

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

APPEAL NO. 139/ATMCD/2023

- 1. Genetix Biotech Asia Pvt. Ltd.
Through its Authorized Representative
Sh. Sandeep Aggarwal
Having its registered Office at
71/1, First Floor, Shivaji Marg
New Delhi**
- 2. Sh. Arun Prakash
S/o Late Sh. Om Prakash
R/C-88, Kirti Nagar
New Delhi-110015**
- 3. Mrs. Raminder Kaur
W/o Sh. Arun Prakash
R/C-88, Kirti Nagar
New Delhi-110015**

..... **Appellants**

Versus

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

..... **Respondent**

Date of Filing of Appeal : 16.03.2023
Date of Judgment : 14.05.2026

JUDGMENT

1. This is an appeal challenging the sealing order dated 13.03.2023 passed in respect of property no. 9/54, Kirti Nagar Industrial Area, New Delhi (hereinafter referred as subject property) being misused for commercial activity by converting the use from industrial to commercial in violation of provisions of Master Plan Delhi-2021 (hereinafter referred as MPD-2021) and without paying infrastructure up-gradation charges.

2. The brief facts necessary for disposal of this appeal are that the appellants no. 2 & 3 are the owners of subject property and are directors of appellant no. 1 company. The subject property is in planned industrial area and as per appellants, the appellant number 1 is in the process of manufacturing various medical equipments, laboratory equipments and reagents used for research purposes, which are supplied to various government organizations. As per appellants, the subject property is used only for the purposes of manufacturing, yet the respondent issued a show cause notice dated 26.07.2022 claiming the property being misused for commercial activity with directions to stop the misuse within 48 hours. This show cause notice was duly replied by the appellants and thereafter the respondent passed the sealing order dated 30.12.2022. This order was assailed by the appellants in appeal no. 01/23 before this Tribunal and the appeal was allowed and the matter was remanded back to the respondent to pass fresh speaking order after dealing with submissions, pleas and defenses of the appellants. The appellants thereafter, submitted fresh reply and personal hearing was given and the impugned sealing order dated 13.03.2023 was passed. The appellants in the meantime also filed Writ Petition (civil) No. 2530/23 before Hon'ble High Court which was disposed of on 28.02.23 directing MCD to provide copy of the sealing order to the appellants and not to take sealing action for three days after providing the copy of the sealing order.
3. The present appeal has been filed on the ground that the respondent did not consider that the appellants are involved only in manufacturing activity and are not undertaking any commercial activity nor are liable to pay any conversion / infrastructure up-gradation charges. It was argued for the appellants that the notification relied upon by the respondent dated 29.10.2020 and the office order dated 22.07.2022 are not applicable to the subject property as the same is being used for manufacture of products. The respondent without considering this fact, asked the appellants to pay up-gradation charges at the rate of Rs. 5000/- per sq. meter. This notification and office order were never a part of show cause notice dated 26.07.2022 and could not have been relied while passing the impugned order as the scope of show cause notice cannot be enlarged while passing the order. The appellant no.1 is not engaged in any packaging work as claimed by the

respondent as it is packaging its own product manufactured by it for supplying it to the buyers and therefore, the impugned sealing order should be set aside and the up-gradation charges of Rs. 79 lacs deposited without prejudice, should be returned to the appellants.

4. Ld. counsel for the respondent on the other hand argued that the notification dated 29.10.2020 is applicable to the activity carried out by the appellants. The notification is retrospective in nature. The appellants are involved in the activities referred under clause 5 & 9 (a) of Table 7.7 provided under chapter 7.0 of MPD-2021 and are liable to pay infrastructure up-gradation charges under this notification and therefore, the appeal is devoid of merits and should be dismissed.
5. I have perused the record. The initial show cause notice dated 26.07.2022 is completely silent in respect of the notification dated 29.10.2020 as well as the office circular dated 22.07.2022. This show cause notice booked the property for being misused for commercial activity instead of industrial. It does not mention that any infrastructure up-gradation charges are required to be paid in pursuance to notification dated 29.10.2020. Even the first sealing order dated 30.12.2022, which was set aside in appeal no. 01/2023, does not refer to notification dated 29.10.2020 and simply stated that since the appellants have not stopped the misuse, nor have paid conversion charges for misuse of the property for commercial activity instead of industrial, the property be sealed.
6. After the matter was remanded back, the respondent passed the impugned sealing order and for the first time referred to the notification dated 29.10.2020 and the office circular dated 22.07.2022. These two were added for the first time while passing the impugned order and the appellants were never put to show cause as to why they should not pay infrastructure up-gradation charges in view of this notification and office order. The scope of show cause notice was enlarged while passing the sealing order and the same is not permissible under law. The respondent cannot add fresh and new ground while passing the impugned order which were never put to the appellants in the show cause notice. Reliance in this regard can be placed on the judgment of Hon'ble Supreme Court passed in **Mohinder Singh Gill and Ors. Vs. The Chief**

Election Commissioner New Delhi (1978)1 SCC 405. The sealing order is liable to be set aside on this ground alone.

7. Coming to the merits of the appeal. The appellant no. 1 is manufacturing medical equipments, laboratory equipments and reagents used for research purposes. The raw material required to process and manufacture these products is stored in the subject premises and it cannot be said to be misuse of the property for using it as warehouse. Further, the finished products manufactured by appellant no.1 are required to be packed before being supplied to the prospective buyers and this packaging of own products for the purposes of selling cannot be said to be a packaging activity. It will amount to packaging activity, if the appellant procured finished products from a supplier and packs it for selling. Packing its own products in the factory for supplying to the buyers does not amount to packaging activity.
8. Let us also examine whether the activity of manufacturing medical equipments, laboratory equipments and reagents falls within the preview of notification dated 29.10.2020. Under this notification, referred in Table 7.7 of chapter 7.0 of MPD-2021, new industrial activity in the NCT of Delhi should be restricted to Hi-Tech areas and service based industries, subject to payment of infrastructure up-gradation charges. The respondent claims that the manufacturing activity carried by appellant no. 1 falls under sub-clause 5 of this Table 7.7. The sub-clause 5 is reproduced herein for the sake of convenience:

“5. Bio-technology / medical

- a. R&D and manufacture of products and processes, which use or are derived by using specific living systems (plants, animals and microbes or parts thereof) and or enzymes / biocatalysts derived there from*
- b. Genetic Engineering & Contract Research & Clinical Trials*
- c. Medical Transcription Services”*

9. A bare perusal of this sub-clause 5 show that the appellant is not carrying out any of these activities. There is no research, development, manufacture of product or process by using specific living systems nor there is any genetic engineering, contract research, clinical trial nor any medical transcription services. The manufacturing activity of the appellant is of medical equipments, laboratory equipments and reagents used for research purposes.

The appellant no1 is not carrying out any research involving living systems or genetic engineering. This sub-clause 5 is not applicable to the appellants.

10. The other sub-clause 9(a) of table 7.7 relates to packaging and as already discussed, the appellants are packing only their own products for supplying to the buyers which does not amount to packaging.

11. The respondent has also mentioned about its office circular dated 22.07.2022 in the impugned order. This circular talks about certain service based activities permitted in existing planned industrial area. The relevant paragraph of this circular is reproduced.

“Accordingly, the building plan for the activities as defined in clause 7.7 of MPD-2021 will be sanctioned after levying infrastructure up-gradation charges as mentioned above in addition to other applicable charges. The existing industries which are operating service based activities without sanction of building plan are also liable to pay the infrastructure up-gradation charges as mentioned above”.

12. These up-gradation charges in respect of industrial plots have been quantified @ Rs. 5000/- per sq. meter on the plot area. These charges are payable if certain service based activities as amended in chapter 7 of MPD-2021 are done in existing industrial areas. The appellants admittedly are manufacturing medical equipments etc. and cannot be said

to be doing any service based activity. As already discussed the activity done by the appellant is not covered under sub-clause 5 of Table 7.7 of chapter 7.0 of MPD-2021. The conclusion by the respondent in the impugned order that appellant is engaged in an activity falling under sub-clause 5 and 9(a) of Table 7.7 is wrong.

13. In view of these discussions, the sealing order is liable to be set aside since the same is beyond the scope of show cause notice dated 26.07.2022 and further, the appellants are not doing any service based activity as contemplated under Table 7.7 of chapter 7.0 of MPD-2021.

14. The appeal is allowed and the sealing order dated 13.03.2023 is set aside. The respondent is directed to return the amount of Rs. 79 lacs which were deposited with the respondent subject to outcome of this appeal, as noted in the order dated 17.03.2023.

15. 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 14.05.2026**

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