

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

APPEAL NO. 780/ATMCD/2024

Rakesh Gupta
S/o Late Sh. Surinder Kumar Gupta
R/o B-3, Rohit Kunj,
Pitampura, Delhi -110034

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal : 12.09.2024
Date of Judgment : 12.12.2024

JUDGMENT

1. The present appeal has been filed impugning show cause notice dated 16.10.2023 in demolition proceedings and the sealing order dated 27.03.2024 passed in respect of the property bearing no. 6016, Gali Arya Samaj Naya Bans, Khari Baoli, Delhi -110006.
2. It is the case of the appellant that he has obtained sanctioned building plan for doing addition and alteration in the property in question. It is submitted that appellant was constructing the property in compliance of the said sanctioned building plan and during the said construction, the MCD initiated demolition as well as sealing proceedings. Appellant appeared before the concerned authority and submitted his reply which was not considered. Appellant also applied for the regularization which

was rejected. It is submitted that as the property is still under construction the appellant could have removed the alleged excess construction but the property was sealed.

3. On the other hand, it is submitted by Ld. Counsel for the MCD that the sanctioned building plan (at P-36 of the appeal) clearly mentions that the appellant was required to clearly shows that the total plot area of the appellant is 147.500 sq. meter and out of it appellant was required to leave the road widening area of 11.178 sq. meter and net plot area available to appellant was 136.322 sq. meter. He submits that MCD had filed the site plan showing the covered area of the property. He submits that the appellant has covered the area which was required left for road widening and has violated sanctioned building plan. He submits that similarly for the 1st, 2nd and 3rd floors, the appellant has covered the area which is more than the sanctioned building plan and has made projections on the municipal land which was meant for the road widening. He submits that the deviations in respect of the road widening are non-compoundable and regularization is already rejected.
4. Arguments heard and record perused. A bare perusal of the sanctioned building plan (at page 36 of the appeal) shows that 11.178 sq. meters was required to be left for road widening area. The site plan filed by the MCD clearly shows that the said area has been encroached by the appellant and constructions has been made on the floors above the ground floor, covering the area which was supposed to be left for road widening. The covered area for 1st, 2nd and 3rd floors is over and above the sanctioned area. Projections are stated to have been made on the municipal land.
5. On 22.10.2024 statement of Mr. Mushtaq Mehmood, Architect who got the sanctioned building plan on behalf of appellant was recorded. His statement is reproduced herein below:-

“I am the Architect for the appellant who have got the sanctioned building plan dated 24.02.2023 approved from the office of MCD. The copy of said sanctioned building plan is at page No.36 of the appeal paper book. I have seen the same today in the court and the same is Exb.A/1. The said addition /alteration plan was got approved for property bearing No.6016, Gali Arya Samaj, Naya Bans, Khari Baoli, Delhi-6. As per the said sanctioned plan, the total plot area is shown as 147.5 sq.mtr. and after deducting the area of 11.178 sq.mtr. left for road widening, the net area of the plot is shown as 136.22 sq.mtr. The covered area at the first floor, second floor and third floor was got approved as 89.98 sq.mtr. in addition to that, an area of balcony in the internal open space as 13.08 sq.mtr. at first floor, second floor and third floor was also got approved. As of now, the area of 11.178 sq.mtr. shown as left for road widening is covered / having some old construction in it. I have not checked the existing covered area on any floor of the property it being lying sealed.”

6. From a bare perusal of aforesaid statement, it becomes clear that road widening area 11.178 sq. meter was required to be left. The projections area of balcony is in the internal space. He confirmed that the area of 11.178 sq. meter to be left for road widening is covered and have construction on it.
7. It is clear from the record that the appellant obtained the sanctioned building plan from the MCD by declaring that he will leave road widening area of 11.178 sq. meters. He did not bother to clear the space and started construction on 1st, 2nd and 3rd floor covering the area meant for road widening. The appellant has not only covered the area meant for road widening but also made projections on the municipal land which is in gross violations of the sanctioned building plan. The site plan filed by the MCD also shows that appellant has changed the layout of the floors. On the ground floor, the appellant has constructed halls and on 1st, 2nd and 3rd floor also the layout of rooms is contrary to the sanctioned building plan. It is clear that the appellant has violated the sanctioned building plan and has not adhered to the undertaking given to the MCD while obtaining sanctioned building plan.

8. Accordingly, I find no merits in the appeal. The same is hereby dismissed.
9. Record of the respondent, if any, be returned along with copy of this order and appeal file be consigned to record room.

**Announced in the open Court
today i.e. on 12.12.2024 (s)**

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

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