

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

APPEAL NO. 38/ATMCD/2025

Sh. Gulzar Ali
S/o Abdul Kalam
R/o 2504, Kucha Baqaullah Khan,
Tiraha Behram Khan, Darya Ganj,
Delhi-110002

..... Appellant

Versus

1. Municipal Corporation of Delhi
(Through its Commissioner)
Civic Centre, Jawahar Lal Nehru Marg,
New Delhi-110002.

2. Deputy Commissioner,
City Sadar Pahar Ganj Zone
Municipal Corporation of Delhi
Nigam Bhawan,
2nd Floor Old Hindu College,
Kashmere Gate, Delhi-110006

..... Respondents

Date of Filing of Appeal : 17.01.2025

Date of Judgment : 21.03.2025

JUDGMENT

1. The present appeal has been filed by the appellant impugning the demolition order dated 06.01.2024 passed by the MCD under 343 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) in respect of the unauthorized construction in the shape of entire construction at ground, first second and third floors of the property bearing no. 2504, Kucha Baqaullah Khan, Tiraha Behram Khan, Darya Ganj, Delhi.

2. It is the case of the appellant that he is the owner of property bearing no. 2504, Kucha Baqaullah Khan, Tiraha Behram Khan, Darya Ganj, Delhi and had purchased the same vide Sale Deed dated 31.12.2012. It is argued that the present order has been passed by the MCD in haste and the structure is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It is submitted that appellant has filed on record property tax returns, assessment order, electricity bills etc. showing that the structure is old and the same is not considered by the MCD.
3. Ld. Counsel for MCD submits that order was passed after providing opportunity of hearing to the appellant. Appellant appeared before the MCD and submitted his reply dated 30.08.2024 which was duly considered and appreciated in the impugned order. It is submitted that documents filed by the appellant are contradictory. It is argued that the appellant had constructed the entire new structure and therefore, the property tax returns and other documents in respect of the property in question is of no relevance. It is pointed out that photographs of the new structure are available in the MCD record. It is pointed out that while making new construction the property nos. 2503 & 2504, Kucha Baqaullah Khan, Tiraha Behram Khan, Darya Ganj, Delhi have been amalgamated which is evident from the photographs placed on record.
4. I have heard the arguments and perused the record. Appellant had purchased the property in question vide Sale Deed dated 31.12.2012. The said Sale Deed mentions that property no. 2504 consists of first to third floors with roof rights admeasuring about 19.38 sq. meters. Appellant also relied upon the property tax returns and the assessment order dated 14.02.2013 to buttress his arguments that the structure is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It is the case of the appellant

that no new construction has been carried out in the property in question and the ground floor was built in the year 1950 and the first to third floors were built in the year 1999.

5. In order to appreciate the pleas taken by the appellant, it will be relevant to appreciate the covered area of the property in question as stated by the appellant in various documents filed before the Court. The Comparative Table of the same is compiled below :-

Covered area (Sq. metrs)	Assement order dt. 14.02.2013 (at page 38)	Site Plan filed by the appellant (at Page-111)	Affidavit filed by the appellant (at P-112-114)
Ground	32	38	29.03 (312.54 sq. ft.)
First	40	28	22.56 (242.88 sq. ft.)
Second	18.5	28	22.56 (242.88 sq. ft.)
Thrid	18.5	19	15.42 (166.04 sq. ft.)

6. From the aforesaid documents filed by the appellant himself it is clear that there are drastic inconsistencies in the covered areas of the property in question as calculated and mentioned by the appellant. No reasonable explanation has been tendered by the appellant in this regard.
7. The property of the appellant is situated in the special area and as per the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The cut off date of the property situated in special area is 08.02.2007. The property tax returns, assessment orders filed by the appellant are after the cut off date and does not show the structure which existed in the property prior to cut off date. The aforesaid documents are not of any help because they pertain to period after cut off date. Apart from that it is the case of the MCD that appellant had demolished the earlier structure and has erected a complete new structure. The fact of erecting complete new structure gets corroborated from the photographs filed on record by the MCD as well as from the inconsistency of the covered area mentioned by the appellant himself.

The said inconsistency clearly highlights that old structure had been demolished and new structure has taken its place. The First Information Report (at page 1/C of the MCD records) record all types of construction material was found at the spot. In such circumstances, the reliance upon the property tax record to justify that the property is old structure is nothing but a farce exercise.

8. It is clear from the record that structure from ground to third floor of property bearing no. 2504, Kucha Baqaullah Khan, Tiraha Behram Khan, Darya Ganj, Delhi is constructed without any sanctioned building plan and the same is unauthorized and liable to be demolished.
9. In view of the aforesaid, the demolition order dated 06.01.2024 is upheld and the appeal is hereby dismissed. The interim application stands disposed off.
10. 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 21.03.2025 (s)**

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