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

+ **W.P.(C) 2014/2024**

RAMESH KUMAR GOEL

..... Petitioner

Through: Mr. Shiv Charan Garg, Mr. Piyush Gupta, Mr. Puneet Goel, Mr. Karan Aggarwal, Mr. Shivam Kapoor, Mr. Jai Saini and Ms. Isha Kapoor, Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ORS..... Respondents

Through: Mr. Arjun Mahajan, SC along with Ms. Neha Rai, Adv. for MCD.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

13.02.2024

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CM APPL.8446/2024 (Exemption in filing of original records) and 8454/2024 (Exemption from filing original/certified/true/typed copies of annexures)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2014/2024

1. The present petition assails a show cause notice dated 27.12.2022, issued under Section 345A of the DMC Act, 1957 which culminated in a sealing order dated 25.01.2023 in respect of the property bearing No.A-10 & 11, Shakarpur, Delhi-110092. The said order reads as under:

“
*MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE DEPUTY COMMISSIONER
419, UDYOGSADAN, F.I.E. PATPARGANJ INDUSTRIAL AREA
DELHI-110092*

No.D.C./SH/S/SO/2023/D-113

Dated: 25/01/23



Sealing Order Under Section 345A r/w Section 347 of DMC Act-1957 for Misuse of Premises.

Whereas, it has been brought to my notice that Sh./Smt/ M/s:Owner(s)/Occupier(s)/Ors. Of Property No:- A-10-11, GF, FF, SF, TF, Shakarpur, .Dellii-110092 has changed the use of the premises/portion of premises from residential to commercial/ industrial / other purpose which is not in conformity with the provision of the MPD 2021 and DMC Act 1957.

And whereas, accordingly, for the aforesaid violation on the part of Sh./Smt/M/sOwner(s)/Occupier(s)/Ors. Show Cause Notice bearing No. DC/Sh./ (South) Zone/2022/D-1149 dt. 27.12.22 under Section 345A r/w 347 of the DMC Act was issued and served upon the property by the way of speed post at the property in question, wherein you were directed to remove the misuse and also directed to pay the misuse / penalty within 48 hours as mandated as per MPD-2021, however compliance of show cause notice has not been made till date.

And now, therefore, I, Vandana Rao, Deputy Commissioner, Shahdara (South) Zone, Municipal Corporation of Delhi, in exercise of the powers vested in me Under Section 345A -/w 347; 491 of the DMC Act 1957 and the rules made there under, hereby order :

That the above said unauthorized change of use should be ceased and the premises be sealed forthwith.

That the premises shall be sealed with the prescribed seal of the Municipal Corporation of Delhi and the said seal shall remain in the personal custody of the concerned Junior Engineer (Bldg.) Shahdara (South) Zone till further orders.

That no person shall remove the aforesaid seal except under the orders of the undersigned or as permitted u/s 347 of the DMC Act.

I, hereby authorize Junior Engineer/Assistant Engineer, Shahdara (South) Zone to execute the above order in the manner prescribed under Sealing Rules 3 (2) (4) & (7) of Delhi Municipal Corporation (Sealing of Unauthorized Construction Rules 1986) and shall exercise the powers mentioned in the Rules and also to report immediate compliance to the undersigned.

Sd/-
Deputy Commissioner
Shahdara (South) Zone
Municipal Corporation of Delhi”

2. Pursuant to the said order, a vacation notice dated 09.02.2023 under Section 349 of the DMC Act, 1957 has also been issued to the petitioner.
3. Learned counsel for the petitioner contends that the aforesaid order



under Section 345A of the DMC Act, 1957 is wholly illegal inasmuch as the same is premised on the ground that unauthorized/commercial activities are being carried out at the ground floor, first floor, second floor and third floor of the premises in question, whereas in actual fact, the ground floor of the property in question has been sold many decades ago to a third party and the petitioner is not the owner/occupier of the same, except a portion of 350 sq. feet which is used by the children of the petitioner (who are stated to be practising Advocates) as their chamber. Further, the petitioner, who is a retired lecturer from Delhi University, is himself residing with his wife in the first floor of the premises and using the same for residential purposes.

4. Further, the second and third floors of the property are stated to have been let out to certain third parties. However, the said premises are being used by the tenants only for residential purposes. No food/restaurant services are being provided to the tenant/inhabitants of the second and third floors. Reliance is placed on the judgment of Coordinate Bench of this court in ***Mrs. Neeta Ghuman &Anr. vs. Delhi Development Authority*** in RSA No.397-98/2006, in terms of which, it is only when the tenants/non-residents are given the facility of a restaurant/ eating facilities, would the user change from residential user to commercial user. Particular attention is drawn to the following observation in the said judgment:

“11. In the judgment of Vikramiit Kapoor a Bench of this Court after examining the case law on mis-user charges being levied upon the properties which were being run as a guest house/boarding house, relying upon a judgment of this Court reported in 2003 III AD (Delhi) 634 Ashwani Kumar Khanna vs. PDA it had held that only when the non-residents were permitted user of restaurant and eating place would the user change from a residential to a commercial user. In the absence of food being served in the boarding house and there being no restaurant the user remains residential. In this judgment it was further



held that even if there was a requirement for seeking permission for running a guest house, running of the same without such a permission would not convert the user from “residential” to “commercial”.”

5. Since the impugned order under Section 345A of the DMC Act, 1957 has been evidently passed without affording an opportunity of hearing to the petitioner despite the petitioner sending several representations (filed as Annexure-F to the present petition) seeking that the Ex. Engg., MCD should inspect the premises in question, it would be apposite to set aside the said order with a direction to the concerned Dy. Commissioner, Shahdara, (South) Zone, MCD to give an opportunity of hearing to the petitioner and pass a fresh order thereafter, in accordance with law. It is directed accordingly.
6. Let a hearing be scheduled by the concerned Deputy Commissioner within a period of two weeks from today and a reasoned order be passed within a period of four weeks thereafter. The petitioner shall also be afforded an opportunity to file supplementary submissions, as may be warranted.
7. It is directed that in the meantime, till the aforesaid exercise is completed, no coercive/precipitative steps shall be taken by the respondent/MCD and the three rooms at the second floor that are stated to have been sealed, shall be de-sealed.
8. With the aforesaid directions, the present writ petition stands disposed of.

SACHIN DATTA, J

FEBRUARY 13, 2024/cl



This is a digitally signed order.

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