

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

APPEAL NO. 184/ATMCD/2025

1. Ms. Babita Goyal
W/o Sh. Sushil Kumar Goyal
R/o 33, Prakash Apartments,
5, Ansari Road, Darya Ganj,
New Delhi -110002.
2. Ms. Nisha Goyal
W/o Sh. Pradeep Kumar Goyal
R/o 33, Prakash Apartments,
5, Ansari Road, Darya Ganj,
New Delhi -110002.

..... Appellants

Versus

Municipal Corporation of Delhi
Through its Commissioner
At SPM Civic Centre near Minto Road,
New Delhi-110002.

..... Respondent

Date of Filing of Appeal : 03.04.2025

Date of Judgment : 16.07.2025

JUDGMENT

1. The present appeal is filed against the order dated 19.02.2025 passed by the MCD under Section 338 of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) revoking the sanctioned building plan in respect of the property bearing no. 229 situated at Kucha Ghasi Ram, Chandni Chowk, Delhi -110006.
2. It is submitted by Ld. Counsel for the appellants that they received advisory dated 31.05.2021 from the MCD informing that GNCT Delhi has directed to ensure the seismic safety of existing buildings in Delhi by way of retrofitting (if required). MCD informed that they have conducted a survey and found that the property of the appellants is found

in deteriorated / dangerous / dilapidated condition and required immediate major repairs so as to avoid any mis-happening. By said notice appellants were directed to take immediate corrective measures for strengthening of the building and removal of the dangerous portions from the premises within 30 days. It was directed that in case notice is not complied with, MCD will initiate action against the appellants under Section 348 and 349 of the DMC Act, 1957.

3. It is submitted that by aforesaid notice dated 31.05.2021, MCD issued time bound directions and the non-compliance of the same were punishable under Section 461 of the DMC Act, 1957. The appellants in compliance of the directions issued by the MCD started the repairs work of the property under the supervision of a structural engineer. The repairs were started but as the property was more than seven decades old and was in dilapidated condition, the whole structure collapsed on its own rendering it beyond the scope strengthening and retrofitting.
4. Upon collapse of whole structure, appellants applied for sanctioned building plan which was granted on 20.11.2024. Pursuant to the said sanctioned building plan, the appellants started carrying on the construction activity.
5. It is stated that the MCD issued a show cause notice dated 03.12.2024 under Section 338 of DMC Act informing that the property is heritage structure. It is submitted that the appellants were not aware about the heritage status of the property. It is submitted that MCD neither in the notice dated 31.05.2021 nor at the time of sanctioning the building plan informed the appellants that their property is a heritage property and appellants have never received any communication from Heritage Conservation Committee in this regard also.

6. It is submitted that the MCD has revoked the sanctioned building plan on the ground that the property is grade -III heritage property. It is submitted that the repairs were carried out in the property only on the directions issued by the MCD vide notice dated 31.05.2021. The said notice directed for time bound action failing which the proceeding under Section 348 and 349 of DMC Act, 1957 will be initiated. Appellants initiated the repairs in compliance of the directions of the MCD. The notice did not mention anything about the heritage status of the property and there was no occasion for the appellants to seek permission from the Heritage Conservation Committee. Appellants were bound under law to comply with the directions issued by the MCD which otherwise have penal consequences under section 461 of DMC Act, 1957. During the compliance of the MCD directions, while carrying out the repairs, the building got collapsed as it was a seven decade old structure and was in dilapidated condition. It is submitted that after the collapse of the whole structure the building had lost its heritage status. It is argued that the structure in question is constructed only after seeking sanctioned building plan and MCD cannot impose the conditions of heritage property on a structure which no more continuous to be a heritage property after its complete collapse.

7. It is submitted by Ld. Counsel for the appellants that neither the show cause notice nor the demolition order discussed anything about the directions issued by the MCD vide notice dated 31.05.2021. He submits that appellants have taken the specific plea before the MCD that the repairs work were carried out in compliance of their directions which led to the collapse of the dilapidated building. He submits that MCD officials have intentionally suppressed the fact of the notice dated 31.05.2021 to hide their mistakes. He submits that appellants had carried out the action

in the property in compliance of notice dated 31.05.2021. He submits that MCD was supposed to consult the matter with the Heritage Conservation Committee before issuing such notice. He submits that an individual at his level is not in a position to decipher whether the MCD before issuing such notice had consulted with the Heritage Conservation Committee or not. He submits that a sincere law abiding individual who has complied with the MCD directions cannot be made to suffer for the faults and the non-compliances which have been made by the MCD officials while issuing notice dated 31.05.2021. He submits that the facts of this case needs to be appreciated in the light of notice dated 31.05.2021 and the suppression of such notice in show cause notice as well as demolition order shows that *mala fide* and misrepresentation made by the MCD officials in order to save their skin and make appellants an escape goat.

8. It is further submitted by Ld. Counsel for the appellants that Section 338 of DMC Act, 1957 mandates providing of reasonable hearing before passing of the order. He submits that MCD record does not contain any office noting, hearing notices and adjudication proceeding showing that the proper procedure was not followed.
9. Ld. Counsel for MCD submits that appellants got their sanctioned plan under the simplified scheme through their Architect. He submits that under the simplified Saral Scheme an architect can issue sanctioned building plan for the residential properties but the properties wherein the permission of external agency like Heritage Conservation Committee is required are excluded from the ambit of the said scheme. He submits that while applying for the sanctioned building plan the architect did not disclose the fact that the building is a heritage property and due to misrepresentation MCD revoked the sanctioned building plan.

He submits that apart from the heritage status other deficiencies are also found which are reflected in the impugned order.

10. I have heard the arguments and perused the record. It is the case of the appellants that they were not aware about the heritage status of the building and came to know about the same only when they received the show cause notice dated 03.12.2024.
11. So far as the question of heritage property is concerned, there is no ambiguity regarding the status as the property is mentioned at Sl. No. 353 of Notification dated 29.07.2016.
12. Clause 1.3 in Annexure -II of UBBL, 2016 mandates that before carrying out any addition/ alteration, repairs etc. in the heritage property the Commissioner MCD shall consult with the Heritage Conservation Committee while granting permission.
13. Clause 1.14 of Annexure -II UBBL, 2016 shows that Chief Town Planner, MCD is a Member of the Heritage Conservation Committee.
14. Clause 1.5 of Annexure -II UBBL, 2016 shows that the list of heritage sites is prepared after inviting objections and suggestions from public which are duly considered by the Commissioner, MCD.
15. From the aforesaid legal position, it is clear that the MCD takes active participation in identification of the heritage sites and the Chief Town Planner, MCD is also a Member of the Heritage Conservation Committee. It cannot be denied that while issuing notice dated 31.05.2021, MCD was aware about the heritage status of the property in question especially considering the fact the property is situated in Chandi Chowk, Delhi which is a special area.
16. The contents of the advisory notice dated 31.5.2022 are reproduced below:-

ADVISORY NOTICE

Whereas, notification vide No. F.7(87)/AD/LB/2016/CD 000389764-3355-64 dated 24.04.2019 followed by subsequent notification F.7(87)/AD/LB/2016/CD 000389764/314-323 dated 10.02.2020 was issued by GNCID wherein it was directed to ensure seismic safety of existing building in Delhi by way of retrofitting if required.

Whereas, in WP(C) No. 4534/2015 in the case titled "Arpit Bhargava & Anr V/s North Delhi Municipal Corporation and others' Hon'ble High Court of Delhi has directed all three Municipal Corporation of Delhi to implement the provisions of above-mentioned notification in a time bound manner in order to ensure the safety of the people in the event of major earthquake.

Whereas, All the three Municipal Corporation of Delhi have issued joint public notice in leading newspapers on 18.06.2020 for compliance of the notifications in respect of safety of building against earthquake. The list of engineers structural empaneled is available on website @<http://mcdonline.nic>. Structure Engineer. However, structural audit from DTU, IIT, Delhi, NCCBM, Engg. Colleges under IP University & other Engineering College/Universities recognized by AICTE in Delhi/NCR will also hold good.

During the survey conducted by the Building Department, City SP Zone, North DMC in the area of Ward No. 84-N (Chandni Chowk) it was noticed that the property No. 299 Kucha Ghasi Ram, Chandni Chowk, Delhi-06 is in deteriorated/dangerous/ dilapidated condition and requires immediate major repairs so as to avoid any mis-happening.

You are hereby directed to take immediate corrective measures with respect to strengthening of building and removal of dangerous portion from the premises under the supervision of qualified structural engineer as per unified building bye laws, 2016 and thereafter also directed to obtain and submit a structural stability/ safety certificate, from a professionally qualified structural engineer duly empaneled from MCD, in the office of Executive Engineer (Bldg.)-II, City SP Zone, Nigam Bhawan, 2nd Floor, Old Hindu College Building, Kashmere Gate, Delhi-6 within 30 days, failing which action will be initiated under section 348 & 349 and other relevant provisions of the DMC Act.

This may be treated as most Urgent and it may also be noted that North DMC shall not be responsible for loss, whatsoever, to the inhabitants/occupiers or the property.

Assistant Engineer (Bldg.)-II
City-Sadar Pahar Ganj Zone

Name: Owners/Occupiers
Address : 299, Kucha Gashi Ram
Chandni Chowk, Delhi -06

17. A perusal of the said notice clearly shows that there is no whisper about the heritage status of the property. There is no mention in the notice as to whether MCD has consulted the matter with the Heritage Conservation Committee as per Clause 1.3 of Annexure II UBBL, 2016 before issuing the said notice. MCD by said notice has directed the owners / occupiers to repair the property in time bound manner failing which the repercussion under Section 348 and 349 of DMC Act, 1957 shall follow. The non-compliance is penal offence under Section 461 of the DMC Act, 1957. An individual under ordinary circumstances is not supposed to go behind the veil, by questioning the authority of MCD while issuing such notice. An individual has no resources to ascertain whether the office of the Commissioner MCD has consulted the Heritage Conservation Committee before issuance of notice. A law abiding citizen upon receipt of such a notice from Government Authorities has no option but to comply the same especially when the issue regarding the seismic safety and conservation of heritage building is involved.
18. From the record it is clear that the appellants had acted in compliance of the notice dated 31.05.2021 issued by the MCD. In notice of the MCD acknowledged the fact that the building was deteriorated, dangerous and in dilapidated condition and required immediate major repairs to avoid any mis-happening. It is during the course of the repairs, the seven decades old dilapidated and deteriorated structure got collapsed and thereafter the appellant approached the MCD for sanctioning of the building plan.
19. In such circumstances when an individual is complying the directions of the MCD, he / she cannot be burdened with the non-compliance of Annexure II of UBBL, 2016 for not seeking permission of Heritage Conservation Committee. It was incumbent upon the MCD to

consult the Heritage Conservation Committee before issuing notice dated 31.05.2021 and MCD failed to do the same.

20. In the case titled as **Nilabati Behera Vs. State of Orissa and Ors** (1993) 2 SCC 746, the Hon'ble Apex Court has observed as under:-

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence... This is not the task for Parliament..... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this Country."

21. Further, in the case titled as **M/s Motilal Padampat Sugar Mills Co. Vs. State of Uttar Pradesh and Ors.** dated 12th December, 1978, AIR 1979 SUPREME COURT 621, the relevant extract of the judgment passed by Hon'ble Supreme Court of India is as under:

"The State, however, contended that the doctrine of promissory estoppel had no application in the present case because the appellant did not suffer any detriment by acting on the representation made by the Government : the vanaspati factory set up by the appellant was quite a profitable concern and there was no prejudice caused to the appellant. This contention of the State is clearly unsustainable and must be rejected. We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, the promisee acting in reliance of the promise should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise.

We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient. The

detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise.

It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has acting in reliance of the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment".

22. From the facts and circumstances, it is amply clear that the repairs were initiated by the appellants upon categorical time bound directions of MCD and upon collapse of the building during such repairs, the heritage structure does not exist any more. In such circumstances, emphasizing the requirements of heritage structure under UBBL, 2016 for a heritage site which has already collapsed is blowing hot and cold together. Ideally the structure should not have been repaired without consulting with the Heritage Conservation Committee. MCD failed to take Heritage Conservation Committee into loop. The MCD did not bother to consult the Heritage Conservation Committee when the heritage structure was intact and was directed to be repaired. Now, when the heritage structure has collapsed and does not exist, emphasizing upon requirement applicable to heritage property is arbitrary and exercise of power by MCD.

23. We need to remember the legal maxim "**Actus Curiae Neminem Gravabit**" : The action of public authority or Court shall not harm a litigant or a litigant shall not suffer due to lapses made by public authority. The sanctioned building plan needs to be considered by MCD as per extant building bye laws applicable to property.

24. In addition to aforesaid, the impugned order as well as show cause notice does not mention about the notice dated 31.05.2021. The facts of the present case needs to be considered in the light of the directions issued by the MCD itself. It is clear that MCD in the show cause notice as well as the impugned order have suppressed the fac

regarding the notice dated 31.05.2021 only in order to present the incomplete picture and justify arbitrary action.

25. Proviso of Section 338 of DMC Act, 1957 mandates that before passing of the order the Commissioner, MCD shall give a reasonable opportunity to the person affected. The MCD record file do not have any office noting, hearing notices or any other proceeding done before the Quasi Judicial Authority showing that reasonable opportunity of hearing was provided to the appellants. It is clear that the order is passed in a mechanical manner without providing a reasonable opportunity of hearing to the appellants.
26. In view of the aforesaid reasoning, the impugned order dated 19.02.2025 is set aside. The matter is remanded back to the Quasi Judicial Authority for deciding the same afresh.
27. The appellants shall appear before the Quasi Judicial Authority on **24.07.2025 at 2.30 PM**. The Quasi Judicial Authority shall provide an opportunity to appellants to submit reply and also grant them personal hearing.
28. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defenses raised by appellants and shall communicate the said order to appellants. The appellants shall however not raise any unauthorized construction in the said property without necessary permission as per law.
29. 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 16.07.2025 (s)**

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