

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

APPEAL NO. 782/ATMCD/2024

Sh. Om Prakash
S/o Late Sh. Mehar Chand
R/o H. No. 47, Ghora Mohalla,
Aya Nagar Village, PS Fatehpur Beri,
New Delhi-110047

..... Appellant

Versus

1. Municipal Corporation of Delhi
(Through its Commissioner)
Dr. S. P. M. Civic Centre, Minto Road,
New Delhi-110002.

2. Assistant Engineer (Building) South Zone,
Municipal Corporation of Delhi
Building Department -II
South Zone, Green Park,
New Delhi-110016

..... Respondents

Date of Filing of Appeal : 12.09.2024

Date of Judgment : 11.03.2025

JUDGMENT

1. The present appeal has been filed by the appellant impugning the demolition order dated 23.08.2024 passed by the MCD under Section 343 of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) directing to demolish the unauthorized construction in the shape of raising of columns at ground floor in property known as Shop Shree Vinayak Ashiyana, Near Jhankar Gate, Aya Nagar, New Delhi.

2. It is submitted by Ld. Counsel for appellant that the property in question is old which is protected under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. He submits that the appellant was erecting new columns as he wanted to change the location of stairs and wanted to install lift in the property. He submits that by carrying out the aforesaid repairs the appellant has not changed the cubical contents of the building and the aforesaid work falls in the definition of repairs as per Clause 2.0.1 (d) of the Unified Building Bye Laws for Delhi, 2016 (hereinafter referred as UBBL, 2016). He submits that as per Clause 2.0.1 (xi) the installation of lift falls in the exempted category.
3. Ld. Counsel for the MCD submits that the property in question falls in an unauthorized colony. He submits that no construction is permitted in an unauthorized colony and only the structure which existed prior to cut off date is protected. He submits that by erecting the columns inside the building the appellant has breached the status quo as provided under Section 3 of the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the property has lost the protection. He further submits that Clause 2.0.1 (v) of UBBL, 2016 permits only rehabilitation / repairs of pillars and does not permit erection of new pillars at all. He further submits that the provision of Clause 2.0.1 (xi) of UBBL, 2016 for installation of lift are applicable to residential plotted development and not to the unauthorized colony.
4. I have heard the arguments and perused the record. It is admitted position on record that the appellant has erected the columns in the property for the purposes of installation of lift. The area where the property is located is an unauthorized colony. In an unauthorized colony there is no permission to carry out any construction. Only the properties which have been constructed prior to cut off date of 01.06.2014 are

provided protection as per Section 3 of the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 subject to maintaining the status quo.

5. From the admitted position on record it is clear that the appellant had carried out construction in the property by erecting the columns and had breached the status quo. So far as the question of repairs under Section 2.0.1 UBBL, 2016 is concerned, Clause 2.0.1 (v) only permits rehabilitation / repairs of existing pillars and does not permit erection of new pillars in the garb of repairs. It is not the case of appellant that he was repairing the existing pillars. It is admitted position on record that appellant had erected new pillars for installation of lift. Therefore, the erection of new pillars does not fall within the exempted category under Clause 2.0.1 (v) of UBBL, 2016.
6. I also find merits in the submissions of Ld. Counsel for MCD that Clause 2.0.1 (xi) is meant for erection of lift in the residential plotted development area. The property in question is situated in an unauthorized colony and by no stretch of imagination the exemption under Clause 2.0.1 (xi) is available to the property situated in an unauthorized colony.
7. From the admitted position on record, it is clear that the appellant had erected the columns in the property which are not covered in the definition of repairs as mentioned in Clause 2.0.1 of UBBL, 2016. By carrying out such erection the appellant had breached the status quo which is mandated as per Section 3 (2) of the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 (as amended by the Act number 42 of 2023).
8. In view of the aforesaid, the demolition order dated 23.08.2024 is upheld and the appeal is hereby dismissed. The interim protection granted vide order 20.09.2024 stands vacated.

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 11.03.2025 (s)**

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