

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

APPEAL NO.118/ATMCD/2021

Sh. Raj Kumar,
S/o Sh. Bachi Ram,
R/o 29, Main Market, SheraMohalla,
Garhi, East of Kailash, New Delhi-65

.....**Appellants**

Vs

South Delhi Municipal Corporation,
(Through its Commissioner)
17th Floor, Civic Centre,
Minto Road, New Delhi.

..... **Respondent**

Date of Filing of Appeal : **17.03.2021.**
Date of Judgment : **27.03.2025.**

JUDGEMENT

1. The present appeal has been filed impugning the demolition order dated 09.03.2021 passed in respect of property no. 29-A, SheraMohalla, Garhi, New Delhi
2. It is the case of the appellant that show cause notice and demolition order were issued in the name of one Raju and not in the name of the appellant. It is submitted that the property number is also incorrectly mentioned in the order. It is submitted that the appellant has already demolished the entire old structure in the property except one front shutter wall which is entirely separate from the new structure. It is argued that the appellant is constructing the property in accordance with sanctioned building plan dated 02.02.2021. It is submitted that despite sanction of the building plan in favour of the appellant, the MCD has passed the impugned order which is liable to be set aside.

3. Ld. counsel for MCD submits that the impugned demolition order was passed after following due process of law. He submits that the show cause notice was issued to Mr. Raju as it is the publically known / nickname of the appellant. He submits that appellant Mr. Raj Kumar filed his reply dated 23.02.2021 before the MCD and therefore demolition order dated 09.03.2021 was passed against Mr. Raj Kumar. It is submitted that during the course of proceedings before the MCD as well as in pleadings the appellant has not taken objection in respect of the property number. He submits that during the course of proceedings a joint inspection was also carried out in the presence of appellant and there is no dispute as to the identity of the property. He submits that it is the admitted case of the appellant that he started the unauthorized construction prior to obtaining the sanctioned building plan. He submits that the present demolition order pertains to the said unauthorized construction which was carried out prior to obtaining of sanctioned building plan. He submits that the appellant had carried out the construction on the upper floors without demolishing the ground floor structure and structure constructed is not in compliance of the sanctioned building plan. He submits that as per the sanctioned building plan the property needs to have a stilt floor, ground floor, first floor, second floor and third floor in the building. He submits that in the joint inspection report dated 11.03.2025 filed alongwith photographs it is clear that the appellant has not demolished the ground floor and the shops and no stilt parking at the spot was found.

4. I have heard arguments and perused the record. An application under Section 151 CPC was moved by the appellant seeking permission to modify the ground floor of the property in question. The said application is nothing but a ploy on the part of the appellant to delay and drag the proceedings. By said application appellant sought permission

to bring the ground floor in conformity with the sanctioned building plan. Appellant has already constructed the ground floor and has carried out the construction above the same. The sanctioned building plan requires that a stilt parking area needs to be created in the building. It is not understood when the appellant has constructed floor above the ground floor, how he intends to create stilt parking in the property and bring the same in accordance with the sanctioned building plan. The said application is nothing but a ploy and farce to delay the proceedings and dismissed.

5. In the present case the proceedings were initiated pursuant to the First Investigation Report dated 27.01.2021. Thereafter MCD issued show cause notice dated 27.01.2022. Appellant obtained sanctioned building plan for the property on 02.02.2021 and thereafter the impugned demolition order was passed on 09.03.2021.

6. So far as the question regarding the service of show cause notice upon Mr. Raju is concerned that stands clarified from the MCD record. Pursuant to the said show cause notice the appellant appeared before the MCD and submitted reply dated 23.02.2021. The said reply was duly considered by the MCD and the demolition order was passed in the name of appellant Mr. Raj Kumar only.

7. So far as issue of identity of property / property number is concerned, the said concern was never raised by the appellant before the MCD as well as in the appeal. During the course of the proceedings joint inspection was ordered by this Tribunal wherein the MCD has filed a report alongwith photographs of the property in question. Therefore in these circumstances, there is no dispute regarding identity of the property.

8. It is the case of the MCD that appellant had obtained the sanctioned building plan of the property on 02.02.2021 but the

unauthorized construction was started much prior to obtaining the sanctioned building plan and has been rightly booked. In order to appreciate the said contention it will be relevant to re-produce the averments made by the appellant in para-7k of the appeal which is as under:

“ 7k.....That the brief facts leading to filing of the present Appeal are that the Appellant and his family is registered owner and in possession of the property bearing No. 29-A, Shera Mohalla, Garhi, New Delhi (hereinafter referred as the suit property) since long back and due to old construction the structure of the suit property became weak. Meanwhile the nala/sewage in front of the suit property was constructed and due to construction impact he suit property developed cracks and could be collapsed at any point of time, hence in haste the appellant had to start repairing work and thereafter as per the need also started construction work also. Meanwhile the appellant also got the sanction plan passed from the respondent, being law abiding citizen and had constructed the same as per site plan only. Now the ground floor at the suit property has been alleged to be newly and unauthorized constructed and against the said ground floor demolition order was passed by the respondent. “The site plan with measurements of the ground floor along with affidavit are annexed herewith as Annexure 1 (Colly). The photographs showing the property in question from inside and outside is annexed herewith as Annexure I (Colly). The copy of registered sale deed in favour of the appellant is annexed herewith as Annexure – K. The photographs showing nala/sewage before construction of street are annexed herewith as Annexure L.”

9. The relevant extract of the reply dated 23.02.2021 filed by the appellant before the MCD is also re-produced below:-

“इसी दौरान नाले का मेरे मकान के सामन हुआ था मेरा मकान 29 मैन market तीन मंजिल का था जिसमें दरार आ गई थी और पुराना होने के कारण बनवाना भी था। इसलिए मेने अपनी जानकारी अनुसार S.D.M.C और आस पडोस में जानकारी ली और कार्य शुरू कर दिया मेरे गाँव में और भी मकानों का निर्माण कार्य चल रहा था। पेहले सिर्फ दो गंजिल बनाने की योजना थी लेकिन जब पैसे की व्यवस्था हुई ता चार मंजिल बनवाने के लिए S.D.M.C में आवेदन कर दिया इसी बीच पडोसियों ने मुझे पर court में शिकायत कर दी इसके बाद मेने कोई भी कार्य नहीं किया जी श्री मान 31/01/2021 क बाद में ' अब 2/02/2021 का मुझे भवन निमाण के लिए S.D.M.C. द्वारा अनुमति मिल गई है आप S.D.M.C के अनुसार जिस प्रकार मुझे काम करने की अनुमाते मिली है। में वैसे ही अपने भवन का कार्य करूंगा जी श्री भान शसमे आप भरा धर बनवान में मेरी मदद करे। जी”

10. From the aforesaid submissions made in para 7k of appeal as well as reply dated 23.02.2021 filed before the MCD, the admitted position which emerges is that the appellant started the construction in the property prior to obtaining the sanctioned building plan on 02.02.2021. The aforesaid fact has also been substantiated from the FIR (page 20/C of the MCD record) which records that all kinds of building material was found at site. From admitted position it is clear that at that juncture, appellant had carried out unauthorized construction in the property in question without any sanction. Obtaining of sanctioned building plan on 02.02.2021 does not wipe away the unauthorized construction which was carried out by the appellant without obtaining any necessary permission from the MCD. The photographs of such unauthorized construction is available at page 5/C of the MCD record. It is clear that the construction which was carried out by the appellant at that juncture was unauthorized and the MCD has rightly passed the demolition order.

11. So far as the question regarding sanctioned building plan dated 02.02.2021 is concerned, the record shows that the appellant has not carried out further construction as per the sanctioned building plan which is available at page No.60/C of the MCD record. Appellant is required to construct stilt, ground floor, first floor, second floor and third floor in the property. On directions of this Tribunal appellant has filed an

affidavit dated 07.02.2025 wherein he has stated that he had demolished the entire old structure except one front shutter wall. I am afraid the affirmation made in the said affidavit are belied from the report dated 11.03.2025 filed by the MCD pursuant to the joint inspection of the property. The photographs filed alongwith said report clearly shows that the structure at the ground floor in the shape of shops still exist .Appellant had carried out further construction over and above the existing structure. Entire structure is not demolished by the appellant as was required to be done by him as per the sanctioned building plan. The report clarified that no stilt parking has been found in existence. It is clear from the record that appellant initiated construction of ground floor of the property unauthorizedly without permission and has further carried out the construction on upper floors flouting the sanctioned building plan.

12. At page No.26 of the appeal appellant has filed the site plan of the ground floor which does not have any shop. At page-27 of the appeal appellant has filed an affidavit dated 16.03.20221 which contains the details of the structure existing at the ground floor and it does not mention anything about shops. Thereafter appellant filed another affidavit dated 05.10.2021 wherein he changed his stance and informed that the constructed area on the ground floor is consisting of two old shops at the site. Thereafter in the affidavit dated 07.02.2025 the appellant informed that he had demolished the entire structure except one front shutter wall. It is clear that the appellant has taken inconsistent pleas in the matter to misguide this Tribunal and prolong the proceedings.

13. Appellant has filed affidavit in the Tribunal giving false averments that he has demolished the whole structure which is not the case in the present matter. In case the whole structure was demolished by the

appellant then the demolition order dated 09.03.2021 would have stand complied and there was no need for the appellant to contest the present appeal. Appellant has continued with the shops at ground floor and has carried out the erection / construction at first floor and above over the unauthorized at ground floor structure which was booked by the MCD. In these circumstances, it is clear that the appellant is flouting the norms and also misleading the Tribunal. This Tribunal deprecates the conduct of the appellant in the present matter and warns him to be careful in future.

14. In view of the above facts and circumstances, the present appeal is dismissed. It is clarified that MCD is at liberty to initiate separate proceedings in respect of the construction carried out by the appellant which does not confirm the sanctioned building plan.

**Announced in the open Court
today i.e. on 27.03.2025 (J)**

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