

IN THE COURT OF SH. PITAMBER DUTT :
ADDL. DISTRICT & SESSIONS JUDGE-CUM-PRESIDING OFFICER,
APPELLATE TRIBUNAL, M.C.D., DELHI.

APPEAL NO. 350/ATMCD/2024

Ms. Ayushi Gupta
Through her Attorney
Smt. Jyoti Gupta
W/o Sh. Manish Kumar
R/o H-1/180-181, Second Floor & Third Floor
Sector – 11, Rohini, Delhi – 110085. Appellant

Vs

Municipal Corporation of Delhi
(Through its Commissioner)
17th Floor, Civic Centre, Minto Road,
New Delhi – 110002 Respondent

Date of Filing of Appeal : 16.05.2024
Date of Order : 07.06.2024

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 02.05.2024, passed with respect to third floor of the property bearing no. H-1/180-181, Sector – 11, Rohini, Delhi – 110085. The brief facts necessitated in filing of the present appeal are given as under:-

2. The appellant has averred that initially her mother Smt. Jyoti Gupta had purchased the second floor and third floor with roof rights of property

bearing no. H-1/180-181, Sector – 11, Rohini, Delhi –110085, by virtue of two separate registered sale deeds in the year 2017 and thereafter her mother gifted the said property to her by virtue of two separate registered gift deeds in the year 2021.

3. The appellant has further averred that they have not raised any construction, addition, alteration, modification in the property in question at any point of time and same is existing as it is since 2002-03. She further averred that their predecessor in interest were paying the property tax return qua the second floor and third floor of the property since year 2005 and after purchasing the property in question, they continued to pay the same.
4. The appellant has further averred that her mother purchased the property on loan, wherein in the loan documents, it was recorded that building was a four storey building i.e. ground plus three floors and same is also apparent from the photographs of building annexed along with the loan documents. She has further averred that the respondent have booked the property in question for unauthorized construction in the shape of deviation / variation, excess coverage at ground floor, first floor and entire construction at second floor and third floor (old and occupied) with amalgamation and projection on Municipal Land, therefore, the third floor of the property being old constructed was also entitled for the

protection but same has not been granted by the Quasi Judicial Authority and the impugned demolition order dated 02.05.2024 has been passed qua the same. Feeling aggrieved from the impugned demolition order dated 02.05.2024, present appeal has been preferred.

5. Sh. Vikram Aggarwal, Ld. Counsel for the appellant has contended that the second floor and third floor of the property in question was purchased by Smt. Jyoti Gupta, mother of the appellant by virtue of two separate registered sale deeds in the year 2017 and thereafter mother of the appellant gifted the said property to the appellant by virtue of two separate gift deeds dated 09.11.2021. He further contended that the appellant has not constructed third floor in the property in question and same was in existence much prior to 07.02.2007 but the Quasi Judicial Authority has not granted any protection to the third floor of the property only. He further contended that the Quasi Judicial Authority has passed the impugned demolition order ignoring the documents placed by the appellant along with her reply to the show cause notice, therefore, same is not sustainable in law. He prayed that appeal may be allowed and impugned demolition order may be set aside.

6. Sh. Sanjeet Kumar, Ld. proxy counsel for Sh. Pritish Sabharwal, Ld. Counsel for the respondent has contended that the property in

question was booked for unauthorized construction in the shape of deviation / variation, excess coverage at ground floor, first floor and entire construction at second floor and third floor with amalgamation and projection on Municipal Land and show cause notice was given to all the owners / occupants of the property in question, who appeared and filed their separate replies along with documents and also attended personal hearing. He further contended that two different sanction building plans were obtained with respect to the property bearing no. H-1/180-181, Sector – 11, Rohini, Delhi, however, both these properties were constructed by way of amalgamation, therefore, entire construction was unauthorized. He further contended that the documents adduced on record by the occupants of the property in question, proves that the property from ground floor to second floor were in existence prior to 07.02.2007 but the third floor of the property was raised subsequently, therefore, the Quasi Judicial Authority has not granted any protection to the third floor of the property in question. He prayed that appeal may be dismissed.

7. I have heard Ld. counsel for the appellant, Ld. proxy counsel for the respondent and perused the appeal, impugned order as well as record. A perusal of the above shows that property bearing no. H-1/180-181, Sector – 11, Rohini, Delhi –110085 was booked for unauthorized construction in the shape of deviation / variation, excess coverage at

ground floor, first floor and entire construction at second floor and third floor with amalgamation and projection on Municipal Land and show cause notice was given to the owners / occupants of the property in question, who appeared and filed their separate replies along with documents and also attended personal hearing and thereafter the Quasi Judicial Authority has passed the demolition order dated 02.05.2024.

8. A perusal of the record shows that property bearing no. H-1/180-181, Sector – 11, Rohini, Delhi –110085 was booked for unauthorized construction in the shape of deviation / variation, excess coverage at ground floor, first floor and unauthorized construction at second floor and third floor with amalgamation and projection on Municipal Land. All the occupants of the property attended the hearing and also submitted their replies along with documents and thereafter the Quasi Judicial Authority passed a speaking order dated 02.05.2024 after dealing with all the contentions raised by the occupants of the property.

9. The appellant has claimed that third floor of the property was also entitled for the protection as same was constructed much before 07.02.2007.

10. The onus to establish the fact that third floor of the property in question was constructed prior to 07.02.2007 upon the appellant. To

establish the said fact, the appellant had relied upon two registered sale deeds, by virtue of which, mother of the appellant had purchased the second floor of the property in question as well as two gift deeds, vide which, she gifted the said property to the appellant.

11. A perusal of the sale deeds dated 30.05.2017 show that same were executed by Sh. Jatin Anand and Smt. Shashi Anand in favor of Smt. Jyoti Gupta, mother of the appellant. By virtue of these two sale deeds, Smt. Jyoti Gupta purchased the entire second floor with roof rights of property bearing no. 180-181 in Block & Pocket – H-1, Sector – 11, Rohini Delhi. There is no stipulation in the entire sale deeds that any construction was existing at the roof of second floor, when Smt. Jyoti Gupta had purchased second floor of the property in question.

12. Smt. Jyoti Gupta, gifted the property in question to the appellant vide two separate gift deeds dated 09.11.2021. A perusal of these gift deeds makes it crystal clear that Smt. Jyoti Gupta had purchased only the second floor of the property in question with roof rights vide registered sale deeds, executed in the year 2017 and after purchasing the same, she constructed the third floor with her own sources, expenses etc.

13. The gift deeds dated 09.11.2021 contain stipulation in this regard, which is reproduced as under:-

“AND WHEREAS the said Smt. Jyoti Gupta had constructed Third Floor on the said property with her own sources, expenses, costs, etc.”

14. The said stipulation made in gift deeds executed by Smt. Jyoti Gupta in favor of her daughter Ms. Ayushi Gupta, makes it absolutely clear that Smt. Jyoti Gupta, mother of the appellant had purchased only the second floor of the property with roof rights vide two separate sale deeds in the year 2017 and thereafter she constructed the third floor of the property in question and gifted the same to the appellant.

15. Ld. Counsel of the appellant has contended that mother of the appellant had applied for loan before purchasing the property in question. He further submits that the loan application is having a stipulation that the property was consisting of *‘ground floor plus three floors’* and photograph of the same is also there at page no. 120 of the appeal. On the strength of these documents, Ld. Counsel of appellant submits that the third floor of the property was already existing, before the mother of appellant purchased the property in question.

16. The said contention of Ld. Counsel of appellant is however not sustainable for the simple reason that the mother of appellant had

purchased the property in question vide two separate registered sale deeds, wherein there is a clear stipulation that Smt. Jyoti Gupta, purchased only the second floor of the property with roof rights. Similarly, Smt. Jyoti Gupta executed a gift deed in favor of her daughter, in which there is a clear stipulation that Smt. Jyoti Gupta, mother of appellant constructed the third floor after purchasing the property from her own sources, expenses, costs etc.

17. These stipulations made in the sale deeds and gift deeds, falsify the documents relied upon by the appellant.
18. The documents filed by the appellant herself make it clear that the third floor of the property was constructed much after 07.02.2007, therefore, same was not entitled for any protection.
19. The Quasi Judicial Authority has considered all the pleas, submissions and documents relied upon by the appellant and other occupants of the property in question and has passed a well reasoned order and I find no legal infirmity in the same.
20. In view of the above facts and circumstances, I am of the considered view that the Quasi Judicial Authority has passed the impugned demolition order dated 02.05.2024 in accordance with law and

I find no legal infirmity in the same. Accordingly, the appeal filed by the appellant is dismissed.

21. The record of the respondent be send back along with copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court
Today i.e. on 07.06.2024**

**(PITAMBER DUTT)
AD&SJ-cum-P.O.
Appellate Tribunal : MCD Delhi**