abadi area and its extension, carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or Layout Plan, as the case may be, and includes any encroachment.

18. This definition includes use of building or use of land in contravention to as permitted under Master/Zonal/Layout Plan. Therefore, the misuse of building as alleged in these appeals falls within the definition of unauthorized development and any action against the same has been stayed by National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, subject to payment of conversion charges as laid down in the judgment of Ramesh Prashad Seth (Supra).
19. Coming to the judgment of Hon'ble Supreme Court relied by Ld. Counsel for respondent passed in Delhi Pradesh Citizen Council (Supra), the Hon'ble Supreme Court did not stay the operation of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act. As a matter of fact, no court has stayed the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act.
20. Even otherwise, the sealing orders in these 15 appeals are bad in law as no specific violation of Clause 15.6.2 (a) of MPD 2021 is mentioned in the show cause notice or the sealing order. They are also bad for the reason that in the other 06 appeals challenging the sealing order dated 29.10.2021, the sealing order has been passed for non-payment of conversion charges for misuse. There exists fallacy in these two orders. In sealing order dated 13.01.2022, where the appellants have already paid conversion charges, the property has been directed to be sealed for the reason that there is violation of Clause 15.6.2 (a) of MPD 2021 and because the property is not existing on notified pedestrian street, whereas

in other 06 appeals challenging the sealing order dated 29.10.2021, for the similar situated properties as are in other 15 appeals, have been directed to be sealed for non-payment of conversion charges for misuse.

21.The respondent on one hand is directing to seal the properties for non-payment of conversion charges and on the other hand in cases where these charges have been paid, is directing sealing on different grounds. So the impugned sealing orders dated 13.01.2022 in all the 15 appeals are liable to be set-aside.

22.In view of this discussion, all the 15 appeals, challenging the sealing order dated 13.01.2022, are allowed and the sealing order dated 13.01.2022 is kept in abeyance till the concerned authorities frame Re-development Plan and Scheme for Special Area as per clause 16.2 (5) of MPD 2021.

23.Coming to the remaining 06 appeals challenging the sealing order dated 29.10.2021. The appeals no. 135/22, 136/22 and 137/22 are required to be allowed only because show cause notice dated 20.09.2021 was never served on the appellants. No office records in these appeals have been filed to establish as to how the show cause notices were served. The copies annexed by the appellants along with the appeals show that the show cause notice dated 20.09.2021 and the sealing order dated 29.10.2021 were served on some person on 22.02.2022 i.e. both the show cause notice and the sealing order were received by one person on 22.02.2022. The appellants were neither given any opportunity of being heard nor had an opportunity to file any reply to the show cause notices. These appeals are therefore allowed and the sealing orders in these three appeals are set-aside and the matter is remanded back with directions to the respondent to give personal hearing to these appellants and pass speaking order after considering their reply and documents. These

appellants shall appear before the Quasi Judicial Authority on 13.01.2026 at 02.00 PM and fresh order be passed within six weeks after conclusion of personal hearing.

24. Coming to appeal no. 110/22, the impugned sealing order records that appellant has not paid conversion charges for misuse. The appellants, along with this appeal, have filed receipts as Annexure-6 to the appeal showing payment of conversion charges. Though appellant in this appeal also claimed non-service of show cause notice and sealing order but the office record shows that the same were served by pasting and by speed post. The tracking report and the original postal receipt are available in the office file.

25. Since payment of conversion charges receipts have been filed along with the appeal, and the ground for sealing was non-deposit of conversion charges, this appeal is also remanded back with directions to the respondent to check and verify as to whether the said deposit has been made and thereafter pass speaking order afresh after considering the deposit of conversion charges. This appellant shall appear before the Quasi Judicial Authority on 13.01.2026 at 2 PM and fresh order be passed within six weeks after conclusion of personal hearing.

26. Coming to appeal no. 91/22 and 107/22. Though, appellants in these appeals also claims non-service of show cause notice and sealing order but the office record shows that the same were served by pasting and by speed post. The tracking report and the original postal receipt are available in the office file. The appellants however have not filed any proof of payment of conversion charges. The respondent is within its right to levy conversion misuser charges as per the judgment of Ramesh Prashad Seth (Supra). The appellants are therefore directed to deposit the conversion misuse charges within 04 weeks from today, if not already

deposited and the impugned sealing order in these two appeals is kept in abeyance only for four weeks. If the appellants fails to deposit the misuser charges or fails to produce the receipt of misuser charges already deposited, the respondent shall be at liberty to take action as per law against the subject properties of these two appeals. In case misuser charges have already been deposited or deposited in four weeks, the sealing order shall be kept in abeyance till the concerned authorities frame Re-development Plan and Scheme for Special Area as per clause 16.2 (5) of MPD 2021.

27. In view of above discussions, all these appeals are disposed of.

28. 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 26.12.2025**

**(AMIT KUMAR)
Addl. District & Sessions Judge
PO: Appellate Tribunal, MCD, Delhi**