

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

APPEAL NO. 790/ATMCD/2024

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
Office of Executive Engineer,
Building Department, Najafgarh Zone,
Main Zonal Building Room No. 121-122,
1st Floor, Dhansa Stand,
Najafgarh, New Delhi-110043.

..... Respondent

No. 1

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

..... Respondent No. 2

Date of Filing of Appeal : 17.09.2024

Date of Judgment : 14.05.2025

JUDGMENT

1. The present appeal has been filed by the appellant impugning the demolition order dated 22.02.2024 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 the appellant that the show cause notice dated 08.08.2023 was issued in the name of Mr. Pawan Mishra, hearing notice was issued in the name of Mr. Sanjeev Chhabra whereas the actual owner of the property in question is appellant Mrs. Nipur Chhabra. He submits that the demolition order is passed without hearing the appellant. He further submits that the hearing in the present case was done by Mr. Vimal Naarayn the then AE (B) and the demolition order is passed by Mr. Sushil Kumar AE (B). He submits that the demolition order should have been passed by the officer who provided the hearing in the matter and due to aforesaid procedural flaw the proceedings stands vitiated. He submits that there is a sanctioned building plan of the property 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.
3. 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 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 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 property as an agricultural land and no stamp

duty is paid on any built up area and on the other hand 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 to sale deed. He submits that the revenue record relied upon by the appellant also shows breach of status quo. He submits that as per Form P-4 for the year 2013-2014 the recorded built up area is 04 biswa and in the Form P-4 for the year 2014-2015 the recorded built up area is 09 biswa. He submits that the aforesaid revenue record also shows that appellant was continuously carrying on construction and breached the status quo.

4. Ld. counsel for the MCD further submits that appellant has misguided the Court by making the submissions in respect of the order passed by Mr. Sushil Kumar AE (B). He submits that after Sh. Vimal Narayan AE (B), the case was marked to Mr. Sushil Kumar, A.E (B). He submits that office noting (at page 3/N and 4/N of the MCD record) clearly show that Mr. Sushil Kumar, AE (B) was providing hearing to the appellant's husband / representative and only after recording submissions that they do not want to file any other documents, the order was reserved by the Quasi Judicial Authority. He submits that submissions made by the appellant in this regard are baseless and false.
5. In respect of the proceedings against Mr. Sanjeev Chhabra it is submitted by Ld. Counsel for MCD that appellant cannot be permitted to brew hot and cold at a same time. He submits that in in reply dated 30.04.2024 filed during the sealing proceedings appellant has admitted that Mr. Pawan Misha was working as a repair person in the property. He submits that as per Section 343 of the DMC Act, 1957 notice can be issued to a person at whose instance the construction is being carried out. He submits that Mr. Sanjeev Chhabra had filed reply before the MCD and also attended the hearings. He appeared in the capacity of a owner

and was representing his wife. He submits that no objection regarding ownership of appellant /wife was taken by Mr. Sanjeev Chhabra. He submits that in the tax assessment order dated 12.09.24 and 19.09.2024 also it is recorded that it was Mr. Sanjeev Chhabra who has represented his wife / appellant. He submits that the Ld. Counsel for appellant during arguments admitted that no complaint is made by appellant / wife against her husband Mr. Sanjeev Chhabra for unauthorized representation in aforesaid proceedings. He submits that from the record as well as submissions made during the proceeding before the Tribunal it is clear that Mr. Sanjeev Chhabra was appearing in representative capacity as a owner and was authorized to represent for the property.

6. Arguments heard and record perused. It is the case of the appellant that the show cause notice was issued in the name of Mr. Pawan Mishra and thereafter the demolition order is passed against Mr. Sanjeev Chhabra, whereas the property is actually owned by appellant Mrs. Nipun Chhabra. It is argued by Ld. Counsel for appellant that as the proceedings are not initiated against the owner of the property the same stands vitiated and liable to be set aside. Though the aforesaid arguments look attractive at the outset, but the same is belied from the record. MCD record shows that the show cause notice dated 08.08.2023 was issued to the owner / builder Sh. Pawan Mishra. In reply dated 30.04.2024 (filed in sealing proceedings) appellant had admitted that Mr. Pawan Mishra was carrying on repair work on her behalf. The receipt of the said show cause notice was acknowledged by Mr. Sanjeev Chhabra (who is the husband of the appellant) in his letter dated 14.08.2023 (at page 4/C of the MCD record). In the said letter Mr. Sanjeev Chhabra represented that the property in question belongs to him. After receipt of the aforesaid letter, MCD issued a hearing notice dated 18.08.2023 to Mr. Sanjeev Chhabra (at page 5/C of the MCD record). Pursuant to that hearing notice Mr. Sanjeev Chhabra

submitted a detailed reply dated 24.07.2023 (at page 8/C of the MCD record). In the said reply, he did not dispute the fact of non-issuance of the notice in favour of his wife. He represented that the property is owned and occupied by his family and contested the case on merits. Office noting and MCD records shows that all the personal hearings were attended by Mr. Sanjeev Chhabra and he never took any objection in respect of ownership of his wife. During the course of arguments, Ld. Counsel for the appellant on Court query clarified that no complaint whatsoever is made by appellant Smt. Nipun Chhabra against her husband Mr. Sanjeev Chhabra for unauthorizedly representing her before the MCD. He confirmed that Mr. Sanjeev Chhabra had appeared under the authority and approval of his wife and represented her before MCD.

7. A person who has claimed himself to be the owner of the property, filed the replies and had appeared before the MCD throughout the proceedings without taking any objection in respect of ownership of his wife, cannot fill up the lacuna's and question the procedure at the stage of appeal. From the record, it is clear that Mr. Sanjeev Chhabra was representing the interest of his wife before the MCD and there is no procedural flaw found in this regard.
8. In case the arguments made by Ld. Counsel for the appellant has to be appreciated then a criminal action needs to be initiated against Mr. Sanjeev Chhabra for misrepresenting before a Public Officer in discharge of his official function. Ld. Counsel for the appellant clarified that they have not lodged any complaint against Mr. Sanjeev Chhabra for unauthorized representation before MCD. The stand of the appellant is contradictory. On the one hand she is objecting to proceedings of MCD on the ground of ownership and non-issuance of notice in her name and on the other hand it is submitted that husband of the appellant Mr. Sanjeev Chhabra was authorized to appear on her behalf before the MCD

and he represented himself to be owner of the family property. In these circumstances, it is clear that Mr. Sanjeev Chhabra has appeared in representative capacity before the MCD and under instructions of his wife (appellant).

9. The representative capacity of Mr. Sanjeev Chhabra also become clear from the assessment order under Section 123 D of the DMC Act, 1957 dated 12.09.2024 and 19.09.2024 filed by the appellant along with the list of documents. The said orders clearly shows that Mr Sanjeev Chhabra husband of the appellant have represented her wife in the proceedings before the MCD for calculation of tax. From the material on record, it becomes clear that Mr. Saneev Chhabra was acting as a representative of the appellant. The stand of appellant is contradictory. MCD had passed order after providing proper hearing to husband / representative Mr. Sanjeev Chhabra who claimed that the property in question is a family property. Accordingly, the contention in this regard is rejected.
10. It is argued by Ld. counsel for the appellant that as per settled legal position, an officer who provides hearing must pass orders. He submits that in present case the show cause notice was issued by Mr. Vimal Narayan, the then AE (B). Thereafter, the hearing notice dated 18.08.2023 was also issued by him. He submits that the documents were submitted by the appellant before Mr. Vimal Narayan, AE (B) but he impugned demolition order dated 22.02.2024 was passed by Mr. Sushil Kumar A.E (B). It is argued as the order is passed by an officer who did not provide any hearing to the appellant and therefore, impugned order does not stand the test as prescribed by the Hon'ble High Court of Delhi in the case titled as **Sudesh Kumar Vs. SDMC, CM (M) 500/2020**.
11. A perusal of the MCD record shows that the proceedings in present case were initiated by Mr. Vimal Narayan, A.E (B). Thereafter,

office notings (at page 1/N and 2/N of the MCD record) shows that the initial hearings were provided by Mr. Vimal Narayan. Thereafter, office noting (at page 3/N and 4/N) shows that Mr. Sanjeev Chhabra appeared before Mr. Sushil Kumar, AE (B) on 09.11.2023 and submitted the copy of revenue record as well as property tax documents. Office noting dated 09.11.2023 clearly records that hearing was provided by Mr. Sushil Kumar, AE (B) and the relevant extract is reproduced below:-

DOH:09/11/2023

Sh. Sanjeev Chhabra today appeared in person before the undersigned for personal hearing. During course of hearing, he repeated his version that his property is old constructed farmhouse and no fresh construction activity is done at site.

During course of hearing, he again submitted a legible photocopy of Girdhavari (Revenue Record) and photocopy of property tax deposited in MCD for the year 2022-23 along with No Dues Certificate and for the year 2023-24. Further, the appellant made request to grant him one month's more time to arrange some other relevant record/documents.

Considering the request of the appellant, the case is posted for further hearing on 04/12/2023 at 03.00 pm.

(Sushil Kumar)

Asstt. Engineer(B)/NGZ

Sh. Sanjeev Chhabra

12. Thereafter on 04.12.2023 Mr. Vikas Shokeen had appeared on behalf of Mr. Sanjeev Chhabra. The authority letter issued by Mr. Sanjeev Chhabra in his favour was also placed on record. Mr. Vikas Shokeen submitted on instruction that they have no other documents / record to be submitted before department and on the basis of submissions the hearing was closed and the matter was reserved for passing of the speaking order. The relevant extract of the office noting dated 04.12.2023 is reproduced below:-

DOH:04/12/2023

Today, Sh. Vikas Shokeen appeared for personal hearing on behalf of Sh. Sanjeev Chhabra and told that Sh. Sanjeev Chhabra is not able to attend the hearing today. He submitted the photocopy of authority letter duly signed by Sh. Sanjeev Chhabra, which is taken on record. However, no other document is submitted by him. He further, on instruction of appellant, submitted that they have no

other documents/records to submit in the department, except the documents already submitted in the department.

In view of above, the hearing is being closed today. The speaking order will be concluded/passed in due course of time and the same will be communicated to the appellant accordingly.

(Sushil Kumar)

Asstt. Engineer(B)/NGZ

Sh. Vikas Shokeen (on behalf of Sh. Sanjeev Chhabra)

13. From the MCD record it is amply clear that Mr. Sushil Kumar AE (B) had heard the appellant and his representative on 09.11.2023 and 04.12.2023 and after concluding the hearing, he reserved the matter for orders and thereafter passed the speaking order dated 22.02.2024. The arguments made by Ld. Counsel for the appellant that Mr. Sanjeev Kumar AE (B) has passed the impugned order without providing any hearing is fallacious and contradictory to the record. As Mr. Sanjeev Kumar passed speaking order after providing hearing and appreciating documentary evidence therefore the mandate of the judgment in the case of **Sudesh Kumar (Supra)** is not applicable to the facts and circumstances of the present case.
14. 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.
15. A perusal of the impugned demolition order dated 22.02.2024 clearly records that MCD had come to the conclusion that the documents submitted by the appellant are not relevant as appellant had 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.

16. 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.

17. 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.

18. 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.
19. 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.

20. 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.

21. 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.

22. 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 demolition order dated 22.02.2024 is upheld.

The status quo which has been provided vide order dated 08.10.2024 stands vacated.

23. 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**