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

APPEAL NO. 902/ATMCD/2024

Sh. Mukesh Kumar @ Mukesh Goyal
S/o Sh. Babu Ram Goyal
R/o 2nd Floor, C-28, Preet Vihar,
Delhi -110092.

Also at

R/o 43 to 46, Main Road,
Chandni Chowk,
Delhi-110006 …….. Appellant

Versus

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

Date of Filing of Appeal	**:**	**08.10.2024**
Date of Order	**:**	**07.11.2024**

JUDGMENT

1. The present appeal has been filed impugning the demolition order dated 08.04.2024 passed under Section 343-344 of the DMC Act, 1957. It is submitted by Ld. Counsel for the appellant that they filed WP(C) 12304/2024 before the Hon'ble High Court of Delhi and vide order dated 4th September 2024 they have been directed to approach before this Tribunal and the Writ Petition was disposed off.

2. It is submitted by Ld. Counsel for the appellant that the said order has been passed in ignorance of law as well as the reply submitted by the appellant before the Quasi Judicial Authority. It is submitted that

the staircase in question was in dilapidated condition and Unified Building Bye Laws for Delhi 2016 (hereinafter referred as 'UBBL') permit its repairs. It is argued that such repaired stairs are self contained unit made up of steel and have not changed any cubic content or built up area of the building. It is submitted that the appellant has also placed on record the structural safety certificate certifying that the staircase in question does not affect the structural stability of the building. In respect of the structure at the fourth floor, it is submitted that appellant in reply in para no. (vi) dated 17.01.2024 filed before the MCD has already stated that he is ready to get the same demolished. Ld. Counsel for the appellant during the course of arguments conceded that the appellant is willing to demolish the alleged structure on the fourth floor.

3. It is further submitted by Ld. Counsel for the appellant that the MCD has already granted protection to second floor and third floor of the property but have booked the ground floor and first floor. It is also submitted that in the year 2010, the MCD acknowledged that the repairs on the roof and dropped the proceeding initiated at that time. It is submitted that the fresh round of proceeding were initiated pursuant to W.P (C) 5458/2023 filed by Mr. Vijay Khodaria.

4. It is submitted that the said Writ was disposed of by the Hon'ble High Court of Delhi vide order dated 28.04.2023. It is submitted that the protection has been denied to ground and first floor on the pretext of erection of stairs. It is argued that the repair / rehabilitation of the stairs does not require any prior sanction and MCD has wrongly denied the benefit of protection to the ground and first floor. It is submitted that the stairs in question are not the principal staircase and, therefore, the sanction is not required. It is argued that the MCD has already granted protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 to the second floor and third

floor of the property and have arbitrary denied the protection to the ground floor and first floor. It is submitted that the said fact was also observed by Hon'ble High Court of Delhi vide order dated 23.04.2024 passed in Cont. CAS (C) 635/2024 wherein the Hon'ble High Court of Delhi in para (12) has observed that *prima facie* once the permission has been granted to the upper floors, it needs to be necessarily extended to the lower floors also as the construction therein would have been prior to the construction in the second floor and the third floor. The Hon'nle High Court of Delhi disposed off the said Contempt Petition with direction to seek their remedies in accordance with law.

5. Ld. counsel for the respondent has submitted that erection of steel staircase in question is not covered in the definition of repairs. It is submitted that by carrying out the unauthorized construction the appellant breached the status quo and, therefore was denied the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It is argued by Ld. Counsel for the respondent that as per Section 334 (g) of the DMC Act, 1957, sanction is required to remove or reconstruct the principal staircase or to alter its position. It is argued that the re-erection of such staircase does not fall within the definition of repairs as stipulated in Clause 2.0.1 (d).

6. I have heard the arguments and perused the record. A perusal of the impugned order shows that the Quasi Judicial Authority has granted protection to the second floor and third floor of the building by giving a finding that the structure existed prior to 08.02.2007. The protection has been denied to the ground floor and second floor on the ground of re-erection of a staircase leading from ground floor to first floor and breach of status quo. Similarly, protection has also denied on the part of the fourth floor on which erection has been made.

7. During the course of the arguments as well as in his reply filed before the MCD, the appellant has conceded to demolish the alleged structure at the fourth floor therefore, there is no controversy in respect of the structure that exist at the fourth floor and the same is liable to be demolished as directed in the impugned demolition order.

8. To appreciate the controversy in respect of the ground and first floor, the relevant portion of the impugned order is re-produced below:-

> "One of the staircase leading from ground floor to first floor which was earlier demolished by owner/occupier has been re-erected. It is further reported that there is one more staircase leading from ground floor to first floor. Since the owner/occupier has himself demolished the staircase and re-erected the same, he himself has violated the "status quo" and is as such not entitled to protection as envisaged in the provisions of "The National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011.

9. A bare perusal of the aforesaid findings show that there was a staircase from ground floor to first floor which was already existing in the building. The said staircase was demolished and thereafter re-erected by the appellant. The appellant in their reply dated 17.01.2024 has admitted the demolition of the said staircase. It is case of the appellant that the said staircase was in dilapidated and dangerous condition and therefore the same was demolished and its place a steel staircase was installed.

10. It is argued by Ld. Counsel for the respondent that as per Section 334 (g) of the DMC Act, 1957 sanction is required to remove or reconstruct the principal staircase or to alter its position. It is argued that the re-erection of such staircase does not fall in the definition of repairs as stipulated in Clause 2.0.1 (d).

11. Perusal of 334 (g) of the DMC Act, 1957 shows that prior sanction is required in case the 'principal staircase' is removed or re-constructed. Clause 7.11 of the UBBL deals with staircase details. Clause 7.11 (m) stipulates that the main staircase shall be continuous from ground floor to the terrace level.

12. Perusal of the impugned order shows that the staircase in question is stated to be leading from ground floor to first floor. Admittedly, there is one more staircase which exist in the property which is from ground floor to the top floor. As per definition of main staircase given in Clause 7.11 (m), the staircase in question which is going from ground to first floor cannot be said to be a principal / main staircase. Therefore, the question for applicability of Section 334 (g) of the DMC Act, 1957 does not apply.

13. It is the admitted position on record that the repaired / steel staircase had been installed in the property at a place where staircase already existed. It is not the case of the respondent / MCD that a new staircase has been erected at a place where no staircase existed earlier. It is not the case of the respondent MCD that the repaired staircase in question has changed the cubic contents or the built up area of the building. Therefore, when the structure is not covered under Section 334 (g) and has not challenged any cubic contents or built up area, the repairs cannot be said to be out of the scope of 2.0.1 (d) of the UBBL. A structural safety certificate is already placed on record certifying that the staircase in question in no manner affect the structural safety of the building.

14. Accordingly in view of the aforesaid findings, the impugned demolition order dated 08.04.2024 passed under Section 343-344 of the DMC Act, 1957 in respect of the ground floor and first floor of the building is set aside. The second floor and third floor of the property have already been granted protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 by the Quasi Judicial Authority and, therefore, consequentially the ground floor and first floor also falls in the scope of said protection. It is clarified that

the impugned order shall remain operative in respect of the structure which exist on fourth floor of the property.

15. The record of the respondent be send back alongwith copy of this order. Appeal file be consigned to Record Room after due compliance.

Announced in the open Court
today i.e. on 07.11.2024 (s)

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