

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 60/2014 & CM APPL. 97/2014**

B.N. MAGON

..... Petitioner

Through: Mr. Sunil Magon, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION..... Respondent

Through: Ms. Madhu Tewatia, Advocate

Mr. B.B. Jain, Advocate Amicus

Curiae

Reserved on : 24th December, 2014

% Date of Decision : 27th January, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. The issue that arises for consideration in the present proceedings is whether a portion of the residential building being used as a lawyer's office in accordance with the parameters specified in the Master Plan for Delhi 2021 (for short 'MPD 2021') falls within the ambit and scope of a 'business building' as defined in Bye-law 9(b) of the Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004 (for short 'Bye-Laws, 2004') for the purpose of levy of property tax under the unit area method introduced by Delhi Municipal Corporation (Amendment) Act, 2003.

FACTS

2. The admitted facts are that the petitioner is the owner and occupier of the property bearing No. E-403, Greater Kailash-II, New Delhi which is

built on 250 square yards of land and comprises the ground floor, first floor and the Barsati. The petitioner resides in the aforesaid house along with his wife and his elder son who is a practicing lawyer in this Court.

3. On 21st November, 2013, the residence of the petitioner was inspected by the MCD officials and it was found that the drawing room comprising 30 sq. mtr. (323 sq. ft.) approximately out of 334 sq. mtr. (3,594 sq. ft.) covered area was being used as a lawyer's office.

IMPUGNED ASSESSMENT ORDER

4. On 22nd November, 2013, the respondent-Corporation passed the impugned assessment order by treating the portion of the drawing room as business building and emphasizing that the portion of the house being used for consultation work and study by the petitioner's son made it a professional establishment which was a 'business building' in accordance with Bye-law 9 of Bye-Laws, 2004. The relevant portion of the impugned order is reproduced hereinbelow:-

“As per inspection report of the AZI dated 21.11.2013, tax payer is used Drawing Room for lawyers office which is certainly a professional activity and not a residential activity. Hence, the AV of the portion under use of professional activity is determined as under:

<i>Floor</i>	<i>Unit Area Value (Rs. Per sq. mts.)</i>	<i>Covered Area (in sq. mts.)</i>	<i>Age Factor</i>	<i>Structure Factor</i>	<i>Occupancy Factor</i>	<i>Use Factor</i>	<i>Annual Value</i>	<i>Date of Effect</i>
<i>GF-Part</i>	<i>500</i>	<i>30</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>4</i>	<i>60000</i>	<i>1.4.2004</i>

To sum up the AV is fixed at Rs.60,000/- p.a. (NR) w.e.f. 1.4.2004.

The above AV is fixed on the basis of information/documents available on record. In case, if any information is found to be contrary, in future, the order shall be amended accordingly.

Area Inspector is directed to compute the property tax, levy interest @ 1% for every month or part of the month till the amount is realized under UAM as per provisions of Section 123D of the DMC Act. Tax payer is requested to make payment of property tax within 15 days of the receipt of this order and property tax bill/demand."

PETITIONER'S SUBMISSIONS

5. Mr. Sunil Magon, learned counsel for the petitioner submitted that a lawyer's office is neither a business establishment nor a commercial establishment or an industry.

6. Mr. Magon contended that the self-occupied premise, predominantly used for residence, would not lose its character and would not become a professional establishment within the definition of 'business building' if a portion of the same was used for rendering professional advice or self study by a lawyer. He stated that in the present instance no portion of the residence could be termed as a business building.

7. In support of his submission, Mr. Magon relied upon the judgment of a Division Bench of the Bombay High Court in ***Sakharam Narayan Kherdekar v. City of Nagpur Corporation and others AIR 1964 Bombay 200*** wherein it has been held that an office of an advocate is not covered under the expression 'commercial establishment' under the Bombay Shops and Establishments Act, 1948. The relevant portion of the said judgment is

reproduced hereinbelow:-

“26. Thus, the very concept of any activity which can justly be called a commercial activity, must imply some investment of capital and the activity, must run the risk of profit or loss. Understood in this sense, therefore, we are inclined to hold that it is not every establishment in the sense of premises or buildings where business, trade or profession is carried on that is intended to be governed by the Act, but only those premises though carrying on one or other of these kinds of activities which are of a commercial nature..... There is no precise definition of what a profession is, but it is possible to gather what is meant by professional activities from other pronouncements.....

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35. In our opinion, enough has been stated above to indicate how the profession of an Advocate is of a class apart, not only from other professions but also from any other commercial activity in which a person may be employed. It is possible to conceive of any commercial activities where services of a professional man like engineer, or architect or draftsman may be utilised, but we cannot conceive of commercial venture where services of a lawyer, not for his own benefit but as a means of providing advice and legal aid to others on behalf of a corporation or an organised body may be made available as part of their commercial activity. The relations between a counsel and his client are not analogous to those of a trader and his customer. The client is not his customer; there is a certain fiduciary relation between them, when the counsel accepts a brief. The obligations do not end with the disposal of the case; they continue so far as the lawyer is concerned. He has obligations not only to the client but also to the Court, and generally to the administration of justice, in which he performs a healthy and necessary function. We therefore do not think that the profession of a lawyer is possible to be carried on as a commercial venture in any sense of the term. There is also considerable force in the argument on behalf of the petitioner that the part a lawyer plays in the administration of justice partakes to some extent, of participation in discharging sovereign or regal functions of the

State. We have already quoted above the pronouncements of their Lordships of the Supreme Court that administration of justice and exercise of judicial power are a part and parcel of sovereign powers or regal powers of the State. In this task the lawyer plays a vital and important role.....We therefore find it difficult to accept the contention of the respondents that a lawyer's profession is a kind of profession which can be said to be carried on as profession of commercial nature. It is inherently improbable in the nature of things that the profession of a lawyer could be viewed as a commercial venture. In fact, the commercial character of business, which is an essential condition of a commercial activity is absent in the lawyer's profession. We fail to see how a lawyer, whether he works in his office or appears in Court, can be said to be carrying on his profession in any of these places where the activity can be said to be of a commercial nature. It is not a commercial activity and the very nature of the work is such that it is incapable of being of a commercial nature.”

8. Mr. Magon also relied upon the reference order of a Two Judge Bench of the Supreme Court in ***M.P. Electricity Board and Others v. Shiv Narayan and Another (2005) 7 SCC 283***, wherein it has been held under:-

“6. The word “commercial” has been defined to mean:

“Commercial.—Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. Anderson v. Humble Oil & Refining Co. [226 Ga 252 : 174 SE 2d 415, 417] Generic term for most all aspects of buying and selling.”

The expression “commerce” or “commercial” necessarily has a concept of a trading activity. Trading activity may involve any kind of activity, be it a transport or supply of goods. Generic term for almost all aspects is buying and selling. But in legal profession, there is no such kind of buying or selling nor any trading of any kind whatsoever. Therefore, to compare legal profession with that of trade and business is a far from correct

approach and it will totally be misplaced.”

9. Mr. Magon referred to the judgment of the Supreme Court in **V. Sasidharan v. M/s. Peter and Karunakar and others AIR 1984 SC 1700** wherein it has been held that a firm of lawyers is not a ‘commercial establishment’. Relevant portion of the said judgment is reproduced as under:-

“10. Learned counsel for the appellant argues that a lawyer's office is a commercial establishment because, persons who are employed in that office are mainly engaged in office work. This argument overlooks that, under the second clause of the definition in Section 2(4), ‘commercial establishment’ means “an establishment or administrative service in which the persons employed are mainly engaged in office work”. Partly, we go back to the same question as to whether a lawyer's office is an ‘establishment’ within the meaning of the Act. The other aspect which this argument fails to take note of is that a lawyer's office is not an ‘administrative service’. It seems to us doing violence to the language of the second clause of Section 2(4) to hold that a lawyer's office is an ‘administrative service’. This argument has therefore to be rejected.

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12. For these reasons, we are of the opinion that the office of a lawyer or of a firm of lawyers is not a ‘commercial establishment’ within the meaning of the Act. This conclusion is strengthened by the other provisions of the Act.....If the current trends are any indication and if old memories fail not, the earnings of lawyers' clerks cannot, in reality, bear reasonable comparison with the earnings of employees of commercial establishments, properly so called. They, undoubtedly, work hard but they do not go without their reward. They come early in the morning and go late at night, but that is implicit in the very nature of the duties which they are required to perform and the time they spend is not a profitless pastime.

registered under the Factories Act, 1948 (LXIII of 1948), or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusement or entertainment.”

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13. I respectfully concur with the views aforesaid expressed by the Bombay High Court and hold that notwithstanding the definition of commercial establishment in Section 2(5) of the Delhi Shops Act as meaning, any premises where any profession or any work in connection therewith is being carried on, the same does not apply to the profession of an advocate. For his own convenience an advocate or solicitor may employ a clerk because a clerk would type his opinion; for his convenience, a solicitor may employ a menial servant to keep his chamber clean and in order; and it is likely that the number of clerks may be large if the concern is prosperous and so would be the number of menial servants; but the work done either by the typist or the stenographer or by the menial servant or other employees in a solicitor's firm is not directly concerned with the service which the solicitor renders to his clients and cannot, therefore, be said to satisfy the test of co-operation between the employer and the employees which is relevant to the purpose. There can be no doubt that for efficiently carrying on the work of a solicitor, accounts have to be kept and correspondence carried on and this work would need the employment of clerks and accountants but the work of the clerk who types correspondence or that of the accountant who keeps accounts does not have any direct or essential nexus or connection with the advice which is the duty of the solicitor to give to his client.

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15. It will thus be seen that notwithstanding the use of the word “profession” while defining a commercial establishment in Section 2(5) of the Delhi Shops Act, the Supreme Court has held that not all premises where professional activity is carried on are commercial establishments.....”

RESPONDENT'S SUBMISSIONS

11. On the other hand, Ms. Madhu Tewatia, learned standing counsel for respondent-Corporation submitted that by virtue of Bye-law 9(b)(i) of Bye-Laws, 2004, a 'business building' included a portion or a part of a building which was used as a professional establishment or for professional activity such as a lawyer's profession as it involved keeping of books and records.

12. Ms. Tewatia stated that since the lawyer's activity fell within the sphere of professional activity which was carried on in an office, that part of the building which was used for professional activity clearly fell within the scope of the definition of a 'business building' under the provision of Bye-law 9(b)(i) of the Bye-Laws, 2004.

13. Ms. Tewatia pointed out that Bye-law 9(b)(ii) of Bye-Laws, 2004 categorically included office buildings (premises) solely or principally used as office or for office purposes.

14. Ms. Tewatia submitted that the definition of 'business building' or 'mercantile building' contained in other statutes were absolutely extraneous to the determination of annual value under the Unit Area System of property tax. She stated that the expression 'business building' was wide as well as inclusive and did not violate any substantive provision of the Delhi Municipal Corporation Act, 1957 (for short 'DMC Act, 1957'). She pointed out that definition of the 'building' as it occurred in the DMC Act, 1957 was extremely wide and did not make a distinction amongst residential, commercial, mercantile, hazardous, industrial, recreational or public purpose.

15. Since Ms. Tewatia laid considerable emphasis on the expression 'building' in Section 2(3) of the DMC Act, 1957, the same is reproduced

hereinbelow:-

(3) "building" means a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter;

16. Ms. Tewatia submitted that though the definition of ‘building’ was not an inclusive expression, yet use of the expression ‘any other structure’ made the definition inclusive by bringing within its ambit every other structure.

17. Ms. Tewatia contended that the permissible non-domestic use in a residential colony under the MPD 2021 would not automatically convert a non-domestic use to residential. She pointed out that the fact that a lawyer’s profession had been included as a non-domestic activity, permissible in a residential area contradicted the very case put forth by the petitioner. According to her, a lawyer’s activity cannot be treated or deemed to mean a residential activity. She stated that if petitioner’s argument was accepted, it would play havoc and cause unprecedented violence to the definition clause of a taxing Statute.

18. Ms. Tewatia submitted that the taxing statutes had to be construed literally and strictly. According to her, hardship or equity had no role to play in construction of taxing statutes. In support of her submission, she relied upon following judgments:-

A) ***State of W.B. v. Kesoram Industries Ltd. & Others, (2004) 10 SCC 201*** wherein the Supreme Court has held as under:-

“Power to tax must be express, else no power to tax

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106. The judicial opinion of binding authority flowing from

*several pronouncements of this Court has settled these principles: (i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly. (See Justice G.P. Singh, *ibid.*, pp. 638-39.)*

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138. It is well settled that it is for the legislature to draft a piece of legislation by making the choicest selection of words so as to give expression to its intention. The ordinary rule of interpretation is that the words used by the legislature shall be given such meaning as the legislature has chosen to assign them by coining definitions contained in the interpretation clause and in absence thereof the words would be given such meaning as they are susceptible of in ordinary parlance, maybe, by having recourse to dictionaries. However, still, the interpretation is the exclusive privilege of the Constitutional Courts and the court embarking upon the task of interpretation would place such meaning on the words as would effectuate the purpose of legislation avoiding absurdity, unreasonableness, incongruity and conflict. As is with the words used so is with the language employed in drafting a piece of legislation. That interpretation would be preferred which would avoid conflict between two fields of legislation and would rather import homogeneity. It follows as a corollary of the abovesaid statement that while interpreting tax laws the courts would be guided by the gist of the legislation instead of by the apparent meaning of the words used and the language employed. The courts shall have regard to the object and the scheme of the tax law under consideration and the

purpose for which the cess is levied, collected and intended to be used. The courts shall make endeavour to search where the impact of the cess falls. The subject-matter of levy is not to be confused with the method and manner of assessment or realisation.”

B) ***Black Diamond Beverages and Others v. Commercial Tax Officer, Central Section, Assessment Wing, Calcutta and Others., (1998) 1 SCC 458*** wherein the Supreme Court has held as under:-

“7. It is clear that the definition of “sale price” in Section 2(d) uses the words “means” and “includes”. The first part of the definition defines the meaning of the word “sale price” and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which “includes” certain other things in the definition. This is a well-settled principle of construction. Craies on Statute Law (7th Edn., 1.214) says:

“An interpretation clause which extends the meaning of a word does not take away its ordinary meaning.... Lord Selborne said in Robinson v. Barton-Eccles Local Board [(1883) 8 AC 798 : 53 LJ Ch 226] AC at p. 801:

‘An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act ... to be applied to something to which it would not ordinarily be applicable.’ ”
(emphasis supplied)

Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning.”

19. Ms. Tewatia submitted that the judgment in the case of ***Lalit Bhasin*** (supra) on which reliance was placed was not applicable since the same had

been rendered in the context of Gratuity Act. According to her, exemption of legal practitioners from the Shops Act/Gratuity Act/ Labour Welfare Act or any other Act would not enure for the purpose of the DMC Act, 1957 which is a taxing statute.

20. Ms. Tewatia submitted that petitioner's reliance on ***M.P. Electricity Board and Others*** (supra) was misplaced as the reference by a two Judge Bench had not been answered by a three Judge Bench on the short ground that an advocate carries on non-domestic activity and was thus liable to pay higher electricity tariff.

21. According to her, Bye-law 9 cannot be read down to imply a residential use, when apparently a lawyer's office is a non-domestic use as held by the Apex Court. She submitted that the plea to read down the provision cannot be resorted to as the said bye-law is absolutely clear and unambiguous.

22. Ms. Tewatia pointed out that validity of the Bye-law 9(b)(ii) of Bye-Laws, 2004 has not been challenged by the petitioner. In any event, she submitted that validity of said bye-law had been upheld by a Division Bench of this Court in the case of ***Vinod Krishna Kaul Vs. The Lt. Governor NCT of Delhi & Ors., 192 (2012) DLT 241 (DB)***.

SUBMISSIONS OF AMICUS CURIAE

23. Mr. B.B. Jain, Advocate who is an expert in house tax matters was appointed by this Court as an Amicus Curiae. He stated that all over the country, including Delhi, professionals such as lawyers, doctors, architects etc. had always been permitted to undertake their professional activities from their residential premises. He further stated that professional activity

by professionals at their residences had always been treated as not changing the character of the use of the premises. In fact, undertaking professional activity from residential premises had always been taken not to amount to commercial activity or violating any of the provisions of the DMC Act, 1957 or any other regulatory mechanism in that behalf.

24. Mr. Jain pointed out that Section 116A(1)(f) of DMC Act, 1957 stipulates that classification has to be done by the Valuation Committee as per use-wise category of any building including residential building, business building, mercantile building, building for recreation and sports purposes, industrial building, hazardous building and public purpose building including educational, medical and such other institutional building and farmhouse, as may be specified by the respondent-Corporation.

25. According to Mr. Jain, Section 123A(1)(e) and (f) of the DMC Act, 1957 provided for filing of returns in accordance with the use mentioned in Clause (f) of Section 116A(1). He contended that nowhere in the DMC Act, 1957 any category had been framed for professional use of advocates, chartered accountants, doctors and other professionals. He, however, stated that while framing the Bye-Laws, 2004, the said Bye-laws 9(b)(i) & (ii) had defined a 'business building' to include professional establishment and office buildings solely or principally used as office. Mr. Jain submitted that without the DMC Act, 1957 directing the Valuation Committee under Section 116A to recommend the classification for professional establishments, the same could not have been included in the Bye-laws 2004.

26. According to him, the Bye-law 9(1) has to be either struck down or read down insofar as the profession of an advocate, solicitor, doctor and

chartered accountant is concerned being beyond the scope of the DMC Act, 1957. In support of his submissions, Mr. Jain also relied upon judgments of the Bombay High Court in *Sakharam Narayan Kherdekar* (supra), *V. Sasidharan* (supra) and *Lalit Bhasin* (supra).

27. Mr. Jain lastly submitted that as a lawyer's office was not an establishment, the word 'professional establishment' in Bye-law 9(1)(b) was ultra virus the DMC Act, 1957.

PETITIONER'S REJOINDER

28. In rejoinder, learned counsel for petitioner submitted that expressions in a definition have to be construed in context of the words which precede it. In support of his submission, he relied upon the judgment of *Queens Bench Division* in *Commissioners of Customs and Excise v. Savoy Hotel, Ltd.*, [1966] 2 All E.R. 299 wherein it was held that freshly squeezed orange juice was not a manufactured beverage and the description 'including fruit juices' was to be construed in context of the words which preceded it.

COURT'S REASONING

THERE IS NO POWER TO TAX BY IMPLICATION OR BY INFERENCE

29. Having heard learned counsel for the parties, this Court is of the view that there is nothing like an implied power to tax. The source of power which does not specifically speak of taxation cannot be so interpreted by expanding its width so as to include therein the power to tax by implication or by necessary inference. The Supreme Court in *State of W.B. vs. Kesoram Industries* (supra) has quoted with approval Cooley in Taxation (Vol. 1, 4th Edn. para 122 at p. 278) wherein it is stated, "*there is no such thing as*

taxation by implication. The burden is always upon the taxing authority to point to the act of assembly which authorizes the imposition of the tax claimed.”

30. Consequently, one will have to examine whether the law permits a part of the residential building being used as a lawyer’s office within the parameters of the MPD 2021 to be assessed separately as a business building.

MASTER PLAN PERMITS CERTAIN PROFESSIONAL ACTIVITIES IN RESIDENTIAL PREMISES

31. Clause 15.8 of the MPD 2021, permits professional activities from residences upon certain conditions. Clause 15.8 of the MPD 2021 is reproduced hereinbelow:-

“15.8 PROFESSIONAL ACTIVITY

Subject to the general terms and conditions specified in para 15.4, professional activity is permissible in plotted development and group housing under the following specific conditions:

- i. Professional activities shall mean those activities involving services based on professional skills namely Doctor, Lawyer, Architect, and Chartered Accountant, Company secretary, Cost and Works Accountant, Engineer, Town Planner, Media professionals and Documentary Film maker [and Management Professionals.*]*
- ii. In group housing, and plotted development with multiple dwelling units, professional activity shall be permitted on any floor subject to maximum of 50% of the permissible or sanctioned FAR, whichever is less, of each dwelling unit.*
- iii. In the case of plotted development with single dwelling unit, professional activity shall be permissible on any one floor only, but restricted to less than 50% of the permissible or*

sanctioned FAR whichever is less on that plot.

- iv. *[Professional activity in basements is permissible in plotted development, subject to relevant provisions of Building Bye-Laws, structural safety norms and fire safety clearance. In case, the use of basement for professional activity leads to exceeding the permissible FAR on the plot, such FAR in excess shall be used subject to payment of appropriate charges prescribed with the approval of Government.]*

*[*Management professional shall be the one holding MBA degree / diploma from AICTE/ UGC / Centrally recognized institutions or institutes of national importance and having membership of Delhi Management Association.]*

IF PROFESSIONAL ACTIVITY IS CARRIED ON WITHIN THE PARAMETERS SPECIFIED IN THE MASTER PLAN, THEN THE USER OF THE PREMISES REMAINS RESIDENTIAL

32. In ***Union of India vs. Harish Uppal & Ors., LPA No.840/2010, decided on 20th January, 2011***, it was held by a Division Bench of this Court that there was no misuse when a professional has an office in his residence within the parameters provided in Clause 15.8 of the MPD 2021. It was also held that Clause 15.8 of the MPD 2021 is applicable to Lutyens Bungalow Zone.

33. A Coordinate Bench of this Court in ***Association of Property Consultants vs. Delhi Development Authority, (2004) 113 DLT 161***, after referring to the Master Plan has held that if a property dealer, property broker or real estate agent use a flat to the extent permissible for purely professional activity, then he cannot be held to be carrying on any commercial activity. The relevant portion of the ***Association of Property Consultants*** (supra) is reproduced hereinbelow:-

“12. Thus, property consultants would also be entitled to the benefit of using 25% of the covered area or 50 sq. metres, whichever is less, of their residential flats for their professional activity as property consultants provided such flats are in the occupation of such property consultants. It goes without showing that the property consultant to whom the residential flat has been allotted must not only be in occupation of the same but must also only use the flat to the extent permissible for purely professional activity i.e., the providing consultancy to their clients in property matters. They cannot carry on any commercial activity. It is clear that activity of a “property consultant”, ipso facto, is not a commercial activity.....”

(emphasis supplied)

34. In the opinion of this Court, the intent of the MPD 2021 is to permit certain categories of ‘professional activities’ in residential premises subject to certain conditions and within certain parameters.

35. Consequently, this Court is of the view that if professional activity is carried out by professionals mentioned in the said Clause within the parameters laid down in it, then the user of the premises, according to MPD 2021, remains residential.

MASTER PLAN HAS THE FORCE OF LAW

36. It is pertinent to mention that the Master Plan has legal sanctity and binding effect in law. Statutory authorities are bound to strictly adhere to the Master Plan on pain of their action being invalidated. In ***R.K. Mittal & Ors. vs. State of Uttar Pradesh & Ors., (2012) 2 SCC 232***, the Supreme Court has held as under:-

“68. The Master Plan and the zonal plan specify the user as residential and therefore these plots cannot be used for any other purpose. The plans have a binding effect in law. If the

scheme/master plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities.

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72. From the above dictum of this Court, it is clear that environmental impact, convenience of the residents and ecological impact are relevant considerations for the courts while deciding such an issue. The law imposes an obligation upon the Development Authority to strictly adhere to the plan, regulations and the provisions of the Act. Thus, it cannot ignore its fundamental duty by doing acts impermissible in law. There is not even an iota of reason stated in the affidavits filed on behalf of the Development Authority as to why the public notice had been issued without amending the relevant provisions that too without following the procedure prescribed under the law.

73. The concept of public accountability and performance of public duties in accordance with law and for the larger public good are applicable to the statutory bodies as well as to the authorities functioning therein. We find no justification, whatsoever, for the respondents to act arbitrarily in treating equals who are similarly placed as unequals. There is also no justification for the Development Authority to issue a public notice in the fashion in which it has done. A few officers of the Development Authority cannot collectively act in violation of the law and frustrate the very object and purpose of the Master Plan in force, the Regulations and provisions of the Act.”

37. Even a Full Bench of this Court in ***Manushi Sangathan vs. Government of Delhi & Ors., 168 (2010) DLT 168*** after referring to two judgments of Supreme Court in ***M.C. Mehta*** of the year 1996 and 2006 has held that the Master Plans of Delhi have the force of law.

INTENT OF SECTION 116A(1) of DMC ACT, 1957 IS NOT TO TAX PROFESSIONAL ACTIVITIES

38. A perusal of Section 116A(1) of DMC Act, 1957 shows that the intent of the Legislature was not to tax professional activities. Amongst the use-wise activities of buildings, professional building has not been mentioned. The relevant portion of Section 116A(1)(f) of DMC Act, 1957 pertaining to use-wise activities is reproduced hereinbelow:-

“116A. Classification of vacant lands and buildings into colonies and groups and specification of base unit area values therefor.- (1) The Municipal Valuation Committee shall recommend the classification of the vacant lands and buildings in any ward of Delhi, referred to in section 5, into colonies and groups of lands and buildings after taking into account the following parameters:-.....

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(f) use-wise category of any building including residential building, business building, mercantile building, building for recreation and sports purposes, industrial building, hazardous building and public purpose building including educational, medical and such other institutional building and farmhouse, as may be specified by [a Corporation];

BYE-LAW 9(b)(i) REFERS ONLY TO ‘PROFESSIONAL ESTABLISHMENT’. BUT DOES NOT DEFINE THE EXPRESSIONS ‘PROFESSIONAL’ OR ‘ESTABLISHMENT’

39. Since all the three counsel laid considerable emphasis on Bye-law 9(b), the same is reproduced hereinbelow:-

“9. Definitions of use-wise categories of buildings.- For the purposes of clause (f) of sub-section (1) of section 116 A, the use-wise -

(a) *“residential building” shall mean any building used for dwelling purposes by a family / families / individual but excludes any premises for commercial use including lodging, guest house, hotel or similar purposes:*

(b) *“business building” shall mean any building or part thereof used for transaction of business or for keeping of accounts and records or for similar other purposes, and such buildings, shall include -*

(i) offices (other than offices of Central Government, State Government and local bodies), banks, professional establishments, court houses, and libraries for the principal function of transaction of public business and keeping of books and records;

(ii) office building (premises) solely or principally used as office or for office purpose; and.....”

40. A perusal of the DMC Act, 1957 and Bye-Laws 2004 reveals that they do not define the expression ‘professional establishment’. The DMC Act, 1957 and Bye-Laws 2004 do not even define the words ‘professional’ or ‘establishment’ separately.

EXPRESSION ‘ESTABLISHMENT’ REFERS ONLY TO THOSE BUILDINGS WHICH HAVE A SEPARATE IDENTIFIABLE EXISTENCE AND PARTAKE ESSENTIAL CHARACTERISTIC OF A BUSINESS BUILDING

41. The word ‘establishment’ in Webster’s International Dictionary is stated to mean, *“The place where one is permanently fixed for residence, or business; residence, including grounds, furniture, equipage, retinue, etc., with which one is fitted out also, an institution or place of business, with its fixtures and organized staff; as large establishment, a manufacturing establishment.”*

42. Recently, the Supreme Court in *The Bangalore Turf Club Ltd. vs. Regional Director, Employees State Insurance Corporation, (2014) 9 SCC 657* while holding that a ‘race-club’ is an ‘establishment’ for the purposes of ESI Act referred to Words and Phrases as well as Corpus Juris Secundum and Dictionary meaning of the word ‘Establishment’. The relevant portion of the said judgment is reproduced hereinbelow:-

“34.1. According to Black's Law Dictionary, 7th Edn. (1999), the term “establishment” means, inter alia:

“establishment.— n. ... (2) An institution or place of business.”

34.2. According to Words and Phrases, Permanent Edn., Vol. 15, the term “establishment” has been held to mean, inter alia, the following:

“An establishment means a permanent commercial organisation or a manufacturing establishment. Spielman v. Industrial Commission [295 NW 1 : 236 Wis 240 (1940)] , NW p. 4.”

“An establishment is the place where one is permanently fixed for residence or business such as an office or place of business with its fixtures. Lorenzetti v. American Trust Co. [45 F Supp 128 (ND Cal 1942)] , F Supp p. 139.”

34.3. According to Corpus Juris Secundum, Vol. LXXX, the term “establishment” has been explained as follows:

“Establishment.— ... More specifically, a fixed place where business is conducted, or a place where the public is invited to come and have its work done; an institution or place of business with its fixtures and organised staff; any office or place of business, with its fixtures, the place in which one is permanently fixed for residence or business; a permanent commercial organisation, as a manufacturing establishment; the place of business or residence with grounds, fixtures, equipage, etc., with which one is fitted out; also that which serves for the carrying on of a business....”

35. Therefore, it can be simply stated that an “establishment” is a term which can have a wide meaning. It would be any place where business is conducted, or in other words, it would be any place of business.....”

43. Consequently, the expression ‘establishment’ refers to those buildings which have a separate identifiable existence and where business is conducted.

A PROFESSIONAL CARRIES ON NO BUSINESS

44. It is settled proposition of law that a professional activity is an activity carried on by an individual by his personal skill and intelligence and there is a fundamental distinction between a professional activity and an activity of a commercial or business character.

45. In ***Sakharam Narayan Kherdekar*** (supra), a Division Bench of the Bombay High Court distinguished legal profession from a business. The relevant portion of said judgment is reproduced hereinbelow:-

“31. The primary characteristics which distinguish the legal profession from business are: (1) a duty of public service in which one may attain the highest eminence without making much money, (2) a relation as an "officer of Court" to administration of justice involving thorough sincerity, integrity and reliability, (3) a relation to clients in the highest degree fiduciary, and (4) a relation to colleagues at the bar characterised by candour, fairness and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with their clients.

(emphasis supplied)

46. Another Division Bench of the Bombay High Court in ***Narendra Keshrichand Fuladi vs. State of Maharashtra, (1985) ILLJ 24 Bom.***, not only distinguished the profession from a trade or industry, but also held that the inclusion of a legal practitioner in the definition of commercial establishment under the Bombay Shops and Establishments Act, 1948 was violative of Article 14 of the Constitution on the ground of unreasonableness. The Division Bench further held that herding together of the establishment of a legal practitioner with a commercial establishment was irrational and arbitrary.

47. Recently on July 10, 2014, a Division Bench of Bombay High Court in ***Dr. Kavita Pravin Tilwani vs. The State of Maharashtra & Ors., Writ Petition No.3989 of 2013***, following the earlier judgments, held that a medical practitioner did not fall within the definition of ‘commercial establishment’ under Section 2(4) of the Bombay Shops and Establishments Act, 1948.

48. In ***Lalit Bhasin*** (supra), a coordinate bench of this Court held that the correct test of finding whether a professional activity falls within the definition of a commercial establishment is whether the activity is systematically and habitually undertaken for production or distribution of goods or for rendering material service to the community with the help of employees in the manner of a trade or business in such an undertaking. Referring to Bombay High Court judgments, the coordinate bench held that unless the profession carried on by a person also partakes of the character of a commercial nature, he cannot fall within the ambit of the Bombay Shops Act. It also held that only when the professional activity is carried on in such a manner that the condition of the co-operation between the employer and

the employee is necessary for its success and its object is to render material service to the community, can it fall within the definition of a commercial establishment.

49. The Allahabad High Court in *Satya Prakash Singh and Anr. vs. State of U.P. & Ors. Writ Petition No.16843/2011 dated 29th May, 2012* also set aside the assessment of the ground floor portion as commercial despite the fact that a Doctor was running a clinic therein. The Allahabad High Court held that the work of a Doctor, Chartered Accountant or a Lawyer or any Consultant, is a profession which is distinct from any trade or business. The Allahabad High Court further held that running a clinic/dispensary/laboratory from a residential area would not be covered by the expression 'commercial establishment' or a 'shop' within the meaning of Sub-section (4) and 16 of Section 2 of the Adhiniyam and its market value was not determinable as a commercial building as provided under Rule 2(d) of the Rules.

ALSO, THERE IS A DISTINCTION BETWEEN A 'PROFESSIONAL ESTABLISHMENT' AND A 'PROFESSIONAL ACTIVITY'

50. Bye-law 9(b) in the context of professionals only refers to 'professional establishment'. It does not refer to the expression 'professional activity' which has been defined and permitted by the MPD 2021 in a residential premise. In the opinion of this Court, there is a fundamental distinction between a professional establishment and a professional activity and therefore, MPD 2021 and Bye-law 9(b) advisedly use different expressions.

51. In fact, in *K. Kanagasabai vs. The Superintending Engineer, W.P.(C) 21731/2003 dated 23rd December, 2010*, the Madras High Court made a distinction between the office of a lawyer in a residence and an office of a lawyer in a commercial place.

52. The distinction between ‘professional activity and ‘professional establishment’ can be illustrated by the following example. A ‘professional’s office’ would be a ‘professional establishment’ when the usage of the office space is in excess of the conditions stipulated in Clause 15.8 of the MPD 2021 or if the said office is situated in a building designated as commercial or business in the MPD 2021 and Zonal Plan. In the opinion of this Court, a premise would not become business premise just because a lawyer read his office file or did some official work at his residence.

53. ‘Professional activity’ as defined and permitted by the MPD 2021 has not been diluted or subject to tax by Bye-law 9(b). After all, the intent the authorities could not have been to take back the concession given by the MPD 2021 in Clause 15.8 in the form of permissible activity by levying property tax!

IF THE DEFINITION USES VARIOUS WORDS SOME OF WHICH ARE GENERAL, THEN THE MEANING OF A GENERAL WORD CAN BE RESTRICTED TO A SENSE ANALOGOUS TO A LESS GENERAL BY APPLYING THE RULE OF NOSCITUR A SOCIIS

54. It is settled law that vagueness of a definition may sometimes defeat the very purpose for which the statute is enacted. After all the principle of interpretation of a provision of a statute is that where words of very wide amplitude are used in a definition, caution has to be exercised to see whether

even within the definition itself there is an indication which limits the amplitude or wide range which would otherwise be given to the bare words.

55. In similar circumstances, in ***Lalit Bhasin*** (supra), a Coordinate Bench of this Court has held that in construing the language of the definition of ‘commercial establishment’ the rule of *noscitur a sociis* has to be adopted. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.

56. The Supreme Court in ***Dr. Devendra M. Surti Vs. The State of Gujarat, AIR 1969 SC 63*** has held as under:-

“6.in our opinion, in the matter of construing the language of Section 2(4) of the Act we must adopt the principle of noscitur a sociis. This rule means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. The words take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. “Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem Generis” (Words and Phrases Vol. XIV, p. 207).....In the present case, certain essential features or attributes are invariably associated with the words “business and trade” as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition of Section 2(4) of the Act, though their normal import may be much wider. We are therefore of opinion that the professional establishment of a doctor cannot come within the definition of

Section 2(4) of the Act unless the activity carried on was also commercial in character..... In our opinion, the correct test of finding whether a professional activity falls within Section 2(4) of the Act is whether the activity is systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community or any part of the community with the help of employees in the manner of a trade or business in such an undertaking. It is also necessary in this connection to construe the word “profession” under Section 2(4) of the Act.....

7. It is therefore clear that a professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction therefore between a professional activity and an activity of a commercial character and unless the profession carried on by the appellant also partakes of the character of a commercial nature, the appellant cannot fall within the ambit of Section 2(4) of the Act.....

.....To put it differently, the manner in which the activity in question is organised or arranged, the condition of the cooperation between the employer and the employees being necessary for its success and its object being to render material service to the community can be regarded as some of the features which render the carrying on of a professional activity to fall within the ambit of Section 2(4) of the Act. Tested in the light of these principles, we hold that the case of the appellant does not fall within the purview of the Act and the conviction of the appellant of the offence under Section 52(c) of the Act read with Section 62 of the Act and Rule 23(1) of the Rules is illegal.”

57. Consequently, the expression ‘professional establishment’ refers only to those buildings where business and not professional activity is transacted.

IN ANY EVENT, BY A DEEMED FICTION IN A BYE-LAW, THE EXECUTIVE CANNOT ACT CONTRARY TO A STATUTE.

58. Moreover, by a deeming fiction in a subordinate legislation (i.e. a bye-law), the Executive cannot act contrary to the parent statute or to another statute namely, the Master Plan in the sense that an excluded activity cannot be included.

59. *Francis Bennion* in its book ***Bennion on Statutory Interpretation, Sixth Edition*** while referring to the legal status and concept of bye-laws has stated that the term ‘bye-law’ is mainly used for delegated legislation made by local authorities, public utilities and similar bodies, whether public or private.

60. It is settled law that a bye-law is void if it is unreasonable. Lord Diplock in ***Mixnam’s Properties Ltd. v. Chertsey UDC [1964] 1 QB 214***, held, “*the kind of unreasonableness which invalidates a bye-law is not the antonym of “reasonableness” in the sense in which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: “Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires”*”. Consequently, the concept of unreasonableness qua a bye-law is equivalent to the irrationality or Wednesbury principle applied in judicial review.

61. Until the decision in ***Percy v. Hall, [1996] 4 All ER 523*** the doctrine also prevailed that, anomalously, a byelaw that was not certain in meaning was void for uncertainty. The same rule was applied to executive instruments made under statutory authority. However, in ***Percy v. Hall*** (supra) the Court of Appeal held that the rule should be applied that was laid down by Lord Denning in a 1961 case :

“I can well understand that a bye-law will be held void for uncertainty if it can be given no meaning or no sensible or ascertainable meaning. But, if the uncertainty stems only from the fact that the words of the bye-law are ambiguous, it is well settled that it must, if possible, be given such a meaning as to make it reasonable and valid, rather than unreasonable and invalid..... I am of the opinion that a planning condition is only void for uncertainty if it can be given no meaning or no sensible or ascertainable meaning, and not merely because it is ambiguous or leads to absurd results. It is the daily task of the courts to resolve ambiguous of language and to choose between them; and to construe words so as to avoid absurdities or put up with them.”

62. Consequently, a building where no business is transacted cannot be included by a deemed fiction in a bye-law especially when professional activity within certain parameters is permitted by MPD 2021.

BYE-LAW 9(b)(ii) HAS NO APPLICATION TO THE PRESENT CASE

63. Bye-law 9(b)(ii) refers to office building solely or principally used as an office. Since this Court is of the view that if professional activity is carried on within the parameters specified in the MPD 2021 then the user remains residential, Bye-law 9(b)(ii) has no application to the present case.

SINCE THE PETITIONER’S PROPERTY IS A SINGLE UNIT WITH NO SEPARATE OWNER AND NO SEPARATE ACCESS, THE WHOLE OF THE BUILDING HAS TO BE ASSESSED AS ONE USER AT A SINGLE RATE BY VIRTUE OF SECTION 115A OF DMC ACT, 1957

64. It is also pertinent to mention that under Section 115A every building has to be assessed as a single unit and since the petitioner’s property, i.e., E-403 is a single unit with no separate owner and no separate access, the whole

of the building has to be assessed as one user at a single rate. Section 115 A of DMC Act, 1957 is reproduced hereinbelow:-

“115A. Unit of assessment-(1) Every building and every vacant land shall be assessed as a single unit :

Provided that where portions of any building or vacant land are separately owned so as to be entirely independent and capable of separate enjoyment, notwithstanding the fact that access to such separate portions is made through a common passage or a common stair-case, as the case may be, such separately owned portions may be assessed separately. ”

65. Consequently, as the building in the present instance is owned by a single entity, having no separate access, it has to be classified for property tax purposes for only one usage. Splitting of uses, as in the present case is contrary to Section 115A of DMC Act, 1957.

66. Before parting with the judgement, this Court would like to place on record its appreciation for the assistance rendered by all the counsel appearing in the case, specially Mr. B. B. Jain, learned Amicus Curiae who provided valuable insight and contextual meaning to the expressions used in different statutes and bye-laws.

CONCLUSION

67. For the aforesaid reasons, this Court is of the view that if MPD 2021, DMC Act, 1957 and Bye-Laws, 2004 are read harmoniously, it would be apparent that where a professional activity is carried out by a professional belonging to a category and within the parameters mentioned in Clause 15.8 of MPD 2021, then the user of premises remains predominantly residential and the said property cannot be assessed to property tax as a ‘business building’.

68. Consequently, present petition is allowed and the impugned Assessment Order under Section 123D of DMC Act, 1957 passed on 22nd November, 2013 and issued on 11th December, 2013 bearing no. TAX/A&C/SZ/2013/1139/10860 passed by Jt. Assessor & Collector, South Zone, R.K. Puram fixing value at Rs. 60,000/- w.e.f. 1st April, 2004 as well as the demand, if any computed on the said basis along with levy for Assessment Years 2004-05 to 2012-13 in respect of property bearing no. E-403, Greater Kailash-II, New Delhi-48 are quashed. The pending application also stands disposed of.

MANMOHAN, J

JANUARY 27, 2015

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