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

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W.P.(C) 2755/2016, C.M. No.11589/2016 & C.M. No.35855/2016

SOUTH DELHI MUNICIPAL CORPORATION ..... Petitioner

Through Ms.Puja Kalra, Standing Counsel for  
SDMC.

versus

ATUL KUMAR SAXENA

..... Respondent

Through Mr.A.Mukherjee, Advocate for R-1.  
Mr.P.C.Sharma and Ms.Vinnie  
Sharma, Advocates for  
R-2/Monitoring Committee.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

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**16.03.2017**

Petitioner is the SDMC. It is aggrieved by the order dated 18.11.2015 passed by the Appellate Tribunal i.e. the ATMCD. By the impugned the subject matter of the present petition (property bearing No.F-5, Rear Side basement, Hauz Khas Enclave, New Delhi (hereinafter referred to as the demised premises) was directed to be de-sealed. Submission is that this order is illegal and arbitrary as such an order could not have been passed. In the grounds of appeal, it has been averred that the report of the Monitoring Committee (dated 20.5.2014) had not been considered. The Monitoring Committee had categorically stated that the deviations and encroachments on public land by the petitioner were non-compoundable deviations; they had to be removed in the first instance

before an order of de-sealing could be passed. No regularization floor-wise is permitted. The Tribunal had directed the petitioner for regularization of his office portion which was not permissible unless a joint application by all the stake-holders/floor owners of this property was made. The impugned order is liable to be set aside.

The stand of the respondent no.1 is evident from his affidavit. His submission is that the impugned order calls for no interference; the Tribunal had correctly noted that the respondent was running a professional activity; he is maintaining a lawyer's office in the basement as such, such an activity being distinct from a commercial activity and the order of de-sealing passed by the ATMCD cannot be faulted with.

This Court notes that the Monitoring Committee has not been arrayed as a party in these proceedings. However, the report of the Monitoring Committee is on record. This report has been perused. This report states that the Monitoring Committee had brought to the notice of the Tribunal that unauthorized construction has been carried out in the demised premises and before the de-sealing order, it had to be demolished. This aspect was not considered by the ATMCD.

Arguments have been heard. Record has been perused.

Record shows that the impugned order is premised largely on the submission and the counter submission of the parties as to whether a professional activity was being run in the premises or not. The case of the respondent all along being that it was a lawyer's office which was being run from the demised premises i.e. the basement of the aforementioned property. The ATMCD had correctly

drawn a distinction between a professional and a commercial activity. It was never brought to the notice of the ATMCD that any commercial activity was being run in the said premises there is no whisper made in the said proceedings before the ATMCD. The order of the ATMCD is silent on this aspect. In fact a specific query has been put to the learned counsel for the petitioner about the averments made in the status report which they had filed before the ATMCD; the same has also been perused. There is no mention in this status report that the respondent was running a commercial activity. Today before this Court certain pictures have been placed on record which include the down loaded pictures of a Company namely “AUM IMPEX Pvt.” Ltd. Contention of the petitioner before this Court is that this company is being run from the afore noted premises. At the cost of repetition neither such an averment was made before the ATMCD and nor is there any such averment in the petition filed before this Court. There is not even a whisper that any such company was being run in the demised premises. This argument was thus rightly not noted at any stage; the said submission having not been pressed the same could obviously not have been answered. This was neither pleaded and nor argued before the ATMCD; it was also never pleaded before this Court.

The impugned order had correctly noted the law on this aspect. In a judgment of the Supreme Court in Chairman, M.P. Electricity Board Vs. Shiv Narayan and Anr. reported as (2005) 7 SCC 283 it had been categorically held that the running of a lawyer's office is a professional activity; it is not a commercial activity.

The ATMCD had also noted the contentions of the status report filed by the Monitoring Committee. The Court had noted that building plan for this property had been sanctioned on 23.12.1988; the entire property comprised of a basement, ground, first and second floor. The Court had noted that the excess coverage on all the floors was within compoundable limits in terms of MPD-2021; the front set back was defective and there was a terrace in the third floor in the form of servant rooms. As per the de-sealing record, the complete misuse was removed during the temporary de-sealing period allowed by the Monitoring Committee. All this is contained in the status report filed by the Monitoring Committee.

The ATMCD had disposed of the appeal giving an opportunity to the respondent to apply for a regularization of his portion of the property which would be considered in isolation. Admittedly, the basement floor is in possession of the respondent and the same has been mutated in his name. There is also no dispute that the undertaking which was required to be furnished by the respondent has since been filed before the Corporation. He had complied with the directions of the ATMCD.

In this background, the impugned order calls for no interference. Petition is without any merit. It is dismissed.

**INDERMEET KAUR, J**

**MARCH 16, 2017**

**ndn**