



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

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Reserved on: 18th September, 2025

Pronounced on: 08th October, 2025

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CRL.M.C. 4881/2005, CRL.M.A. 9803/2005

B. K. SOOD

E-76, Anand Niketan,

New Delhi-110021

.....Petitioner

Through: Mr. A. S. Chandhiok, Sr. Advocate
with Mr. Tarranjit Singh Sawhney
and Ms. Jasmeet Kaur Ajimal,
Advocates with Petitioner in person.

versus

NORTH DELHI MUNICIPAL CORPORATION

Through

The Chief Architect, N.D.M.C.

Palika Kendra,

New Delhi

.....Respondent

Through: Mr. Abhinav Bajaj, ASC with Mr.
Saksham Ojha and Ms. Geetashi
Chandna, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure (CrPC) 1978 has been filed on behalf of the *Petitioner B. K. Sood* for quashing of Complaint No.487/2004 under Section 252 read with Section 369(1) of NDMC Act, 1994 and all consequential proceedings emanating therefrom.



2. Petitioner submits that he is a practicing Advocate of this Court and is in the possession and occupation of premises bearing No. 17-18, Lower Ground Floor (LGF), Golf Apartments, Sujan Singh Park, New Delhi. As per Summons received on 12.08.2005, the Petitioner is alleged to have committed an offence under Section 252 read with Section 369 of NDMC Act. Allegations of misuse of premises were premised on his carrying out *commercial activity by running a lawyer's office* without permission of Chairperson, NDMC.

3. It is submitted that the cognizance was taken by learned MM against the settled principles of law and Notice was issued erroneously to the Petitioner vide Order dated 09.02.2004.

4. The question which arises is whether the *legal services* rendered by the office of a lawyer would amount to '*commercial activity*'. It is asserted that there are certain characteristics which distinguish the business and commercial activity or even actionable Tort from *professional service*. While a *commercial activity* involves investment of capital, profit and loss and co-operation of labour; on the other hand, the professional service of rendering advice in law is dependent upon one's own academic qualification and individual skill. These peculiar and distinctive features of the legal profession do not permit its inclusion in commercial or semi-commercial activity, establishment, or institution.

5. The word '*commercial*' originates from word '*commerce*', which means exchange of goods, production, buying and selling or exchange of articles, but does not include profession like the one carried on by the Petitioner. A vocation or occupation requires special, usually advance education, knowledge and skill. The labour and skill involved in the legal



profession is predominantly, mental and intellectual. The Supreme Court has held that an Office of the Lawyer is not a commercial establishment.

6. Classifying the activities of the Petitioner, who is an Advocate, as commercial activity is not only arbitrary but irrational, but is also in violation of Article 14 of the Constitution of India.

7. The impugned Order is also challenged on the ground that it is in the format, reflecting that there was no application of mind to the facts of the case and no reasons have been disclosed for taking cognizance.

8. Further, from the provisions of NDMC Act, it is apparent that in order to improve its Revenue, commercial charges may be levied for electricity and house tax. The violation of Section 252 read with Section 369 of NDMC Act, does not deal with charge of house tax or electricity, for which there are distinct and separate provisions. Tariff for the electricity supplied to the office of a Lawyer, is already subject matter of various Writ Petitions including Writ No.899/1992, wherein the Interim Order was passed, which still hold good.

9. It is further submitted that Section 252 of NDMC Act, even if applicable, does not apply *to the use of premises not used for human habitation without the written permission of the Chair Person*. Admittedly, the Petitioner is not using the premises for *human habitation*. The facts of present case could never result in prosecution and that too, without Notice.

10. Section 252 NDMC Act does not get attracted to such professional activities. Even otherwise, lawyers store their books and files in the premises; therefore, on the showing of the Respondent NDMC itself, there is no change of user. The Building Bye-laws, 1983, containing various provisions including provision pertaining to use of basement, were



applicable to NDMC. Clause 14.12.1(vii) stipulates specifically that the Basement may be used for office or commercial purpose, provided it is air-conditioned.

11. Admittedly, the Petitioner's premises as air-conditioned. It is apparent from the Inspection Report which is the basis of the Complaint that it has been prepared at the Office of NDMC, without carrying any actual inspection or else it would have been able to see the air-conditioner installed therein.

12. It is therefore, submitted that the Complaint No.487/2004 under Section 252 read with Section 369(1) of NDMC Act, 1994 and all consequential proceedings emanating therefrom, be quashed.

13. The Respondent NDMC, **in its Counter Affidavit** has denied all the averments made in the Petition. It is submitted that the premises in question has a *basement*, which is sanctioned only for use as *storage/godown* and not for an office. After the inspection was carried out, a statutory Notice under Section 252 of NDMC Act was served upon the Petitioner, on 28.11.2003. However, the Petitioner failed to respond to the said statutory Notice and also did not stop misusing the property.

14. The Competent Authority with permission of the Chair Person, NDMC, thus, filed the present Complaint. It is claimed that *change of user of premises* without permission of Chairperson, NDMC is actionable under Section 252 of NDMC Act.

15. It is further submitted that the basement cannot be used as an Office, as it is only meant for storage and godown. The question is not whether the operating of the office by a lawyer is a commercial activity, but it is the change of the user of the basement from storage/godown to run the office. It



is therefore, submitted that the Petition is without merit and is liable to be dismissed.

Submissions heard and record perused.

16. Admittedly, inspection was carried out on the premises on 27.10.2003, and as per the Inspection Report, and the petitioner who is a lawyer by profession, was admittedly running his Professional office for providing professional services in law, from the basement of premises bearing No. 17-18, Lower Ground Floor (LGF), Golf Apartments, Sujana Singh Park, New Delhi. The first contention of the Petitioner is that running a professional office does not qualify as *commercial activity* amounting to human habitation, in violation of S.252 NDMC Act.

17. However, the averment against the Petitioner is that such use of basement for professional services, was in contravention of Section 252 NDMC Act. For better appreciation of this contention, Section 252 NDMC Act is reproduced as under:

“252. *No person shall, without the written permission of the chairperson, or otherwise than in conformity with the conditions, if any, of such permission-*

a) use or permit to be used for human habitation any part of a building not originally erected or authorized to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and the bye-laws made thereunder;

b) change or allow the change of the use of any land or building;



c) *convert or allow the conversion of one kind of tenement into another kind.”*

18. From the bare perusal of this Section, it emerges that there are certain restrictions on use of buildings, which states that no part of any building not originally erected or authorised to be used for *human habitation*, can be used for that purpose, without the permission of the Chairperson.

19. In the present case, it is a residential building, basement of which was being used as office of the lawyer by the Petitioner. The Building was for human habitation and there is no other use of this property but for human habitation.

20. The main aspect for consideration is whether the running of an office by the professional, tantamount to *commercial activity*. This aspect was considered by two Judge Bench of the Supreme Court in *M.P. Electricity Board and Others v. Narayan and Another* (2005) 7 SCC 283 , wherein it has been held as 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.”

21. Supreme Court in V. Sasidharan v. M/s. Peter and Karunakar and others AIR 1984 SC 1700 held that a firm of lawyers is not an ‘establishment’. Relevant portion of the said judgment is reproduced 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”.

22. It was further observed that *“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.”* The same view has been reiterated by the Division Bench of this Court in South Delhi Municipal Corporation vs. B N Magon, in LPA 564/2015 decided on 23.03.2023.



23. The Bombay High Court *in the case of Sakharam Kherdekar v. City of Nagpur Corporation and others* AIR 1964 200 and was succinctly stated that 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. It was *observed as under*:

“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.”*

24. Therefore, the first conclusion that emerges is that the activity of running an Office by the Lawyer is not a **commercial activity**.
25. The main contention of the Petitioner is that the Complaint alleges running of professional Office of the Petitioner in the basement, but it is neither in violation of MDP, 2001 or Building Bye-laws.
26. On the other hand, the Respondent has argued that the Basement was never intended *to be used for residence but only for storage*, while the



Petitioner was using it for *human habitation* as he was running his office from the basement.

27. To answer this contention, reference needs to be necessarily made to the Master Development Plan, 2001, (MDP, 2001). Before considering the MDP, 2001, it is pertinent to note that the notified Development Plan has a legal sanction and provisions contained therein are mandatory in nature. They are incapable of being altered or varied without following the due process prescribed in law.

28. The Apex Court in the case of NDMC & Ors. vs. Tanvi Trading and Credit Private Limited and Ors. (2008) 8 SCC 765, not only took the view that even the interim guidelines issued in relation to Luytens' Building Zone till finalization of the Master Plan for Delhi would have statutory force and be treated mandatory, but also that such guidelines, so far as consistent with the Master Plan, would continue to be binding even after coming into force of the Master Plan. In the case of R.K. Mittal & Ors vs. State Of U.P. & Ors, (2012) 2 SCC 232 the Apex Court held that the Master Plan has the force of law and statutory authorities have to strictly adhere to the same. The Coordinate Bench of this Court in the case of B.N. Magon vs. South Delhi Municipal Corporation 2015: DHC: 764 reiterated the binding nature of the MDP. The Coordinate Bench of this Court in Delhi Factory Owners' Federation vs. South Delhi Municipal Corporation & Ors., 2025:DHC:5295 has reiterated the same as established position of law.

29. *Clause 10* of MDP, 2001 deals with *Mixed Use Regulation- Non Residential Use of Residential Premises*. It provides that *the resident can be permitted to use part of his residence to the extent of 25% or 50 sq. meters,*



whichever is less, for a **non-residential or a non-nuisance activity**, which is for the purpose of rendering services based on his professional skills.

30. The premises in question are admittedly residential premises, wherein part of it, i.e. Basement was being used for professional activity, which is permitted under the MDP, 2001.

31. It would also be relevant to refer to *Delhi Building Bye-Laws, 1983* which was applicable at the relevant time. Clause 14.12 of Delhi Building Bye-Laws, 1983, deals with the use of part of buildings, which reads as under:

“14.12. BASEMENT:

14.12.1 The construction of the basement shall be allowed by the Authority in accordance with the land use and other provisions specified under the Master Plan.

14.12.1.1 Where the use, setbacks and coverage is not provided in the Master Plan provisions, the same shall be allowed to be constructed in the plot leaving mandatory set-backs and can be put to any of the following uses;

- i) storage of house hold or other goods for non flammable materials;*
- ii) dark room;*
- iii) Strong rooms, bank cellars etc.;*
- iv) air conditioning equipment and other machines used for services and utilities of the building;*
- v) parking places and garages;*
- vi) stack rooms of libraries; and*
- vii) office or commercial purpose provided it is air-conditioned.*

Note: - Uses of basement from 14.12.1.1 (i) to (vi) shall not be reckoned for the purposes of FAR whereas for uses in 14.12.1.1 (vii), the basement coverage shall be reckoned for the purpose of F.A.R.



14.12.1.2 The basement shall not be used for residential purposes.

14.12.2 The basement shall have the following requirements:

- i) every basement shall be in every part at least 2.4 m in height from the floor to the underside of the roof slab or ceiling;
- ii) Adequate ventilation shall be provided for the basement. The standard of ventilation shall be the same as required by the particular occupancy according to Bye-laws. Any deficiency may be met by providing adequate mechanical ventilation in the form of blowers, exhaust fans (one exhaust fan for 50 sq. m. of Basement area), Air-conditioning system etc.
- iii) the minimum height of the ceiling of any basement shall be 0.9 m and maximum of 1.2 m above the average surrounding ground level;
- iv) adequate arrangement shall be made such that surface drainage does not enter the basement;
- v) the walls and floors of the basement shall be water-tight and be so designed that the effect of the surrounding soil and moisture, if any, are taken into account in design and adequate damp proofing treatment is given;
- vi) the access to the basement shall be separate from the main and alternate stair-case providing access and exit from higher floors. Where the staircase is continuous the same shall be enclosed type serving as fire separation from the basement floor and higher floors. Open ramps shall be permitted if they are constructed within the building line subject to the provision of (iv);
- vii) In the case of basements for office and commercial occupancies sufficient number of exit ways and access ways shall be provided with a travel distance not more than 15 m.



viii) *The basement shall not be partitioned. In case the partitions in the basements are allowed by the Authority, no compartment shall be less than 500 sq. ft. in area and each compartment shall have ventilation standards as laid down in sub-clause (ii) separately and independently. The basement partitions shall however conform to the norms laid down by Chief Fire Officer, Delhi.*

ix) *Kitchen, bathroom and toilet shall not be permitted in the basement unless the sewer levels permit the same and there is no chance of back flow and flooding of sewerage. If permitted, this shall be placed against an external wall of the basement (which shall also be external wall of the building) and shall be adequately lighted and ventilated. The area of kitchen, bathroom and toilet so permitted in the basement shall be counted towards FAR calculations.*

x) *A kitchen when permitted in the basement shall be equipped with electric ovens, stoves, gas or similar equipments.”*

32. First and foremost, Clause 14.12.1 refers to the construction of the basement in accordance with the land use and other provisions specified under the Master Plan. There is no dispute that the Basement was constructed according to the Master plan. The question is in regard to its user. As already observed, MDP, 2001 recognizes the use of residential premises for office purpose to the extent of 25% of the area. There is nothing in the Inspection Report to indicate that the office was being run in an area which was more than the permissible limit.

33. *Secondly, Clause 14.12.1.1 (vii) provides that the basement can be used for office or commercial purpose, provided it is air-conditioned. There*



are certain other conditions about the height, etc. which have been detailed in Clause 14.12.2. *First and foremost*, it is evident that the basement can be used for Commercial / Office Purposes, which in the present case, was indeed being used as office of the lawyer. The other requirements were in regard to the height, roof, ventilation and the conditions of the wall and floor, etc.

34. The inspection of the premises was carried out on 27.10.2003, but in the entire Inspection Report, none of these aspects about height, extent of floor area or absence of Air-conditioner has been mentioned. There is nothing to show that the premises in dispute, which was being used as Lawyers office, did not meet any of the requirements stated therein.

35. It has to be necessarily concluded that there was *no misuse of the premises by the Petitioner*, who had been running his office in terms of MDP, 2001 read with Delhi Building Bye- Laws, 1983. The prosecution has not been able to even prima facie show that there was any violation of Clause 14.12 of the Delhi Building by Laws, 1983, as amended from time to time, *which provides for the usage for the basement as the office by a professional.*

36. The Apex Court in the case of *State of Haryana vs. Bhajan Lal*, AIR 1992 SC 604 has observed that the case which tantamount to abuse of the process of the Court or where it is in the interest of justice, the criminal case may be quashed. It may be noted that this was a Challan issued on the Complaint filed in the year 2003, which entails imprisonment up to six months or fine of Rs.5,000/- under S. 369(1) NDMC Act. Considering the nature of unsubstantiated allegations and that the case being pending for the last more than 22 years, it would be abuse of the process of the law and not



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serve *any interest of justice*, if such Complaint is permitted to continue and choke the judicial system.

37. The Petition is therefore, allowed and the Complaint No.487/2004 under Section 252 read with Section 369(1) of NDMC Act, 1994 and all consequential proceedings emanating therefrom, are quashed.

38. The pending Applications are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

OCTOBER 08, 2025/R