

A.No. 56/25

23.05.2025

Present : Sh. Amreek Singh, Ld counsel for the appellant.  
Sh. Ashutosh Gupta, Ld counsel for the respondent.

**ORDERS**

1. Arguments on the point of interim application seeking stay as well as limitation heard at length from Ld. Counsels of both the parties in respect of property bearing no.25-26, Gali No. 9 & 10, K.No.387/1, 386/1, Near Anar Masjid, Old Mustafabad, Delhi-110094.
2. Ld. Counsel for appellant submits that he is not pressing application under Order 1 Rule 10 CPC at this juncture and needs to take instructions from his client and submits that the limitation as well as application seeking stay be decided on merits.
3. It is case of appellant that the property in question is devolved on appellant by way of various gift deeds and other documents which were executed by Hazi. Karimuddin. It is submitted that total plot size is 440 sq. yds and appellant Mr. Irshad Malik is the owner of 125 sq. yds.
4. In respect of Limitation period, it is stated that there is delay of around 542 days. It is submitted that the impugned demolition order was not served upon the appellant and appellant obtained impugned demolition

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order on 28.01.2025 and thereafter filed the present appeal. Ld. Counsel for appellant further submits that property in question is situated on Kh.No.347 and the

MCD has passed order against the K.No. 386/1 & 387/1. He submits that as property number is unclear therefore benefit needs to be granted to the appellant.

5. Ld. Counsel for appellant conceded that there is no sanctioned building plan of property in question and they have not filed property tax returns on record.
6. Ld.counsel for MCD submits that as per the MCD record the impugned demolition order was served by way of affixation on 05.07.2023 as is evident from the photographs available (at page no.81/C) of MCD record. He submits that service of show cause notice dated 20.06.2023 is not in dispute as it was duly replied by the appellant and the reply is part of paper book (at page no. 207 to 211 of the appeal). He submits that MCD had carried out demolition actions in property in question on 20.07.2023, 12.10.2023, 16.10.2023, 06.01.2025 and 18.02.2025. He submits that it is the admitted position on record that parallel civil proceedings were going on wherein MCD had filed status reports informing about the court about the proceedings in the matter. He submits that in view of demolition actions and the civil proceedings, appellant cannot plead ignorance to the demolition proceedings and appeal is highly time barred.

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7. He further submits that the title documents filed by appellant on record are unregistered and hit under Section 17 as well Section 49 of the Registration Act and cannot be read in evidence. He submits that the documents filed on record by appellant clearly shows that from time to time they are assigning different property numbers to subdivided plots. He submits that subdivided private

property numbers cannot be taken as shield to protect the action against unauthorized construction. He submits that MCD in their FIR as well as show cause notice has clearly shown that unauthorized structure in question is situated between street no.9 and street no.10. He submits that the said fact is also confirmed by the site which is filed by appellant at page no.203 of the appeal. He submits that MCD photographs at page 77/C also shows that absolutely new structure is erected without any sanctioned building plan. He submits that electricity bills filed (at page 204 to 206 of the appeal ) also shows the energisation date of the year 2023 which substantiate the case of MCD that a new structure is erected. It is argued that the appellant has erected absolute new structure without obtaining any sanctioned building plan and is liable to be demolished being unauthorized.

8. Arguments heard. Record perused. MCD has placed on record the photographs of unauthorized construction in question. During the course of arguments identity of

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property in the said photographs is not disputed by Ld. Counsel for appellant. It is conceded that the said structure shown in the said photographs (page 77/C) exist on the plot of 440 sq.yds which originally belong to Hazi Karimuddin. So far as the question of khasra number is concerned, MCD in their record has placed photographs of property in question and has also shown a sketch plan showing that structure in question exists between street no.9 and street no.10. The site plan filed by appellant also confirms that the structure in question exists between street no.9 and street no.10. Therefore, from the substantive evidence on record there is no confusion in respect of identity of property which has been booked by the MCD.

9. It is the case of appellant that they have received the impugned demolition order on 28.01.2025. In the present case the service of show cause notice is not denied and the said notice is duly replied by appellant. The demolition order is stated to have been served by way of affixation. The photograph of affixation is placed on MCD record. In view of the affixation proceedings, the demolition order is deemed to be served as per Section 444 of DMC Act, 1957. No reasonable explanation has been tendered by appellant in respect of various demolition actions which have taken by MCD from the year 2023 to 2025. Appellant cannot permit the plead of ignorance about the

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demolition order specially in view of various demolition actions carried out by MCD from the year 2023 to 2024. It is clear that no reasonable justification has been provided by appellant in respect of delay which has occasioned in filing of present case. It gets aggravated due to pendency of civil proceedings wherein MCD is filed various status reports apprising about proceedings.

10. In view of aforesaid background appellant cannot claim any nescience in respect of demolition proceedings and no reasonable grounds has been tendered for seeking condonation of huge delay of more than 500 days in filing of this appeal. From the MCD record it is clear that identity of property in question is unambiguous and appeal is highly time barred. Application seeking condonation of delay is dismissed. In consequence thereof, the interim application seeking stay, application under order 1 Rule 10 CPC is also disposed off. Appeal is dismissed.
11. The record of the respondent be send back alongwith copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court.**

(ABHILASH MALHOTRA)  
Addl. District & Sessions Judge  
P.O.: Appellate Tribunal, MCD  
23.05.2025 R