

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

APPEAL NO. 238/ATMCD/2024

Harvest Plantation Private Limited
(a company duly incorporated under the Indian Companies Act)
Having its regd. Office at E-9, Connaught House,
Connaught Place, New Delhi -110001
through its Authorized Representative
Sh. Tarak Saha **Appellant**

Versus

Municipal Corporation of Delhi
(Through its Commissioner)
Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi. **Respondent**

Appearances: Sh. Dalip Rastogi, Ld. Counsel for the appellant.
Sh. Ashutosh Gupta, Ld. Counsel for the respondent
along with Sh. Kuldeep Narwal, AE (B).

Date of Filing of Appeal : 03.04.2024
Date of Order : 30.09.2024

APPEAL NO. 255/ATMCD/2024

Heavenly Farms Private Limited
(a company duly incorporated under the Indian Companies Act)
Having its regd. Office at E-9, Connaught House,
Connaught Place, New Delhi -110001
through its Authorized Representative
Sh. Vinod Kumar Malhotra **Appellant**

Versus

Municipal Corporation of Delhi
(Through its Commissioner)
Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi. **Respondent**

**Appearances: Sh. Sanjeev Sindwani, Ld. Sr. Counsel along with Sh. Virender Mehta, Sh. Aaseem Chaturvedi, Sh. Munal Mehtra, Ms. Rupali Bandhopadhyay and Sh. Milind Jain, Ld. Counsels for the appellant.
Sh. Ashutosh Gupta, Ld. Counsel for the respondent along with Sh. Kuldeep Narwal, AE (B).**

Date of Filing of Appeal : 08.04.2024

Date of Order : 30.09.2024

JUDGMENT

1. This common order will decide Appeal No. 238/2024 and Appeal No. 255/2024 filed by M/s Harvest Plantation Private Limited (hereinafter referred as '**M/s Harvest**') and M/s Heavenly Farms Private Limited (hereinafter referred as '**M/s Heavenly**') respectively. In both the Appeals, the appellants have impugned the demolition order bearing No. D/4219/AE(Bldg.)/South Zone/ 2024 dated 26.03.2024 passed by Mr. Kuldeep Narwal, AE (Building), South Zone, New Delhi.
2. Both the appellants in their respective appeals have impugned the same demolition order. In nutshell, it is the case of the M/s Heavenly (in Appeal No. 255/2024) that no unauthorized construction exists in Farm No. 5 belonging to them. On the other hand, it is the case of the M/s Harvest (in Appeal No. 238/2024) that though the demolition order has been passed in respect of Farm No. 5, but they are apprehensive that

respondent may act against the property belonging to them i.e. Farm No. 3 under guise of the aforesaid demolition order.

3. Before proceeding further to appreciate the controversy in this matter it will be prudent to mention the timeline of important events involved in present appeals.

Timeline of Events

Sr. No.	Date	Event
1.	21.08.2023	F.I.R in respect of Unauthorised construction in Farm no 5
2.	21.08.2023	Show cause notice in respect of unauthorised construction issued to owner/builder of Farm no 5
3.	01.09.2023	Demolition order
4.	25.10.2023	Status report of Tehsildar, Vasant Kunj in respect of khasra no 648/1/1 min and 648/2 min on application of M/s Heavenly.
5.	18.01.2024	Appeal No 627/2023 filed by M/s Heavenly was remanded back by ATMCD for fresh adjudication by Quasi Judicial authority.
6.	20.03.2024	Final submissions filed by M/s Heavenly before Quasi-Judicial Authority
7.	26.03.2024	Demolition order passed
8.	08.04.2024	Status report filed by MCD
9.	10.04.2024	Status report filed by MCD
10.	22.04.2024	Status report filed by MCD
11.	29.04.2024	Status report filed by MCD
12.	13.05.2024	Status report filed by MCD

Facts in Appeal No. 255/2024 (M/s Heavenly)

4. It is stated that appellant is the owner of property i.e. Farm no 5 comprising of Khasra No. 597 min, 645 min, 649/1 min, 646 min, 647

min, 648/1 min, 648/2 and 655/1 min. In respect of the aforesaid property, building sanction plan was issued by the Competent Authority on 27.08.1996 and pursuant to the said Sanction Plan, the appellant had constructed a farm house after obtaining necessary permission from Air Force Station Rajokari. It is stated that the appellant is paying House Tax in respect of the aforesaid property (including Khasra No. 648/1) regularly.

5. It is stated that Mrs. Smriti Bhatia had filed a civil litigation in Dwarka Courts and later in Patiala House Courts. The MCD booked the property vide demolition order dated 01.09.2023. The said order was impugned before this Tribunal and vide order dated 18.01.2024 the matter was remanded back to Quasi-Judicial Authority to provide personal hearing to the appellant before passing any order.
6. Thereafter, the appellant submitted its final submissions dated 20.03.2024 before the Quasi-Judicial Authority and without considering the same on merits, the impugned order dated 26.03.2024 was passed. It is stated that no unauthorised construction exist in the property i.e Farm no 5 and the property is wrongly booked by MCD.

Facts in Appeal No. 238/2024 (M/s Harvest)

7. It is stated that the appellant company is owner of property i.e. farm no 3 comprising of Khasra No. 597 min, 598/2 min, 643/2/1min, 644/1 min, 645 min, 649/1 min, which is approx. 3.75 acres. It is stated that the said property was purchased by the appellant vide sale deed dated

15.09.1994 and 03.05.1995. The Sanction plan for construction for aforesaid property was granted on 25.03.1996. The appellant is paying property tax in respect of the aforesaid khasra and the electricity meter is also installed in the property by the BSES. It is stated that the Civil Authority accept and recognize the aforesaid property as "property No. 3 Grand Westend, Rajokri, New Delhi -110038 comprising of the aforesaid khasras.

8. It is stated that the appellant was carrying out renovation/ development work at its premises since August 2023. On 21.03.2024, some officials of respondent / MCD visited the property along with the police force and pasted one inspection notice in respect of property bearing Farm No.5, Grand Westend, Rajokri, New Delhi-110038, at the out wall of the appellant's property. Thereafter, the officials of respondent visited the property of appellant on 01.04.2024 and instructed to vacate the same for carrying out demolition action pursuant to demolition order dated 26.03.2024. It is stated that the present appeal has been filed challenging the demotion order dated 26.03.2024 as the appellant apprehends that the respondent/MCD under the garb of the said demolition order may carry out demolition action in the property belonging to the appellant.

Directions issued by the Hon'ble High Court Of Delhi in WP (C) 3759/2024

9. Before proceeding further to adjudicate to present matter, it would be relevant at the outset to refer to the directions which have been issued

by the Hon'ble High Court of Delhi in WP (C) 3759/2024 vide judgment dated 09.08.2024. The relevant directions are re-produced here-in-below:

30. This Court is unable to countenance a situation where the MCD is not even in a position to identify the relevant khasra number/s of the land in question where rampant unauthorized construction is being raised. When an authority like the MCD professes to be either helpless or unable/unwilling to take action, the same lends credence to the allegations/ apprehensions of the petitioner regarding connivance of the MCD officials with the concerned owner/occupier/builder of the property in question. There is no justification whatsoever as regards the evident lack of ability/desire on the part of the MCD to take requisite action against the rampant unauthorized construction in the present case. It is incumbent on the MCD to ensure that any action qua the unauthorized construction in question is not impeded on any account, including any alleged difficulty in obtaining particulars of the khasra number/s of the land in question and/ or in identifying the owner/occupier/builder of the property in question.

31. The present position, as it stands, is that the appeal against the demolition order dated 23.06.2024, bearing Appeal no. 255/2024, and Appeal No. 238/2024, are pending before the ATMCD. There is a subsisting interim order of the ATMCD in terms of which the MCD has been interdicted from taking demolition action qua unauthorized construction in question.

32. Needless to say, the pending appeals before the ATMCD shall be decided on their own merits and in accordance with law. However, it is incumbent on the MCD to ensure that any further unauthorized construction is not allowed to be raised and that any enforcement/demolition action qua the same, is not impeded on account of confusion created by the recalcitrant parties (who have carried out unauthorized construction) as regards the address/khasra numbers of the property in question.

35. Given the erosion of the confidence in the MCD's intent and ability to tackle the unauthorized construction which is the subject matter of the present petition, this Court deems it necessary to issue certain directions. Accordingly, it is directed as under:-

- i. The MCD shall clearly identify the land on which the unauthorized construction in question has/is being raised and the concerned owner/occupier/builder;
- ii. The MCD shall duly inspect the unauthorized construction in question to ascertain the extent thereof. The MCD shall also inspect the neighboring/ other properties in the locality to ascertain whether unauthorized construction (viz. any construction beyond the sanctioned building plan) has

proliferated in the area. Requisite action, in accordance with law, shall be taken qua each and every unauthorized construction; it shall be ensured that effective action is not impeded on account of any confusion as regards the khasra number/s on which any unauthorized construction subsists.

- iii. Immediate and effective steps shall be taken by the MCD as also the Police Authorities/SHO of PS Vasant Kunj to ensure that no further unauthorized construction is allowed to be raised in the area in question, and that any ongoing unauthorized construction is put to an immediate halt. Strict disciplinary action is directed to be taken against the concerned officials of the MCD/Police officials if they are remiss in implementing these directions.
- iv. The ATMCD is requested to decide the pending appeals qua the unauthorized construction in question viz. Appeal No. 255/2024 & Appeal No. 238/2024 as expeditiously as possible, and preferably within a period of 08 weeks from today.

Submissions made by Ld. Counsel for the Appellant in Appeal No. 255/2024 (M/s Heavenly)

10. Mr. Sanjeev Sindhwani, Ld. Sr. Advocate appeared for the appellant M/s Heavenly and impugned the demolition order primarily on following grounds:

- a. Farm No. 5 is a separate property, owned by a separate company and property tax is paid separately.
- b. Separate building sanction plan dated 27.08.1996 has been issued in respect of Khasra numbers No. 597 min, 645 min, 649/1 min, 646 min, 647 min, 648/1/1 min, 648/2 and 655/1 min which comprises Farm No. 5.

No unauthorized construction has been raised by the appellant in Farm no. 5. The Municipal Corporation without clarifying the exact demarcation of the khasra on which the alleged unauthorized constructed is raised, has proceeded further to book the property i.e. Farm no 5 belonging to the appellant.

- c. No unauthorized construction is being raised in the property in question i.e. Farm No. 5 and it is evident from status report dated

25.10.2023 issued by the office of Tehsildar, Vasant Vihar, New Delhi which clearly mentions the existing construction on khasra number 648/1/1 min and 648/2 min in the property. The said report clarifies that *“on the spot verification it is found that there is no new construction in progress in above Khasra Numbers”*.

- d. In status report dated 22.04.2024 (para no (e)) the respondent MCD had recorded that the newly carried out unauthorized construction booked by the department is relating to farm no. 3 and the appellant M/s Heavenly (which owns Farm no 5) has been penalized for no fault.
- e. In status report dated 22.04.2024 filed by the MCD, it is recorded that the Farms are separated by intervening wall of low light gypsum sheet and blue iron sheet. The same is also reflected on the photographs placed on record. Once the separation is admitted in the report by the MCD, it cannot plead and allege amalgamation of the farm houses.
- f. The construction existing in Farm No. 5 is an old construction which is not booked by the respondent and the appellant cannot be penalized for the alleged wrongs which are not done by them.
- g. It is also argued that corporate veil cannot be lifted in the present matter as there are no circumstances to de-fraud the public at large. It is submitted that even if the two companies have same set of Directors, it is the shareholders who are considered to the real owners of the company, as a company only functions through the Directors which are only representative of majority of shareholders.

Submissions made by Ld. Counsel for the Appellant in Appeal No. 238/2024 (M/s Harvest)

11. Mr. Dilip Rastogi, Ld. Counsel for the appellant submitted that the impugned demolition order does not pertain to the property belonging to

M/s Harvest i.e. Farm No. 3. It is argued that the appellant was constrained to file the present appeal only when the official of MCD on 21.03.2024 pasted an inspection notice at their property Farm no 3 and on 01.04.2024 gave directions for vacating the property for carrying out demolition. It is argued that the property in question is owned by M/s Harvest which is a separate legal entity. A separate Building Plan has been sanctioned by the MCD in respect of property Farm no 3 in favor of M/s Harvest. It is submitted that as per Section 343 of DMC Act, 1957, no demotion order can be passed against any person/entity without serving a notice and providing an opportunity of being heard.

Arguments advanced by Ld. Counsel for Respondent / MCD

12. It is argued by Mr. Ashutosh Gupta, Ld. Counsel for the respondent/MCD that the unauthorized construction in Farm No. 5, Grand Westend Rajokri, New Delhi was recorded in First Information Report dated 28.01.2023. Thereafter, Show Cause Notice dated 21.08.2023 was served upon the owner/occupier and later demolition order dated 01.09.2023 was passed by the Competent Authority. The said order was impugned before this Tribunal and vide order dated 18.01.2024 the matter was remanded back to the Quasi-Judicial Authority with direction to grant opportunity to the appellant to submit reply, grant personal hearing and pass speaking order.
13. Pursuant to the directions, the opportunity of hearing was granted and a speaking order for demolition dated 26.03.2024 was passed by the

Competent Authority. Mr. Ashutosh Gupta has vehemently opposed both the appeals primarily on following grounds:

- a. Sanctioned Building Plan for M/s Heavenly and M/s Harvest were passed in respect of the Khasra Numbers and no Farm number is mentioned in the said Sanction Plan. He submits that the private numbers have been given to the Farms by both the appellants to camouflage the identity of properties.
- b. Status Report dated 22.04.2024 filed in the court clearly shows that the Farm House No. 5 and Farm House No. 3 have been amalgamated and are inseparable. The joint inspection report dated 12.04.2024 (filed with status report dated 22.04.2024) clarifies that a low light gypsum sheet and blue iron sheet wall has been raised as a sham wall to highlight the division between farm no. 5 and farm no. 3. He submits that erection of such kind of wall does not satisfy the criterion of 'Boundary Wall' as stipulated under clause 7.2.6.1 of Unified Building Byelaws, 2016, which mandates that the boundary wall needs to be made of solid material with minimum height and should have visual continuity. The gypsum sheet and blue iron sheet cannot be termed as boundary wall as per building byelaws and is a sham to hide the amalgamation of farms.
- c. Ld. Counsel for MCD had also placed on record the list of Board of Directors of M/s Heavenly and M/s Harvest. It is argued that

both the companies are having common Directors i.e. Mr. Vijay Kumar Bhatia and Mr. Gaurav Bhatia. He submits that both the companies are managed and controlled by the same management and M/s Harvest cannot take shield of a plea of non-receipt of notice. It is submitted that in cases where the companies tend to defy the public interest and public policy the corporate veil needs to be lifted to see complete status of affairs.

- d. Both the companies have common registered office i.e. C-14, South Extension, Part -II, Delhi.
- e. M/s Heavenly and M/s Harvest were represented by same counsels in WP (C) 3759/2024 as reflected in order dated 18.03.2024 and 23.04.2024.
- f. Both the farms have common Khasra i.e. Khasra no 645, 597, 649/1.

FINDINGS

14. In both the appeals, it is argued by Ld. counsel for the respective appellants that Farm No. 3 and Farm No. 5 are separate properties and owned by different companies.

15. In respect of Farm No. 5, it is argued by Ld. Counsel for the appellant that no unauthorized construction has taken place in Farm No. 5 which is evident from the report dated 25.10.2023 (at page 106 of appeal no 255/24) issued by Tehsildar, Vasant Kunj, Delhi wherein it is stated that no ongoing construction was found on Khasra No. 648/1/1 min. and

648/2 min. It is submitted that the MCD had passed the impugned demolition order without verifying the Khasra number on which the alleged unauthorized construction is stated to exist and has wrongly booked the property belonging to appellant M/s Heavenly. Though the appellant has disputed the alleged unauthorized construction in Farm No. 5, but has not clarified the details of the property/Khasra on which the said alleged unauthorized construction has been erected.

16. M/s Harvest in their appeal has stated that they are carrying on repair/development work in Farm No. 3 since August, 2023. Their appeal is also silent regarding the Khasra number on which the alleged unauthorized construction exists.

17. It is important to note that neither in appeal nor during the arguments before the Tribunal M/s Harvest has disputed the grounds taken by M/s Heavenly in their appeal.

18. From the material on record in both the appeals, neither M/s Harvest nor M/s Heavenly have admitted unauthorized construction in khasras forming part of Farm No. 3 and Farm No. 5. M/s Harvest is banking upon non-receipt of demolition notice and M/s Heavenly has disputed existence of any unauthorized construction in Farm No. 5.

19. Before proceeding further to delve deep into the controversy involved in the present case, it is important at the outset to refer and consider the joint inspection report dated 12.04.2024 (filed with status report dated

22.04.2024) which was signed by representatives of both the parties.

The relevant extract of the said report are re-produced below:-

“Time 11:00 AM Inspection Report Date 12/4/2024

As per Order dated 10.04.2024 of Hon'ble Court in Appeal No. 238/2024 and 255/2024, a Joint Inspection has been carried out in the presence of following Ars/representatives:-

1) M/s Heavenly Farms Pvt Ltd. (Appeal No.255/2024)
Sh. V.K Malhotsa (AR)
Adv. Virender Mehta
Ady Kunal Mehta

2) M/s Heavenly Plantation Pvt. Ltd. (Appeal No. 238/2024)
Sh. Tarak Saha S/o Mr. K. B. Saha (Authorised represantine)
3) Smt. Suriti Bhatia (Intervener)
Adv. Adab Singh Kapoor

Farm No.5-

During the course of inspection with AR, there exist One kothi (G/F & F/F) of area approx. 1200 sq. yards which is old & residentially occupied, one Swimming Pool, one Changing Room.

Farm No.3 (as claimed by the appellant)

During the course of inspection carried out with AR, there found unauthorised Construction in the Farm of raising coloums & beams with shuttering at Ground Floor which found stopped (area approx. 1000 sq. Yard)

Further, it is submitted that there is no proper demarcation between Farm No. 5 and Farm No. 3. However, under construction area is seperated by intervening wall of low light Gypsum Sheet & Blue Iron Sheet. Both the ARs identified their respective areas.

M/s Heavenly Farms Pvt. Ltd.
Sh. V. K. Malhotra

(Kuldeep Narwal)
AE(B) SZ

M/s Harvest Plantation Pvt. Ltd.
Sh. Tarak Saha S/o Mr. K.B. Saha
3) Smt. Suriti Bhatia (Intervener)”

20. From a bare perusal of the said Joint Inspection Report, it becomes patently clear that the unauthorized construction in respect of columns and beams with shuttering at ground floor is stated to have been formed in the area falling in Farm No. 3. It is also stated that there is no proper demarcation between Farm No. 5 and Farm No. 3 and they are separated by an intervening wall of low light gypsum sheet and blue iron sheet.

Nomenclature of properties i.e. 'Farm No. 5' and 'Farm No. 3'

21. To understand and appreciate the controversy involved in the present matter, it will be relevant to delve deep into the nomenclature of the addresses of properties i.e. Farm No. 3 and Farm No. 5 which has been provided to the farm houses by their respective owners. It is argued by Ld. Counsel for the respondent that these farm numbers are private numbers and not allocated by the MCD and in the garb of farm numbers both the appellants have attempted to hide the amalgamation of the farm houses. The following facts on record clarifies the position in this regard:

- a. Sanctioned Building Plan of both the Farms is only sanctioned in respect of khasra numbers and does not mention any farm number. (Page 155 of Appeal no 238/24 and Page 40 of Appeal no 255/24)
- b. M/s Heavenly in their appeal has placed on record the property tax assessment order dated 01.02.2007 (at Page 44 of appeal).

The said order refers to the property belonging to M/s Heavenly through Khasra numbers and nowhere the nomenclature 'Farm No. 5' has been used.

- c. In Appeal No. 238/24 M/s Harvest has placed on record the Sale Deed of their property dated 03.05.1995 (on page-37 of appeal) and 15.09.1994 (at page 69 of appeal). Both the said Sale Deeds refer the property by Khasra numbers and nowhere nomenclature 'Farm No. 3' is mentioned.
- d. M/s Harvest (on page 153, 154 of appeal) has placed on record khasra girdawari (Form P4) of property which also does not mention any Farm number. M/s Heavenly has also placed on record the Khasra girdawari (Form P4) in respect of their property (vide list of additional document submitted on 06.09.2024). The said Khasra girdawari also does not show any Farm number.
- e. M/s Harvest has also placed on record the electricity bill pertaining to their property (at P-158 & 159 of appeal). The energization date in the said bill is 12.05.2008. The said electricity bill is also mentions address as Khasra number and nowhere mentions nomenclature 'Farm No. 3' on the same.

22. From the aforesaid documents which have been filed by the respective appellants on record, it is amply clear that the property/ farm houses belonging to both companies have been referred by way of khasra numbers in all the relevant and admitted documents and the

nomenclature for the address i.e. 'Farm No. 3' and 'Farm No. 5' is christened by M/s Heavenly and M/s Harvest at their own level to identify their respective properties. No demarcation by way this nomenclature is made by the Municipal Authorities.

23. Thus, the distinction of the property based on private Farm no 3 & Farm no 5 is immaterial from the point of view of enforcement of building bye-laws and proceedings under DMC Act, 1957.

Demarcation of Khasra Number and Amalgamation of Farm Houses

24. The appellants in both the appeals are defending their properties by claiming Farm No. 3 and Farm No. 5 as separate properties owned by separate companies. It is argued that before booking the unauthorised construction MCD should have identified the exact khasra number on which the alleged unauthorised construction is stated to exist.

25. M/s Harvest has taken a plea of non-service of notice under section 343 DMC Act, 1957 as the show cause notice and demolition orders are stated to be addressed to M/s Heavenly.

26. On the other hand, respondent/MCD has submitted that both the farm houses have been amalgamation and are inseparable. It is stated that both the farm houses are managed, controlled, and operated by same set of directors in both the companies and the plea of separate companies is only being taken to mislead the court and authorities.

27. The question whether the farm houses have been amalgamated or are separate properties goes to the root of the matter. The amalgamation of

farm houses goes in the teeth of the defence taken by M/s Harvest regarding non-service of notice. In case the both farms are amalgamated and controlled and operated by same set of management, the plea of non-service of notice on M/s Harvest cannot sustain in law and equity.

28. Following set of facts throw light upon the controversy and clarify whether the farms are separate properties or amalgamated?

- a. In first round of appeal before this Tribunal, i.e. Appeal No. 627/2023, appellant M/s Harvest in para (vi) (viii) and (ix) took a stand that there is no construction in khasra 0/648/1 falling in Farm no. 5. In present appeal bearing no. 255/2024 also in para (iii) of the grounds of appeal, the appellant has stated that no construction is being carried out in the property being khasra 0/648/1. The report of Tehsildar, Vasant Kunj is also given only in respect of Khasra no. 648/1/1 min. and 648/2 min.

Nowhere in the present appeal, previous appeal and in the report of Tehsildar Vasant Kunj any whisper is made in respect of other khasras which are stated to be part of Farm No. 5. The appellant has made a suppression of facts in respect of the other khasras which are stated to be part of farm no. 5 and has fallen short to clarify whether any construction/unauthorized construction exists in the other khasras or not.

- b. In Joint Inspection Report dated 22.04.2024, it is stated that there is no proper demarcation between Farm No. 5 and Farm No. 3. It is submitted by the respondent that both the farms have been amalgamated and a sham division has been created in the form of low light gypsum sheet and blue iron sheet which does not satisfy the criterion of boundary wall as per clause 7.2.6.1 of Unified Building Byelaws, 2016, which mandates that the boundary wall needs to be made of solid material with minimum height and should have visual continuity. The gypsum sheet and blue iron sheet cannot be termed as boundary wall as per building byelaws and is a sham to hide the amalgamation of farms.
- c. On Page 158 and 159 of Appeal No. 238/2024 M/s Harvest has placed on record the electricity bill installed in Farm no. 3. The said electricity connection was installed on 12.05.2008 at the address i.e. plot in "*Khasra no. 587,G/F Rajokri, New Delhi 110038*". As per the pleadings as well as Sanctioned Building Plan available on record, Khasra no. 587 neither falls in Farm No. 3 nor falls in Farm No. 5. The installation of electricity meter belonging to Farm No. 3 in the Khasra of a Farm which does not belong to M/s Harvest clearly shows that the farms have been amalgamated and are enjoying the joint resources including the electricity. M/s Harvest has placed on record (Page 163 of

appeal no 238/2024) the Site Plan showing of the khasra of farm no 3 and adjoining land, and as per the said Site Plan Khasra number 587 falls in Farm no. 2.

- d. The Joint Inspection Report dated 12.04.2024 which is signed by representative of both the appellants, records that their exist one Kothi (G/F & F/F), one Swimming Pool and one Changing Room in Farm No. 5. No Swimming Pool is shown in Farm No.3 as per the said report.

The list of documents filed by the M/s Heavenly on 06.09.2024 includes khasra girdawari (Form P4) which enlist the khasra numbers falling under ownership of M/s Heavenly. Khasra 645 min records 'Taran Taal (Swimming Pool) with area 02 (unit not specified) in the property of M/s Heavenly.

The Khasra Khatoni (at page 153-154 of appeal) placed on record by M/s Harvest in their appeal, shows existence "Taran Tall" (Swimming Pool) in khasra no. 644/1min. in the property belonging to them. It also records it area as 03 (unit not specified).

M/s Harvest (On page 163 of appeal) has placed on record the map/site plan of adjoining khasras. Khasra number 644 and 645 are adjacent to each other.

As per joint inspection report dated 12.04.2024 (signed by representatives of both the appellants) there exist only one

swimming pool in both the farm houses i.e. Farm no 5 and Farm no 3. A conjoint reading of the inspection report and the khasra girdawari of M/s Heavenly & M/s Harvest shows that, the aforesaid 'one and only swimming pool' falls partly in khasra belonging to M/s Harvest and partly in khasra belonging to M/s Heavenly. Thus, making it abundantly clear that the land/khasras in the both the farm houses are amalgamated and are inseparable.

- e. The pictures filed on record by the joint inspection report dated 22.04.2024, makes it amply clear that the low-lying gypsum wall is a temporary structure and afterthought measure to separate the two farms for creating defence of non-receipt of demolition notice by M/s Harvest and to drag the matter.

29.From the aforesaid analysis it is amply clear that Farm No. 3 and Farm No. 5 is a private nomenclature given by the appellants to their property. The khasra/land in respect of both the farms have been amalgamated by the appellants M/s Harvest and M/s Heavenly and the properties are inseparable and one piece of land.

Managed, Controlled, and operated by same Directors

30.It is argued by Ld. Counsel for both the appellants that M/s Harvest and M/s Heavenly are separate companies having separate legal entities and are owning separate properties.

31. On the other hand, Ld. counsel for respondent/MCD submits that there are only two persons i.e. Mr. Vijay Kumar Bhatia and Mr. Gaurav Bhatia who are directors in both the companies and the management of both companies is one and the same.

32. It is contended by counsel of both the appellants that the plea of common management and directors was not appreciated by the quasi-judicial authority and this new plea cannot be argued before this tribunal. It will be prudent to refer to the observations made by the Hon'ble High Court of Madras in **N. P. Saraswathi Ammal v. Commissioner of Income-Tax**, (1982) 138 ITR 19 : 1982 SCC OnLine Mad 459 wherein it was held that:

"In a recent reported decision of this court in *CIT v. Madras Industrial Investment Corporation Ltd.*[1980] 124 ITR 454, the Supreme Court's ruling in *Hukumchand's case*[1967] 63 ITR 232, was referred to, and the legal position was summed up in the following terms (p. 463): "Thus, the legal position is clear that neither the assessee nor the department is restricted to the plea put forward at any earlier stages, when the matter travels through the hierarchy of authorities and that it would be open to the Tribunal to consider any fresh plea in the exercise of its discretion. Even where consequences of the acceptance of the assessee's plea would involve granting a larger amount as deduction than was demanded at the stage of assessment, the Tribunal would have jurisdiction to consider such a plea. The Tribunal has, however, discretion not to admit any fresh plea being put forward when it would involve investigation of facts." We do not regard the last observation as a fetter on the Tribunal's jurisdiction to admit a new plea. For, the power to listen to a new contention and decide the appeal on that basis has been spelled out by the Supreme Court from the terms of the statute. The exercise of that power does not depend on the presence of any other factor, excepting that the new plea comes from a party to the appeal. Even in a case where fresh facts are called for to decide the new plea, the Tribunal would have jurisdiction to entertain that plea. How the Tribunal wishes to get at the relevant facts in order to decide the new point may be quite a different thing. The Tribunal may either remand the matter for the purpose, or proceed to investigate the facts themselves. In this part of the decisionmaking alone, there is scope for the play of the Tribunal's discretion. As to the very power to entertain a new plea, that is not to be ruled out, merely because

a consideration thereof would call for further facts to be gone into. In *Hukumchand Mills'* decision [1967] 63 ITR 232, the Supreme Court laid down no fetter on the Tribunal's powers. That case, indeed, was a case where the new plea raised by the department before the Tribunal could not be considered without a further investigation into facts. Nevertheless, the Tribunal entertained the plea, and remitted the case to the ITO for the ascertainment of the relevant facts. The Supreme Court, in their decision, upheld not only the Department's new plea, but also the Tribunal's order of remand based on the new plea. Three more examples from the law reports were cited before us on the point by the learned standing counsel for the Department. They were also cases where courts had upheld the Tribunal's action in entertaining a new plea which happened to be urged by a respondent to the appeal. Two of the cases cited are from the Bombay High Court. They are *CIT v. Gilbert & Barker Mfg. Co.*[1978] 111 ITR 529 (Bom) and *D. M. Neterwalla v. CIT*[1980] 122 ITR 880 (Bom). In one case the respondent happened to be the assessee. In the other, the respondent was the department. The power of the Tribunal to dispose of an appeal on a new plea raised by a respondent was upheld in both these cases. The other decision is from Delhi, reported as *CIT v. Edward Keventer (Successors) P. Ltd.*[1980] 123 ITR 200. The Delhi High Court in their judgment observed that a new plea from respondent must be entertained by the Tribunal as a matter of practice on principles of natural justice. The value of these three decisions as precedents, however, is so much the less because none of them refers to the decision of the Supreme Court in *Hukumchand's* case [1967] 63 ITR 232. Nevertheless, they disclose a consensus of judicial opinion on the amplitude of the Tribunal's appellate jurisdiction as including the power to entertain a new plea even if it is raised by a respondent to an appeal."

33. In present case the presence of two common directors in both the companies is not disputed by any of the Appellants and it does not require any investigation of facts in that regard. The adjudication involves the appreciations of facts and documents which are already on record and there is no embargo on the powers of this Tribunal to entertain this plea to appreciate the complete facts and status of affairs.

34. To appreciate this aforesaid contention, it will be necessary to look into the following facts on record:

- a. Appellants M/s Heavenly have placed on record (at page 48 of appeal) the copy of plaint filed by M/s Smiriti Bhatia against M/s

Heavenly and its Directors i.e. Mr. Vijay Kumar Bhatia and Mr. Gaurav Bhatia, MCD and Mrs. Radha Bhatia. In para -1 of the said plaint, the Ms. Smrirti Bhatia/plaintiff therein has stated that the property is being used by her as residential accommodation and she along with her children is residing there. Use of said property as a residential property is not disputed by any of the parties before this Court. This clearly goes to show that though the properties are owned by two different companies, but the same are used as a residential property by the family members.

- b. My Ld. Predecessor vide order dated 21.05.2024 directed the appellants in both the appeals to file their article of association, memorandum of registration, and directed them to file their affidavit to the effect that they are not directors in Hemlet farmhouse. The directions in respect of filing of affidavit was stayed by the Hon'ble High Court of Delhi.

It will be relevant to observe here that appellants in both the appeals did not disclose the details of incumbent directors at the time of filing of the appeal. In compliance of order dated 03.06.2024 both the appellants placed on record memorandum of association and articles of associate with the list of founding directors but did not file the list of current incumbent directors. From the conduct of the appellants in both the appeals, it is clear that every effort was made to suppress the details of the current

incumbent directors as it directly goes in the teeth of defence of non-receipt of notice by M/s Harvest, as the management of both the companies is one and the same.

- c. The factum in respect of common Directors of both companies came to the notice of the Tribunal only when during the arguments when Mr. Ashutosh Gupta, Ld. counsel for respondent placed on record the list of Directors M/s Heavenly and M/s Harvest showing that Mr. Vijay Kumar Bhatia and Mr. Gaurav Bhatia are the only two common Directors in both the companies. This fact is not disputed by both the counsels for the parties during arguments and in the written submissions.
- d. In the written submissions filed by the appellant M/s Heavenly, it is stated that even if the company have same set of Directors, it is the shareholders of the companies who are considered the real owners and the company only functions through its directors which are representative of the majority of shareholders. This plea is not sustainable. The management and the legal compliances are entrusted by the shareholders on the board of directors, and they are the one who are managing the affairs of the company and briefing the shareholders through various notices as well as A.G.M. The irony in the aforesaid plea is, firstly, both the companies are private limited companies with no involvement of public at large and having only two directors which

are common in both the companies and secondly, even in the written submissions the appellant has failed to disclose the share holding pattern of the aforesaid Company despite taking this plea.

- e. It is clear from the record that though the properties are owned by two different companies, they are used for residential purposes by the directors and family members and the khasra/land falling in both the farm houses have been amalgamated and is inseparable. The nomenclature Farm no 3 and farm no 5 is immaterial from the point of view of municipal record. Mentioning of Farm no. 5 on demolition order and consequent action against the unauthorised construction does not affect the enforcement mechanism, because the farms have been amalgamated. The requirement of sperate notice to M/s Harvest is also diluted and eclipsed, as both the properties Farm No. 3 and Farm No. 5 are amalgamated and managed by same set of directors/persons at whose instance the erection of the unauthorized construction in the amalgamated land is being carried out. The notice has been duly served upon and the representative of the common management of both companies and they have participated in the proceedings before the quasi-judicial authority.
- f. It is settled legal position that no one can take advantage of their own wrongs. M/s Harvest and M/s Heavenly have misled this Tribunal as well as various other forms by creating private

property number, suppressing common management of both the companies, suppressing the construction in the khasra other than 648/1 min and suppressing amalgamation of both the farm houses. A company and the representatives / directors who are misleading the Court as well as public authorities to pursue their illegal and nefarious design of unauthorized construction cannot claim equity in law for not lifting the corporate veil or stopping the Court from ascertaining the true facts. (See **LIC v. Escorts Ltd & Ors** 1986(1) SCC 264 and **State of Rajasthan v. Gotan Lime Stone Khanij Udyog Pvt. Ltd. & Ors.** 2016 (4) SCC 469.

33. In view of the aforesaid findings, Appeal no. 238/2024 and Appeal No. 255/2024 are dismissed. The interim protection granted vide order dated 10.04.2024 in both the appeals is vacated and application of respondent seeking vacation of stay stands disposed. The respondent is directed to comply the following directions upon expiry of statutory period for filing appeal against this judgment:

- a. Respondent/MCD to take steps to ensure the unauthorized construction in question be completely demolished and brought down to ground within a period of two weeks from the date of expiry of statutory period for filing appeal against this judgment.
- b. The DCP concerned is directed to provide necessary police protection to the MCD officers/officials for discharging their duties.

- c. The demolition drive be photographed and video graphed and compliance report be placed before this Tribunal.
- d. Criminal action for the offences committed be initiated against all wrong doers including common directors of M/s Heavenly and M/s Harvest for raising unauthorised construction and other violations as per DMC Act, 1957.

Copy of this judgment be sent to the Deputy Commissioner, South Zone through the office of the Commissioner, MCD for necessary compliance.

Copy of this judgment be sent to the concerned DCP, Delhi Police through the office of the Commissioner of Police, Delhi for necessary compliance.

**Announced in the Open Court,
Today i.e. on 30.09.2024 (s)**

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