

(2018) 09 DEL CK 0196

In the Delhi High Court

Case No : Civil Writ Petition No.8572 Of 2018

Farhad Khan

APPELLANT

Vs

East Delhi Municipal Corporation

RESPONDENT

Date of Decision : 04-09-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 09 DEL CK 0196

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

SIDDHARTH MRIDUL, J

1. The present petition under Article 226 of the Constitution of India prays as follow:-

a) â??Pass a writ of mandamus or any other appropriate writ/order(s)/direction(s) against the respondent, thereby directing or ordering the

respondent to allow a period of 4 weeks to the petitioner to remove his material out of the premises so sealed by the respondent i.e. Khasra no. 12/16,

Main Sewadham Road, Near Pepsi Godown, Mandoli, Delhi-110094;

Any other relief may also be granted by the Honâ??ble Court in favour of the petitioner as well as against the respondentâ??

2. A perusal of the prayer clause extracted hereinabove clearly reveals that, without assailing the act of sealing carried out by the EDMC, in

accordance with law, the petitioner has limited himself to the relief of de-sealing of the subject property, in order to enable him to remove his goods

lying sealed therein.

3. Furthermore, the petitioner has also not assailed the sealing order passed by the EDMC, prior to the sealing of the subject premises for misuse

thereof, in the present proceedings.

4. In W.P. (C) 4677/1985, titled as *M.C. Mehta Vs. Union of India & Ors* vide its judgment and order dated 16.02.2006, a three Judge Bench

of Hon^{ble} Supreme Court clearly concluded that, the expression *to erect a building* in relation to provisions of Section 345(A) of the Delhi

Municipal Corporation Act, 1957 (hereinafter referred to as the *said Act*) means and includes the *conversion of user* therein.

5. A further reading of the provisions of Section 347(B) and in particular sub-section (m) thereof clearly provides that, an order directing sealing of

unauthorised constructions under Section 345(A), is an order against which an appeal may be preferred before the Appellate Tribunal.

6. In view of the foregoing discussion, this Court has no jurisdiction to grant the relief prayed for by the petitioner, in view of the effective remedy of

statutory appeal provided under the provisions of the said Act.

7. The petition is therefore dismissed, whilst reserving liberty to the petitioner to assail the act of commission on behalf of the EDMC, hereinbefore

elaborated, in accordance with law, before the Appellate Tribunal Municipal Corporation of Delhi (ATMCD).

8. A copy of this order be given dasti to learned counsel for the parties under the signatures of Court Master.