

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

APPEAL NO. 189/ATMCD/2014

**Economy Sales
Through its partner Sh. Ravi Kamal
Garhwal Bhawan
Punchkuiya Road
New Delhi-110001**

..... **Appellant**

Versus

**New Delhi Municipal Council
Through its Chairperson
Palika Kendra, Parliament Street
New Delhi – 110001**

..... **Respondent**

Date of Filing of Appeal : 05.03.2014
Date of Judgment : 12.06.2026

JUDGMENT

1. This is an appeal challenging the sealing order dated 21.02.2014 passed in respect of Garhwal Bhawan, Punchkuyian Road, New Delhi (hereinafter referred as subject-property) for misuse of the premises.
2. The brief facts necessary for disposal of this appeal are that the appellant is the occupant of the first floor of the subject property in pursuance to an agreement executed between the appellant and the owner M/s Garhwal Hiteshi Sabha (GHS). There was some dispute between the appellant and the owner for which couple of suits are pending. The respondent issued a show cause notice dated 21.03.2013 under section 250 of the NDMC Act to the appellant and the owner stating that the property is being misused for commercial purposes in the shape of a show room of ready made garments in the name of appellant against the permitted use being Institutional. The show cause notice was replied by the appellant as well as by the owner and after considering their replies, the respondent passed the impugned order dated 21.02.2014 on the premise that the allottee has changed the use from

Institutional to commercial against the sanctioned building plan for which the building was sanctioned and also contrary to the lease. The appellant filed writ petition no. 1723/14 where vide order dated 14.03.2014, the counsel for the NDMC made statement that the subject premises shall not be sealed.

3. The appellant has challenged this sealing order on the ground that section 250 of NDMC Act is confined to unauthorized construction and cannot be invoked for alleged change of user. There is no unauthorized construction in the property and only allegation of misuse which ex-facie is without jurisdiction being passed under section 250 of the Act. The alleged unauthorized use is since 1998 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being prior to 08.02.2007. The reliance of the respondent on the judgment of Hon'ble Supreme Court in M.C. Mehta Vs. Union of India Writ Petition Civil no. 4677/1985 is misconceived as those directions are only in respect of misuse of residential premises. Clause 15.9 of MPD-2021 is also not attracted as it refers to non-residential activity in residential premises. The Garhwal Bhawan is not a residential building and is as such, neither the judgment of M.C.Mehta Vs. Union of India nor clause 15.9 of MPD-2021 are applicable. Further, even as per MPD-2021 at table 13.27 at serial no. 26, commercial activity is permitted as defined in table 5.5. The demand of respondent seeking regularization charges is disproportionate and illegal and there is a collusion between the owner and the respondent and therefore, the impugned sealing order should be set-aside.
4. Ld. counsel for appellant in support of his submission has relied upon the following judgments:
 1. Chand Ram Vs. DDA & Ors. 2012:DHC:1326.
 2. Gorkha Security Services Vs. Govt. of NCT of Delhi (2014)9 SCC 105.
 3. Oryx Fisheries Pvt. Ltd. Vs. Union of India (2010)13 SCC 427.
 4. State of Punjab Vs. Gurdayal Singh (1980) 2 SCC 471.
5. Ld. counsel for the respondent on the other hand argued that an inspection was carried out in the subject-property on 29.08.2012 and it was observed that the property is being misused for a commercial activity against the sanctioned plan for an institutional use. A show cause notice dated 21.03.2013 was issued which was replied by the appellant on 05.04..2013.

The appellant was provided personal hearing and thereafter, the speaking order was passed. The subject-property is an institutional building and appellant is running commercial activity since 1998. The land use of the subject-property is institutional and the permitted use as per table 13.27 of MPD-2021 is social and cultural institute. Serial number 26 of this table is not applicable to the present case since use of subject-property is social and cultural institute where no commercial activity is permitted. The appellant has concealed the fact that the appellant and the office bearer of the owner have already been held guilty under the offenses punishable under section 252/369 of the NDMC Act. The special provision of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 act are not applicable to the present matter as it relates only to relocation and rehabilitation of slum dwellers. The applicant is liable to pay misuser charges for the area under misuse and the appeal is liable to be dismissed.

6. I have perused the record. The property was leased out to GHS vide agreement for lease dated 03.05.1962. The additional space was allotted vide additional lease deed dated 10.06.1974. As per lease deed, the subject premises was not allowed to be used for any purpose whatsoever other than Garhwal Bhawan. It was given for institutional purpose as mentioned on the last page of lease deed. Therefore, the argument of the appellant that no purpose of use was mentioned in the lease deed is factually incorrect.
7. Further, the sanctioned building plan was also obtained by GHS for an institution and not for running a commercial space. As per this sanctioned plan, there was an assembly hall and a stage at the first floor of the subject premises which admittedly is in occupation of the appellant. Therefore, the act of GHS of getting into an agreement with appellant in 1998 for using the first floor for commercial purposes itself violates the terms and conditions of the lease. The appellant and the owner cannot claim that the use of the premises by the appellant is not contrary to the terms of lease. This itself amounts to misuser more so, when the lease deed was for Institutional purpose. Any prolong misuse shall not make the use lawful or in accordance to MPD-2021.
8. Coming to the argument of the appellant that the commercial office and retail space are permitted under table 13.27 clause 26. This table talks about

socio-cultural and community facilities. Serial No. 12 of this table talks about social and cultural institute whereas Serial No. 26 talks about socio-cultural center. GHS to whom the property was leased out is a social and cultural institute and therefore, this activity of commercial office and retail space is not permitted at the subject premises. Clause 12 of table 13.27 shall apply to the subject premises and not clause 26. Under clause 12, the activity of commercial office / retail space is not provided.

9. The next argument of the appellant was in respect of powers of the Commissioner to take action in case of misuse of the premises. The Hon'ble supreme court in the judgment of M.C.Mehta Vs. Union of India (2006) 3 SCC 3999 held that the Commissioner of MCD is empowered to exercise power of sealing in case of misuser of any premises. In view of this judgment, the Commissioner always had powers to seal the premises in case of misuse. It was irrespective of whether a residential premises is misused or any other premises is misused for a purpose other than permissible.
10. Coming to the argument of the appellant that the said misuse is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Though it is correct that any unauthorized development is also protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, but the user is required to pay the misuser charges. Section 2 (1) (i) of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 provides the definition of unauthorized development which means the use of land or building in contravention of sanctioned plan. Therefore, the misuse of a premises prior to 08.02.2007 is to be kept in abeyance under section 3 of this Act.
11. However, the respondent has powers to seek misuser charges for the same even if the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The Hon'ble Delhi High Court in the case of Ramesh Pershad Seth Vs. MCD & Ors. in writ petition (civil) number 13402/2009 vide judgment dated 15.03.2017 held in para 14 that the status quo qua a property is to be maintained under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is totally unrelated to the powers of the respondent to levy a demand for

misuser. Though, the misuse by the appellant is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 yet the appellant is bound to pay the misuser charges.

12. Ld. counsel for the respondent in this regard has rightly relied upon the orders of Hon'ble Supreme Court dated 11.12.2007 in IA No. 2195-2196 in W.P.C.No. 4677/1985 where the Hon'ble Supreme Court permitted the use subject to a penalty for the year 2006-07 and 2007-08 at the rate indicated by Monitoring Committee. The appellant is therefore supposed to pay misuser charges.

13. It was also argued for the appellant that since Panchkuan Road, New Delhi has been declared a commercial road, the appellant has a right to use the subject premises for commercial purposes. The misuse relates back to the year 1998 and the misuse has to be seen in relation to that year and not the present position that the Panchkuyan Road has been declared a commercial area. Even otherwise, conversion charges are required to be paid to get the property used converted from institutional to commercial.

14. In these facts, the sealing order is upheld but kept in abeyance till National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. However the same is subject to the appellant paying the misuser charges failing which the respondent shall have every right to seal the property for non-payment of misuser charges. Further, the respondent shall be at liberty to take action once National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 ceases to be in force.

15. Appeal stand disposed of.

16. Record of the respondent, if any, be returned along with copy of this order and appeal files be consigned to record room.

**Announced in the open Court
today i.e. on 12.06.2026**

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