

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

APPEAL NO. 106/ATMCD/2019

Mr. Rajive Kapoor (Since Deceased)
Through Legal Representative
Mr. Rahul Kapoor
S/o Late Sh. Rajive Kapoor
R/o C-2/12, Safdarjung Development Area
New Delhi-110016

..... **Appellant**

Versus

Municipal Corporation of Delhi
Through its Commissioner
Civic Centre, Minto Road
New Delhi

..... **Respondent**

Date of Filing of Appeal : **08.02.2019**
Date of Judgment : **11.03.2026**

JUDGMENT

1. This is the appeal challenging the sealing order dated 11.03.2019 passed in respect of misuse of Basement of Property No. C-2/12, Safdarjung Development Area, New Delhi in the shape of running Gymnasium in the name & style of Fiber Fitness in violation of permissible / sanctioned use and also against the Master Plan-2021 / Sanctioned Plan. The brief facts necessary for disposal of this appeal are that the

appellant is the owner of entire basement (subject-property) which was initially leased out to his father by DDA on 31.08.1984. The appellant became owner after the death of his father. As per appeal, the property was let out on 24.10.2006 to one Jitender Gaur proprietor of M/s Fiber Fitness. This lease was extended till 23.10.2010. The said tenant vacated the property in July 2010 and was again leased out to one Anil Yadav on 20.08.2010. The appellant earlier was running a Guest House from the upper floors of this property and had deposited conversion charges. However, the Guest House was stopped in 2012 and after that, only the basement was used for running a Fitness Center since 2006. The appellant received show cause notice dated 19.09.2018 which was replied on 24.09.2018 and the impugned sealing order dated 11.03.2019 was passed.

2. It was argued for the appellant that the subject-property is on a notified commercial road and running a Fitness Center is permitted in the basement. Further Fitness Center is categorized as other activity under Clause 15.7 of MPD-2021 and therefore, the subject-property was unlawfully sealed by the respondent. It was argued that conversion charges have already been deposited by the appellant. The property is situated on notified street having ROW of more than 18 meters and therefore, the impugned sealing order should be set-aside.
3. Ld. counsel for the respondent on the other hand argued that the license for the Guest House was cancelled on 20.08.2008 and simultaneously, the Fitness Center was also closed. The appellant executed fresh Lease Agreement in august 2010 which was after the cut-off date of 08.02.2007 and running of Fitness Center on non-notified commercial road is not permitted under MPD-2021 and therefore, the appeal should be dismissed.
4. I have perused the record. Admittedly the show cause notice was duly replied by the appellant and thereafter, the impugned sealing order dated 11.03.2019 was passed. This order records that the subject-property does not abut on notified Commercial Street. It further notes that as per the property tax assessment order, the property was not used for Guest House after 2008 and was lying vacant and was let out to Anil Yadav w.e.f. 20.08.2010 to be used as Gymnasium and

therefore, protection claimed under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available.

5. I have perused the record. The documents filed by the appellant along with the appeal show that a Service Agreement for running a Fitness Center was executed for the subject-property on 24.10.2006 till 23.10.2008 and was further renewed up to 23.10.2010. Thereafter, a Lease Agreement was executed on 20.08.2010 between the appellant and Anil Yadav for running a Fitness Center for five years. Thereafter this Lease Agreement was extended for another five years on 29.03.2015. As per appellant, the earlier contract with Jitender Gaur came to an end in July 2010, when he vacated the property and thereafter, a fresh Lease Agreement was executed with Anil Yadav in August 2010. This clearly shows that a Fitness Center / Gym was existing at the subject-property since October 2006.
6. Coming to the mix use regulations under MPD-2021. Under Clause 15.3.2 of MPD-2021, the Fitness Centers are permitted to continue on plots abutting roads of minimum 18 meters ROW i.e. 60 feet wide road. Further, under Clause 15.7 of MPD-2021, Fitness Center is permitted on residential plots abutting roads of 18 meters ROW subject to terms mentioned under Clause 15.7.2.
7. As per Master Plan filed on record, the property of the appellant is situated on a road having width of 60 feet i.e. 18 meters ROW. Aurobindo Road from Ansari Nagar to the red light of Kaushalya Park is having ROW of 60 meters. The subject-property is situated at the crossing of Kaushalya Park abutting 18 meters wide ROW road. As per MPD-2021, Fitness Centers / Gym in residential colony of A & B category are permitted. The subject-property is in 'A' category colony. The subject-property is in basement and a Fitness Center is permitted in the basement. There are no merits in the argument of the respondent that Fitness Center is not permitted in the basement as the property is not abutting a notified commercial road. Fitness Centers are permitted even in residential colony subject to the ROW being minimum 18 meters. The subject-property abuts 18 meters wide road and is used for Fitness Center. In these facts, the appeal is allowed and the impugned sealing order dated 11.03.2019 is set-aside.

8. Let the property be de-sealed within two weeks.
9. 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 11.03.2026**

**(AMIT KUMAR)
Addl. District & Sessions Judge-cum-P.O.
Appellate Tribunal, MCD, Delhi**