

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

**APPEAL NO. 72/ATMCD/2025**

**Smt. Nipun Chhabra**  
**W/o Sh. Sanjeev Chhabra**  
**R/o Khasra No. 30/25, MIN (3-13),**  
**39/5/1/1 MIN (0-8), 5/1/2 MIN (0-17),**  
**Main Road, Samalkha Village,**  
**South-West Delhi, Delhi -110037**

**..... Appellant**

**Versus**

**1. Municipal Corporation of Delhi**  
**Through its Commissioner**  
**17<sup>th</sup> Floor, Civic Centre,**  
**Minto Road, Delhi -110002.**

**..... Respondent No. 1**

**2. Assistant Engineer (B)**  
**Najafgarh Zone,**  
**Municipal Corporation of Delhi**  
**Building Department, Najafgarh Zone,**  
**Main Zonal Building Room No. 121-122,**  
**1<sup>st</sup> Floor, Dhansa Stand, Najafgarh,**  
**New Delhi-110043.**

**..... Respondent No. 2**

**Date of Filing of Appeal : 06.02.2025**

**Date of Judgment : 14.05.2025**

**JUDGMENT**

1. The present appeal has been filed by the appellant impugning the sealing order dated 01.05.2024 passed by the MCD in respect of the unauthorized construction comprising of entire ground floor, first floor, part second floor with boundary wall along with Farm land in property bearing Farm No. 01, 12, Petals, Samalkha Revenue Estate, Rajokri to Kapashera Road, New Delhi.

2. It is submitted by Ld. Counsel for appellant that the sealing order was passed without providing any opportunity of hearing. He submits that neither show cause notice nor sealing order was served upon the appellant.
3. On the aspect of limitation, it is submitted by Ld. counsel for appellant that after passing of the demolition order the appellant initially preferred an appeal bearing no. 268/2024. The said appeal was withdrawn on 06.05.2024 as appellant intended to move regularization application. The regularization application was rejected on 17.08.2024 and appellant filed an appeal bearing no. 790/2024 against the demolition order. He submits that interim protection was granted to the property in question during the demolition proceedings and appellant was under the impression that no separate proceedings for sealing needs to be filed and under this misconception she did not file appeal impugning the sealing order.
4. Ld. Counsel for the appellant further submits that there is a sanctioned building plan of the property in question which was not considered by the MCD. He submits that the appellant has placed on record the documentary evidence to show that the structure is old and constructed prior to 01.06.2014 and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
5. Ld. Counsel for MCD submits that appeal is barred by limitation. He submits that appellant has made false averments in the appeal. He submits that in para (I) of the appeal, it is sated that no show cause notice was issued to the appellant whereas the MCD record shows that appellant has filed a detailed reply dated 30.04.2024 to the show cause notice dated 24.04.2024 which is available on MCD record (at page 110 C to 121 C). He submits that appellant has misrepresented the Tribunal by making a

submission that show cause notice was not served. He submits that the appellant participated in the proceedings before the MCD and the sealing order was passed after following due process of law.

6. On the other hand, it is submitted by Ld. Counsel for MCD that the property in question is an agricultural land as per sale deed dated 04.10.2022 and the cut off date applicable to the agricultural land as 08.02.2007. He submits that the sale deed dated 04.10.2022 clearly records that appellant has purchased the agricultural land and it does not record payment of stamp duty on the built up structure. He submits that the assessment order dated 12.09.2024 and 19.09.2024 (appeal no. 790/2024) are based on the inspection conducted in the year 2024 and cannot be relied upon. He submits that the affidavit given by the appellant during the assessment proceedings is contradictory to the sale deed. He submits that on the one hand, sale deed records that property is an agricultural land and no stamp duty is paid on any built up area and on the other, in the assessment proceedings appellant is claiming that the structure existed from the year 2006. He submits that the affidavit submitted by the appellant in the assessment proceeding is afterthought and contradictory. He submits that the revenue record relied upon by the appellant also shows the breach of status quo. He submits that Form P-4 of the year 2013-2014 records built up area is 04 biswa and in Form P-4 for the year 2014-2015 records built up area 09 biswa. He submits that the aforesaid documents also shows that appellant was continuously carrying on construction and breached the status quo.

7. He submits that appellant in the reply dated 30.04.2024 (at page 121 /C) filed during the sealing proceedings appellant has admitted that Mr. Pawan Misha was working as a repair person in the property. He submits that appellant filed a reply during the proceedings before the

MCD and now cannot take a stand that the proceedings were conducted at her back.

8. Arguments heard and record perused. So far as issue of limitation is concerned, it is stated in the application that appellant initially filed appeal no. 268/24 which was withdrawn to seek remedy to regularization. Upon rejection of regularization appellant filed fresh appeal bearing no. 790/24 challenging the demotion order. It is stated that appellant was under the impression that as the sealing proceedings also have its genesis in the allegation of unauthorized construction and therefore, the same will be catered in the demolition appeal. From the record, it is clear that appellant was taking various actions to seek legal recourse and was not sitting idle and it was due to confusion about filing a separate appeal to impugn sealing proceedings the delay had occurred. The appellant has raised grounds which needs to be considered and appreciated on merits. Appellant is able to show sufficient cause and the delay is condoned.
9. It is the case of the appellant that the impugned sealing order had been passed without providing any opportunity of hearing and show cause notice as well as impugned order was not served upon appellant. The said averments in the pleading are belied by reply dated 30.04.2024 filed by the appellant to reply to show cause notice dated 24.04.2024. It has remained unexplained in case no show cause notice was not received then how the reply to the show cause notice was filed by the appellant. Apart from that page 123 C of the MCD record bears the receiving made by the appellant against the service of the sealing order the said receiving has remained undisputed and goes against the plea of non-service taken by appellant.
10. It is the case of the appellant that the MCD did not appreciate the documentary evidence filed on record and did not pass a speaking order. It is argued that the deviations / excess coverage is also not specified in

the order. It has argued that the structure in question is old and constructed prior to 01.06.2014 and falls within the bracket of protection as per National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

11. A perusal of the demolition order dated 22.02.2024 clearly records that MCD has come to the conclusion that the documents submitted by the appellant are not relevant as appellant has carried out new construction which is out of the scope and ambit of the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The impugned sealing order is passed in furtherance to it.
12. Appellant is relying upon sanctioned building plan dated 06.09.2002. It is the case of the appellant that as per said sanction plan construction of 100 sq. meters was permitted in the property in question and MCD in their demolition order should have specified the alleged construction over and above the same. On the other hand, Ld. Counsel for the MCD submitted that the entire structure erected by the appellant is new. He further highlighted that the sanctioned building plan is for Khasra nos. 30/15/2 min, Khara no. 30/15/1, Khasra no. 30/16/min, Khasra no.30/25 min, Khasra no. 31/11/1, Khasra no. 39/5/1 and Khasra no. 39/5/1/2 at Village Samalkha, Delhi. He submits that in para no. 9 (i) of the appeal the appellant has stated that his property only comprised of Khasra nos. 30/25, Khasra no. 39/5/1/1 and Khasra no. 5/1/2. It is submitted that the Khasra no. 5/1/2 is not part of the sanctioned building plan. It is submitted that appellant has failed to clarify who are the owners of Khasra no. 30/15/2, Khara no. 30/15/1, Khasra no. 30/16/MIN, Khasra no. 31/11/1, Khasra no. 39/5/1/2. He further submits that appellant has failed to clarify on which of the aforesaid khasras the said structure of 100sq. Meters was constructed. He submits that in the absence of the

clarification regarding the other Khasras, it cannot be presumed that the permitted structure of 100 sq. yards was on the Khasras belonging to the appellant especially when Khasra no. 5/1/2 is not part of the sanctioned building plan.

13. I found merits in the submissions made by Ld. Counsel for the MCD. During the course of the submissions that Ld. Counsel for the appellant has failed to throw any light on the aforesaid aspect. It is not clarified on which Khasra number exactly the built up area of 100 sq. yards existed. The existence of the said permitted covered area on the appellant's land further become clouded by her own sale deed 04.02.2022 which mentions the nature of the property bought by the appellant as an agricultural land. The said sale deed clearly shows that no stamp duty has been paid by the appellant on the built up structure as per the extant stamp duty rates. The said sale deed clearly shows that the land which has purchased by the appellant did not contain the permitted / sanctioned built up structure. Accordingly as a natural corollary the conclusion arrived by the MCD that the entire structure is unauthorized is flawless and as per record.

14. It is argued by Ld. Counsel for the MCD that as per sale deed the property in question is an agricultural land and the cut off date as 08.02.2007 is applicable to the property . On the other hand, it is argued by Ld. Counsel for the appellant that cut off date of 01.06.2014 which is applicable to unauthorized colonies is applicable to their property. Ld. counsel for the appellant has placed on record copy of order in appeal no. 259/2024 dated 06.05.2024 to buttress his submissions that for the property in neighborhood the cut off date of 01.06.2014 was considered by this Tribunal. A perusal of the said order shows that no finding on merits in respect to the cut off date applicable (to the property in question in that case) was given by the Tribunal. However, record shows that

appellant is not even helped by self presumed cut off date of 01.06.2014. Form P-4 for the year 2013-2014 shows that the constructed area is mentioned as 04 biswas whereas Form P-4 for the year 2014- 2015 shows that the constructed area is 09 biswas. One biswa is approx. 151sq. Yards. The aforesaid revenue record shows that even after 01.06.2014 further construction was carried out and the built up area increased by 05 biswas which is approx. 755 sq. yards. It is clear from the documents submitted by the appellant herself that the status quo was breached.

15. On the other hand, revenue record submitted by the appellant is contradicted by her own sale deed dated 04.10.2022 by which she has purchased the property in question. The said sale deed shows property as an agricultural land. No stamp duty has been paid on the built up area. Appellant has placed on record the property tax assessment order dated 12.09.2024 and 19.09.2024. In the said assessment order the appellant has filed an affidavit and is claiming that the area of 168 sq. meters at ground floor was constructed during the year 2006-2007, 560.82 sq. meters at ground floor, 644.93 sq. meters at first floor, 164.85 sq. meters on second floor was constructed during the year 2013-2014. In case that was the scenario as per appellant, it is not understood why at the time of registration of the sale deed dated 04.10.2022 the aforesaid built up area was not declared and mentioned by the appellant in the sale deed and why the stamp duty was not paid on the same. It is clear that the affidavit filed by the appellant in the property tax assessment proceedings is afterthought exercise made with intention to get the benefit of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, but he said fallacious exercise of the appellant got hit by her own sale deed which has separated the chaff from the grain.

16. Appellant has also argued that property tax assessment for 12.09.2024 and 19.09.2024 be also considered for providing protection

to his property. A perusal of the said assessment order shows that they are based on the inspection report dated 11.09.24 and 18.09.2024 which is clearly after the cut off date. The affidavit of the appellant regarding built up area was also submitted in the year 2024. The proceedings have been done in the year 2024 i.e after the cut off date and the assessment order cannot be relied upon to appreciate the issue of protection available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Apart from that property tax assessment also becomes eclipsed as the affidavit furnished by the appellant during the said proceeding giving details of the covered area / built up area is absolutely contradictory to the appellant's sale deed dated 04.10.2022. One more aspect which creates doubt about affidavit of the appellant is non-mentioning of second floor area in the first round of assessment proceedings. Order dated. 12.09.24 records that appellant in her affidavit informed that covered / built up area only in respect of the 'basement' and 'ground floor' and assessment order was passed on the basis of the same. Thereafter within a period of one week appellant applied for the ratification of the order. Order dated 19.09.24 records that submissions of the appellant that in her previous affidavit appellant has inadvertently mentioned ground floor and basement floor instead of 'ground floor' and 'first floor'. It is also recorded that the appellant inadvertently did not mention second floor area of the property due to *bonafide* mistake.

17. A collective perusal of the aforesaid documents filed by the appellant shows that on 04.10.2022 when appellant bought the property it was an agricultural land. On 12.09.2024 the assessment order recorded the structure as basement and ground floor as per the affidavit submitted by the appellant herself. Thereafter due to reasons unknown the appellant applied for ratification and informed that the property comprises of ground floor, first floor and second floor. From the record it is clear that



the appellant is continuously changing her version and the structure in question has surfaced after 2022 and is a new construction.

18. From the material on record it is clear that appellant has erected a new structure on the property which is not covered within the ambit of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The documentary evidence filed by the appellant is contradictory and unreliable. As the new construction is erected without any sanctioned building plan, the same is unauthorized and liable to be demolished. Accordingly the appeal filed by the appellant is dismissed and the impugned sealing order dated 01.05.2024 is upheld.
19. The file of the respondent be send back along with copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court  
today i.e. on 14.05.2025 (s)**

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

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