

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

APPEAL NO. 386/ATMCD/2016

**Mrs. Rohini Kapoor
Through Ravi Kumar Vahi
R/o M-7 Green Park (Main)
New Delhi - 110016**

..... Appellant

Versus

- 1. New Delhi Municipal Council
Through its Chairperson
Palika Kendra, Parliament Street
New Delhi – 110001**
- 2. M/s CBB Energy India Pvt. Ltd.
Having its registered office at
A-15, 2nd Floor, Hauz Khas
New Delhi-110016**

Also at:
**2nd Floor, Infinity Tower – B
Sector-25A, DLF Phase-II
Gurgaon, Haryana-122002**

..... Respondents

Date of Filing of Appeal	:	30.03.2016
Date of Judgment	:	29.05.2026

JUDGMENT

1. This is an appeal challenging the sealing order dated 22.07.2013 passed on account of misuse of the residential premises in the shape of running non-permissible activities in the property at Flat No. 24, Dakshineswar Building, 10 Hailey Road, New Delhi (hereinafter referred as subject property).
2. The brief facts necessary for disposal of these appeals are that the appellant is the owner of subject property and let out the subject property vide Lease Deed dated 08.12.2005 to M/s. CBB Energy India Pvt. Ltd.(respondent no. 2) for a guest house for residential purpose for the employees of respondent no.

2. Respondent no. 1 sealed the subject premises on 07.12.2011 on the ground of misuse being used as a guest house. The appellant filed Writ Petition(c) against this sealing action bearing Writ Petition (Civil) No. 1669/2013. The same was disposed of by the Hon'ble High Court on 13.03.2013 with directions to respondent no. 1 to issue a show cause notice to the appellant within a week which was to be replied within 10 days and after providing opportunity of hearing, the respondent no. 1 was directed to pass speaking order within 2 months. In pursuance to this direction, respondent no. 1 issued show cause notice dated 19.03.2013 which was replied by the appellant on 01.04.2013 and thereafter, the impugned sealing order was passed.
3. The appellant has challenged this order on the ground that sealing action was done as per official noting being used as guest house whereas the show cause notice dated 19.03.2013 was issued on another ground for running an office by respondent no. 2 and on that basis, the impugned sealing order was passed. It was argued for the appellant that since the sealing action on 07.12.2011 was on account of different allegation, the subsequent show cause notice and the sealing order based on altogether different fact, is liable to be set aside. The respondent did not provide any opportunity to the appellant to reply the fresh material considered while passing the impugned order. The sealing was done without authority from the Competent Authority. The premises was let out by the appellant to respondent no. 2 for running a guest house for its employees which is permissible under building bye laws. The survey conducted by the respondent nowhere records that any office is being run from the premises by respondent no. 2 and the alleged photographs taken at the time of sealing action on 07.12.2011 were never provided to the appellant. Further, it was argued that the alleged misuse if any was prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Ld. Counsel for the appellant has placed reliance upon the following judgments:

- 1) Ashwani Kumar Khanna Vs. DDA 2003 (105) DLT 98.
- 2) Sagar Enterprises Pvt. Ltd. Vs. Union of India 2007 (93) DRJ 470.
- 3) Union of India Vs. Deepak Singh 2011 (10) AD (Delhi) 148.

4. Ld. counsel for the respondent no. 1 on the other hand argued that during inspection on 03.10.2011, the tenant of appellant i.e. respondent no. 2 did not permit physical inspection of the subject property and it was orally contended by its employees that the subject premises is used for guest house and for that reason subject property was sealed on 07.12.2011. However, during the sealing action on 07.12.2011, the photographs of the subject property were taken which showed that it was used for running an office and not for guest house. The appellant had sufficient opportunity to reply the show cause notice which was issued on the ground of running an office and therefore, no prejudice was caused to the appellant as she was duly informed through show cause notice dated 19.03.2013 that the subject premises was used for running office. The Hon'ble High Court was also of the opinion that there is misuse of the property and as such kept the property sealed even while disposing of Writ Petition (Civil) No. 1669/2013 on 13.03.2013. The reply and the documents of the appellant were considered and personal hearing was also provided and therefore, there are no merits in this appeal.
5. None appeared for respondent no.2 despite service.
6. I have perused the record. The record of respondent no.1 shows that an inspection was carried out in residential building at 10, Hailey Road, New Delhi on 03.10.2011. In that inspection, it was stated by staff of respondent no.2 that the subject property is being used for a guest house in the name of respondent no.2. However, no requisite documents were provided by respondent no. 2 or its staff. The Competent Authority approved the sealing action on 24.11.2011 and the sealing action was taken with police aid on 07.12.2011. In these facts, the arguments of the appellant that the sealing action on 07.12.2011 was without any authority is factually incorrect.
7. The appellant challenged this sealing action in Writ Petition (Civil) No. 1669/2013 and the Hon'ble High Court remanded the matter back with directions to the respondent no. 1 to issue fresh show cause notice. The respondent no. 1 following those directions, issued show cause notice dated 19.03.2013 seeking reply of the appellant. In this show cause notice, the respondent no. 1 specifically brought to the notice of appellant that the premises is being used for running office by respondent no. 2. Even if, the sealing action dated 07.12.2011 was on account of running a guest house,

but after taking photographs while sealing, respondent no. 1 came to know that the misuse is not for running a guest house but is of running an office and the same was duly communicated to the appellant. No prejudice was caused to the appellant since after the directions of the Hon'ble High Court, the appellant was duly put to show cause the misuse on account of running an office. The appellant cannot claim that he was never told about the nature of misuse.

8. The appellant in her reply dated 01.04.2013, nowhere claimed that the premises was not used for running an office. It was stated that the premises was let out to respondent no. 2 on the understanding that it would be used by respondent no. 2 as a guest house. She claimed that the allegations of running an office were never communicated to her. The same is factually incorrect since the show cause notice dated 19.03.2013 clearly mentioned the misuse for running an office.
9. As per office record, the officials of respondent no. 1 were not permitted to inspect the property during inspection on 03.10.2011 nor any document was provided to show that the subject premises is used for running a guest house. It was only on the basis of oral communication by the staff of respondent no. 2, respondent no. 1 noted in the inspection that it is being used as guest house. However during sealing action on 07.12.2011 it was found that the subject property is used for running an office. The same is also visible from the photographs taken during sealing action that a full fledged office was being run from the subject premises by respondent no. 2 and thereafter, it was duly put to appellant through show cause notice dated 19.03.2013.
10. The appellant cannot be permitted to take benefit of wrong facts informed to the officials of respondent no. 1 during inspection on 03.10.2011 and therefore, there are no merits in the arguments that the sealing order is liable to be set aside since the sealing action was for running a guest house whereas the sealing order is based on altogether different misuse.
11. Coming to the argument of the appellant that the misuse is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. This argument is baseless as running an office from residential premises is not permissible and protected even under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act,

2011. Further, as per the directions of the Hon'ble Supreme Court passed in the case of M.C. Mehta Vs. Union of India, a residential premises cannot be used for running an office and is not protected. Otherwise also there is no evidence to show that misuse was prior to 08.02.2007. The lease between appellant and respondent no.2 was for a guest house and it is not even known to appellant that since when the misuse of an office started.

12. In view of this discussion, the appeal is meritless and is liable to be dismissed. The appellant is required to pay misuser charges as calculated by respondent no.1 and also to furnish an undertaking to use the premises only for the purposes permitted under MPD-2021 and then only the subject property can be de-sealed. The sealing order is upheld and the appeal is dismissed.
13. 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 29.05.2026**

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