



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

% *Judgment Reserved on: 30th January, 2026*
Judgment pronounced on: 23rd April, 2026

+ **W.P.(C) 5449/2016**

VISHAL KUMAR

.....Petitioner

Through: Mr. P.P. Malhotra, Senior Advocate
with Ms. Sonia Malhotra, Mr. Vishal
Gauri and Mr. Shubhendu Kaushik,
Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Ms. Puja S. Kalra, ASC for NDMC
with Mr. Virendra Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present writ petition has been filed seeking setting aside of the order dated 2nd May, 2016, passed by the Appellate Tribunal, MCD (hereinafter 'ATMCD') in Appeal No. 862/2014.
2. *Vide* the impugned order, the appeal filed by the petitioner against the order passed by the Chief Architect, NDMC has been dismissed and the petitioner has been directed to deposit a penalty of Rs.20,55,713/- along



with interest. Upon deposit of the said amount, the subject premises have been directed to be de-sealed.

3. Brief facts necessary for deciding the present writ petition are as under:

- 3.1. The petitioner is one of the co-owners of the property, being *flat No.35, 9th floor, Dakshineswar, 10 Hailey Road, New Delhi* (hereinafter 'subject premises').
- 3.2. On 1st April, 2009, the subject premises were given on lease to a joint stock company, Aviation Holding Company ("SUKHOI"), having its registered office in Moscow, Russia. The lease clearly provided that the premises will not be used for commercial purposes.
- 3.3. The duration of the lease was for a period of five (5) years with effect from 1st April, 2009 to 31st March, 2014 and the rent was Rs.1.90 lakhs per month with escalation of 6% every year.
- 3.4. The tenant, in terms of the permission granted by the Reserve Bank of India (RBI), was permitted to establish a liaison office in India, subject to the condition that it would not involve in any commercial trade or commercial activity.
- 3.5. The subject premises were sealed by the respondent/NDMC on 7th December, 2011, without any prior notice.
- 3.6. The petitioner, along with other co-owners, made various representations to the respondent/NDMC for the de-sealing of the subject premises, however, the respondent did not de-seal the subject premises.



- 3.7. On 14th December, 2011 and 23rd December, 2011, one of the co-owners of the subject premises made a request for the de-sealing of the subject premises, stating that the property was not being used and would not be used for commercial purposes in the future. An affidavit was also given along with the said request letter.
- 3.8. From 3rd April, 2012 to 9th April, 2012, the subject premises were temporarily de-sealed and the tenant of the petitioner vacated the premises and removed all its belongings. The premises were again sealed on 9th April, 2012.
- 3.9. On 18th September, 2012 and 7th February, 2012, the petitioner once again requested the respondent/NDMC to de-seal the subject premises, stating that the tenant had already vacated the subject premises and had handed over the possession of the same to the petitioner.
- 3.10. Since the respondent did not de-seal the subject premises, the petitioner filed a writ petition, being W.P.(C) 3860/2014, before this Court. The said writ petition was disposed of on 4th June, 2014, directing that the petition be treated as a representation to the NDMC and directing NDMC to take a decision on the representation.
- 3.11. Pursuant to the aforesaid direction, a speaking order was passed by the Chief Architect, NDMC, on 30th June, 2014, after granting a personal hearing to the petitioner, directing the petitioner to deposit a penalty of Rs.20,55,713/- on account of misuse of the subject premises and thereupon file an application seeking permanent de-sealing of the premises.



- 3.12. The petitioner filed an appeal before the ATMCD, challenging the order passed by the Chief Architect, which was dismissed by the impugned order dated 2nd May, 2016.
4. Aggrieved by the aforesaid order passed by ATMCD, the petitioner has filed the present petition.
5. The present petition came up for hearing before this Court on 2nd June, 2016, on which date, it was directed that upon the petitioner depositing in Court a Fixed Deposit Receipt (FDR) in the name of the Registrar General of this Court for a sum of Rs.20,55,713/-, the NDMC shall de-seal the subject premises.
6. On 20th February, 2017, the aforesaid sum was deposited by the petitioner and accordingly, the premises were de-sealed.
7. The speaking order passed by the Chief Architect, NDMC, recorded that during the inspection on 3rd April, 2012, made by NDMC for temporary de-sealing of the premises, photographs were taken that showed that the office was being run by the tenant in the subject premises. Neither in the representation made by the petitioner nor in the personal hearing, was any evidence produced to controvert the same. The speaking order also records that penalty has been calculated taking into account the area of the premises, which is 134.01 square meters and applying the relevant rate of Rs.1,534/- per square meter as prescribed in paragraph 15.9 (v) of the Master Plan, Delhi, 2021 (hereinafter 'MPD 2021').
8. The petitioner challenged the aforesaid order before the ATMCD. The ATMCD noted that the subject premises were being used for the purposes of an office. In terms of the permission granted by RBI dated 8th November,



2008, the tenant was granted permission to establish a liaison office in India, subject to approval from other statutory authority under any other law. However, in the present case, no approval was taken either by the owner or the tenant from NDMC for running of the liaison office. On the aspect of the penalty being levied on the tenant since the misuse was done by the tenant, ATMCD held that misuse charges are levied on the premises and not against the user, hence the owner would be liable to pay the penalty.

9. With regard to the contention of the petitioner that the penalty could not be levied on the basis of running of a shop as against an office, the ATMCD observed that shops and offices have been kept in the same category under 15.6 and 15.6.1 and, therefore, 'the office has to be treated at par with the shop' insofar as levy of penalty is concerned. In these circumstances, the following directions were passed by the ATMCD:

"16. In these circumstances, I do not find any error in the impugned order, whereby the authority has order for payment of Rs.20,55,713/- as per 15.9(5) of MPD-2021. In view of above said discussion, I direct the appellants to deposit the penalty of Rs.20,55,713/- alongwith interest, if any, and other charges for the misuse of the same. Further, the property in question be desealed within 15 days after depositing the abovesaid amount and furnishing an affidavit before this Tribunal with one copy to the concerned Chief Architect or any concerned officer of the respondent that he will use the subject premises for those activities only which are permissible under the Master Plan and shall not raise any unauthorized construction in the same. The violation of any such undertaking giving full liberty to the respondent to reseal the property without any further notices to the appellants. Further, the respondent shall be at liberty to take action as per law, if there is any unauthorized construction in the premises in question."

10. Mr. P.P. Malhotra, senior counsel appearing on behalf of the petitioner, assails the impugned order and submits as under:



- 8.1. The respondent/NDMC did not have any power to seal the premises on 7th December, 2011, as the power of sealing vested with the Monitoring Committee appointed by the Supreme Court *vide* order dated 24th March, 2006, in *M.C. Mehta v. Union of India*¹.
- 8.2. There was no misuse of the subject premises as the same was being used by the tenant for running a liaison office. The petitioner's tenant had received approval from RBI for running a liaison office. In terms of the RBI guidelines, a liaison office is not permitted to carry out any commercial activities. There was no public dealing or customer service conducted from the subject premises.
- 8.3. Despite repeated requests/representations made by the petitioner to the respondent/NDMC, the subject premises were not de-sealed by the respondent/NDMC.
- 8.4. The subject premises were sealed without any prior notice to the petitioner.
- 8.5. The penalty has been wrongly imposed at the rate of Rs.1,534/- per square meter, which is the prescribed rate for retail shops. The activity carried out by the tenant was not in the nature of a retail shop. Therefore, the penalty, at best, could be for a maximum of Rs.384/- per square meter, which is the applicable rate for professional activities.
11. In the counter-affidavit filed on behalf of the respondent/NDMC, it is stated as under:

¹ 2006 (3) SCC 429



- 9.1. Upon receipt of complaint from the Director (Vigilance), NDMC, officials of the respondent/NDMC inspected various flats in the *Dakshineswar Building* on 3rd October, 2011 and found that the subject premises were being used as an office, which was not permissible as per MPD-2021. Accordingly, the subject premises were sealed on 7th December, 2011 and information regarding the sealing was forwarded to the Monitoring Committee appointed by the Supreme Court.
- 9.2. The subject premises were being used for commercial purposes, which was in violation of MPD-2021. Photographs have been filed to show that the subject premises were being used for an office. As regards the permission granted to the tenant to establish a liaison office in India, the permission was subject to the condition of further approval from the Regulatory Authority under any other law.
- 9.3. In terms of paragraph 15.9 (v) of MPD-2021, the subject premises could be de-sealed only upon deposit of penalty charges. Since the petitioner did not pay the aforesaid amount, the subject premises could not be de-sealed.
- 9.4. It is wrong to state that no notice was issued prior to the sealing. The respondent/NDMC had issued a public notice dated 29th May, 2007, in the newspapers for the removal of misuse. It was specifically mentioned in the public notice that, in case misuse is not stopped within 15 days, sealing of the premises would take place under Section 250 of the New Delhi Municipal Council Act, 1994.



9.5. The penalty has been calculated by the respondent/NDMC on the basis of the measurement of misuse and in terms of paragraph 15.9 of the MPD-2021. MPD-2021 has kept shops and offices in the same head under paragraphs 15.6 and 15.6.1.

12. I have heard the counsel for the parties and perused the record of the case.

13. It is an admitted position that the tenant of the petitioner was using the subject premises for running a liaison office. The photographs filed along with the counter-affidavit also establish that the subject premises were being used for the purposes of running an office. Even though it is contended on behalf of the petitioner that, in terms of RBI permission, no commercial activity could have been carried out by the tenant, the permission granted by RBI to the petitioner's tenant was for the purposes of running a "liaison office". Therefore, it cannot be denied that the tenant was running an office from the subject premises. The RBI permission did not grant an immunity in favour of the petitioner to run an office without obtaining the necessary approval from the civic body, *i.e.* NDMC, in the present case.

14. I do not find any merit in the submission of the petitioner that since the misuse was on the part of the tenant and not by the petitioner, the petitioner cannot be called upon to pay a penalty for misuse. ATMCD, in the impugned order, has correctly observed that the misuse charges are levied in respect of the subject premises. Since the tenant has failed to pay the misuse charges/penalty, the liability to pay the same would be that of the petitioner.

15. The respondent/NDMC has made a reference to the Monitoring Committee in respect of the sealing of the subject premises, which was duly



acknowledged by the Monitoring Committee on 16th December 2011. The respondent/NDMC has filed a copy of the same along with the counter-affidavit. Therefore, the contention of the petitioner that the property has wrongly been sealed by the NDMC without approval from the Monitoring Committee, is not correct.

16. As regards the petitioner's contention that the sealing action was undertaken without issuance of prior notice, the respondent/NDMC had circulated a public notice dated 29th May, 2007, in newspapers, whereby all occupiers/owners of premises were cautioned to discontinue misuse of residential properties. The said notice has been attached along with the counter-affidavit of the respondent/NDMC.

17. In terms of MPD-2021, the subject premises could not be used for commercial purposes. Running of an office would clearly qualify as commercial use. In this regard, reference may be made to the relevant provisions of MPD-2021:

“15.6 [RETAIL SHOPS AND OFFICES]

*15.6.1 (i) **Retail shops and Offices** shall be permitted on plots abutting streets notified for mixed use only on the ground floor upto the maximum permissible ground floor coverage.*

...

15.9 REGISTRATION OF MIXED USE PREMISES AND PAYMENT OF CHARGES

(v) [In addition to other penal action available under the relevant act, properties found to be under mixed use, without registration or in violation of the terms of this notification shall be liable to pay, to the local body, a penalty{as prescribed with the approval of Government.}]”

18. Clearly, the subject premises were not abutting on a street that was notified for mixed use. Hence, the petitioner was liable to pay the penalty at



the prescribed rates. The quantum of penalty has been prescribed under the DDA (Fixation of Charges for Mixed Use and Commercial Use of Premises) Regulations, 2006, for the NDMC areas in the following manner:

“5. Annual Mixed Use Charges.

- 5.1. The premises under mixed use shall be subject to levy of Annual Mixed Use charges for the period up to which the premises remain/likely to remain under mixed use. The annual mixed use charges for the financial year 2006-07 for different categories of colonies shall be as under:

(a) ...

(b) For NDMC areas: -

<i>S.No.</i>	<i>Type of mixed use</i>	<i>(Rates in Rs. Per Sqm. built up area)</i>
<i>1.</i>	<i>Retail Shops</i>	<i>1534</i>
<i>2.</i>	<i>Other Shops</i>	<i>766</i>
<i>3.</i>	<i>Professional Activities</i>	<i>384</i>

19. In terms of paragraphs 15.6 and 15.6.1 of the MPD-2021, ‘retail shops and offices’ have been put in the same category. Therefore, no fault can be found in the action of the respondent/NDMC in calculating the penalty at the rate of Rs.1,534/- per square meter as applicable to retail shops.

20. In light of the discussion above, I do not find any infirmity in the impugned order passed by ATMCD that requires interference by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India.

21. I do not find any merit in the present writ petition and the same is dismissed.



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22. The subject premises have already been de-sealed since the amount towards penalty has already been deposited by way of an FDR in the name of the Registrar General of this Court.

23. Accordingly, the Registry is directed to release the said amount along with the accrued interest in favour of the respondent/NDMC.

**AMIT BANSAL
(JUDGE)**

APRIL 23, 2026

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