

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

APPEAL NO. 121/ATMCD/2025

**Sh. Narender Kumar
S/o Late Sh. Pratap Singh
R/o H. No. 1, Village Pitampura,
Delhi -110034.**

..... Appellant

Versus

**1. The Commissioner,
Municipal Corporation of Delhi
Civic Centre, Minto Road,
S. P. M. Marg, Delhi-110002.**

**2. The Assistant Engineer
Building Keshav Puram Zone
Municipal Corporation of Delhi
Delhi.**

..... Respondents

Date of Filing of Appeal : 28.02.2025

Date of Judgment : 29.07.2025

JUDGMENT

1. The present appeal has been filed by the appellant impugning the Vacation Notice dated 13.02.2025 by which directions have been issued to vacate the third floor of the property bearing House No.1, Village Pitampura, Delhi -110034 which is liable to be demolished. The relevant extract of the vacation notice is reproduced below:-

Vacation Notice Under Section-349

WHEREAS, it has been noticed that the property under reference has been occupied by owner/ builder/occupier in contravention of Section-346 of the D.M.C. Act, 1957 as neither the occupant(s) has/ have been notice for completion of the erected building nor the Commissioner, M.C.D. has granted permission to occupy the same. Details of property are as under:-

U.C. File No.& Dt	Owner/ builder	Property No. & Address	Ward No.
168/C-63/B-11/UC/CLZ/2014 dt. 29.08.2014 (U/c in the shape of entire second & third floor & projection on Mpl. Land)(Ground & First Floor already booked vide file No. 336/B/UC/RZ/2007 dt. 03.10.2007	Sh. Narender Kumar S/o Late Sh. Pratap Singh	H. No. 1. Village Pitampura, Delhi-110034	61

Whereas, the documents appended with the representations dated 24.09.2024 and 04.10.2024, to ensure that no prejudice is caused to the owner in terms of relief available under "The National Capital Territory of Delhi Laws (Special Provisions) Second Act", documents were examined and observed that the protection can be given only for second floor of the property and kept in abeyance till the expiry of cut-off date i.e. upto 31.12.2026, however, the third floor of the property does not fall under the purview of this Act. Therefore, the third floor of the property is liable to be demolished. In case of case of non- extending of such Act after 31.12.2026, action will be taken against the Second Floor of the property including Ground Floor and First Floor.

WHEREAS, it has been established that unauthorized construction has been carried out in the said building and the Municipal Corporation of Delhi have to proceed in the matter in accordance with the law. The competent authority has already passed the demolition orders in the said case.

NOW, therefore, I, Assistant Engineer, Building Deptt. II, Keshav Puram Zone, Municipal Corporation of Delhi, under Section-349 of the D.M.C. Act, 1957 call upon you to vacate the Third Floor of the premises, within 24 hours of the receipt of this order, so that the M.C.D. may take demolition action against the unauthorized construction in the shape of Third Floor, as per demolition program fixed by the Department, failing which the demolition action shall be carried out at the risk and cost of the owner/occupier.

Sh. Narender Kumar S/o Late Sh. Pratap Singh
Owner/Occupier
H.No. 1, Third Floor, Village Pitampura,
Delhi-110034

Asstt. Engineer (Bldg.)-11
Keshav Puram Zone

2. It is submitted by Ld. Counsel for the appellant that the demolition order dated 08.09.2014 passed vide file no. 168/C-63/B-II/UC/CLZ/2014 was in respect of the unauthorized construction of the entire second and third floor. He submits that appeal bearing no. 472/2015 was filed before this Tribunal challenging the said demolition order. The said appeal was dismissed vide order dated 18.08.2015. A Civil Suit was also going on in respect of the property. Thereafter appellant gave representations dated 20.09.2024 and 27.9.2024 to the MCD. The MCD provided protection to the second floor and has issued vacation notice for the third floor. He submits that by issuing vacation notice in respect of the third floor of the property, MCD had altered the demolition order and the proceedings have been vitiated and liable to be set aside by this Tribunal.
3. Ld. counsel for MCD submits that vide file no. 336/B/UC/RZ/2007 dated 03.10.2007 ground floor and first floor of the property were booked. Thereafter, vide file no. 168/ C-63/ B-II/UC/ CLZ/2014 dated 08.09.2014 second floor and third floor were booked. Thereafter, vide file no.279/C-63/B-II/UC/CLZ/2014 dated 24.11.2014, fourth floor and fifth floor were booked. He submits that demolition action were taken in respect of fourth and fifth floor.
4. He submits that in respect of demolition order dated 08.09.2014 passed vide file no. 168, appellant filed an appeal bearing no. 472/15 before this Tribunal. The said case was heard on merits and the appeal was dismissed and demolition order dated 08.09.2014 was upheld. The Tribunal also observed that order dated 03.10.2007 has become final.
5. He submits that a Civil Suit bearing no. CS/SCJ 406/2015 was going on in the Court of Ms. Neha Mittal, Ld. ASCJ, North Rohini, Delhi wherein MCD filed a status report dated 25.09.2024 informing that they

are examining the documents submitted by the appellant to look into the question of protection available to second and third floor of the property under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

6. He submits that a representation dated 20.09.2024 and 27.09.2024 was received from the appellant. The appellant submitted electricity bills, rent agreement and affidavit of the neighbours and written statement of the MCD filed in the Civil Suit no. 158/07 to claim the protection. He submits that the said documents were examined by the MCD and by office noting dated 18.12.2024 (Page 11/N) the protection was granted only in respect of the second floor of the property and the demolition order in respect of the third floor was kept intact. He submits that as the protection has been granted in respect of the second floor of the property, therefore, the Vacation Notice had been issued in respect of third floor. He submits that appellant on the one hand has accepted the protection for the second floor and on the other hand is challenging the same proceedings wherein action against the third floor is kept intact. He submits that appellant cannot pick and chose to challenge the order which goes against him and accept protection which goes in his favour. He submits that the appeal against the vacation notice is not maintainable.

7. Ld. Counsel for the MCD submits that in their reply they have clarified that the cut off date for protection in respect of the Village Abadi areas was enhanced to 01.06.2014 by way of amendment which came into effect from 26.12.2014. He submits that the demolition order was passed by the MCD on 29.08.2014 and therefore, the MCD vide file noting dated 18.12.2024 considered the matter for providing protection to second floor of the property in question.

8. He further submits that on 26.05.2025 MCD has already filed their affidavit tendering unconditional apology and prays that the contempt proceedings be not initiated against the MCD officials.
9. I have heard the arguments and perused the record. Before proceeding further, it will be relevant at this juncture to tabulate the stage- wise demolition orders which have been passed by the MCD against the property in question.

Sl. No.	File Number	Booking Details
1.	336/B/UC/RZ/2007 dated 03.10.2007	Unauthorized Construction of ground floor and first floor.
2.	168/C-63/B-II/UC/CLZ/2014 Dated 08.09.2014	Unauthorized construction of the entire Second and Third floor.
3.	279/C-63/B-II/UC/CLZ/2014 dated 24.11.2014	Unauthorized construction of Fourth floor and Fifth floor.

10. As per reply filed by MCD the property in question is located in Village Abadi area and the cut off date in the Village Abadi area as applicable to the property in question is 01.06.2014.
11. It is also admitted position on record that the property in question is constructed without any sanctioned building plan and the appellant is only claiming protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 as amended from time to time.
12. From the record it is amply clear that in the year 2007 the ground floor and first floor were unauthorizedly constructed in the property and directed to be demolished by the MCD vide demolition order dated 03.10.2007. Appellant did not deter from the said booking and continued construction in the property in question which was again directed to be demolished vide demolition order dated 08.09.2014 in respect of second and third floor. Another demolition order dated

24.11.2014 was passed in respect of Fourth and Fifth Floor. From stage wise booking it is apparent that appellant by breaching status quo and flaunting law by carrying unauthorized construction.

13. Construction in respect of Fourth and Fifth Floor is not in dispute and stated to have been demolished by the appellant. The said fact is confirmed by the MCD in para 2 (iii) of reply. Appellant has also not contested the demolition order in respect of fourth and fifth floor.

14. The demolition order dated 08.09.2014 in respect of second and third floor was challenged before this Tribunal vide Appeal No. 472/2015. The Tribunal decided the matter on merits and dismissed the appeal. The demolition order dated 08.09.2014 was upheld and the demolition order dated 03.10.2007 was also stated to have become final. The relevant extract of the judgment dated 18.08.2015 is reproduced below:-

“Admittedly, the earlier show cause notice and demolition order were issued in respect of ground floor and first floor and served upon the Sh. Partap Singh, who did not file any reply or objection or appeal against the same, therefore order in respect of ground floor and first floor which had already been booked vide booking No.336/B/UC/RZ/2007 dated 03.10.2007 had already become final.

In view of the above circumstances, the impugned order dated 08.09.2014 passed by the AE(B) is upheld. The appeal is accordingly dismissed”.

15. From the said judgment, it is absolutely clear that the appeal in respect of second and third floor was dismissed by this Tribunal. Upon dismissal of the appeal, MCD was supposed to carry out the demolition action against the property in question. Any remedy against the said judgment was available under Section 347 D of the DMC Act, 1957 by filing the appeal before the Court of Ld. Principal District & Sessions Judge, Delhi. But the record shows that the MCD took the baton in their

own hand and proceeded further to annul the judgment of this Tribunal and providing protection to the second floor.

16. It is a settled legal position that the Quasi Judicial Authority does not have any inherent power of review. The power of review needs to be conferred by the statute and DMC Act, 1957 does not provide any powers to MCD in that regard. The settled legal position in this regard is as follows:

In the case titled as **Ved Prakash Gupta and Sons and Ors. vs. Delhi Development Authority**, Neutral Citation W.P(C) 22121/2005, 2007.DHC.392, MANU/ DE/ 7683/ 2002, Hon'ble High court of Delhi held that:

"10. The position in law as explained in decisions of the Hon'ble Supreme Court is fairly settled. The power of review of a statutory authority exercising judicial or quasi-judicial power is not an inherent power. Unless the statute vesting appellate powers in an authority also specifically enumerates the power of review, such a power cannot be implied or inferred. An implied power of review is available only to Courts of record like the High Court or the Hon'ble Supreme Court.

13. Even upon a collective reading of the above 2 provisions, it is not possible to agree with the counsel for the Respondent DDA that there is any implied power of review in the Hon'ble Lt. Governor in his capacity as the second appellate authority under the Act. Although he may, by virtue of Section 347C of the DMC Act, exercise similar powers of a civil court, the reference is to particular powers of a civil court. It does not extend to exercising the powers of review. The inescapable conclusion is that there is no specific power given to the Lt. Governor to review or recall his own order.

In the case titled as **H.C. Suman v. Rehabilitation Ministry Employees Cooperative Housing Building Society**, (1991) 4 SCC 485 the Hon'ble Supreme Court of India held that:

"It is settled law that a quasi judicial order once passed and having become final cannot be reviewed by the authority passing that order unless power of review has been specifically conferred. The quasi judicial order dated August 19, 1985, as seen above, had been passed by the Lt. Governor under Section 76 of the Act. No power to review such an order has been conferred by the Act."

In the case titled as **Patel Narshi Thakershi V. Pradyumansinghji Arunsinghji**, AIR 1970 SC 1273 the Hon'ble Supreme Court held that:

"It is well settled that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

17. Perusal of the MCD record shows that representation dated 20.09.2024 and 27.09.2024 was received by MCD from the appellant. A office note dated 01.10.2024 (at page 1/N of the MCD record) was prepared to seek legal opinion in the matter. The matter was sent to the Law Officer, MCD. The concerned JLO (Law Officer) vide Office Noting dated 21.10.2024 (at page 3/N) categorically opined that there is no provision to consider the reply / representation submitted by the owner / occupier and the department is duty bound to take action against the unauthorized construction. The relevant extract of the opinion given by the concerned JLO (Law Officer) is reproduced below:-

“Therefore, I am of the view that once the department passed the demolition order against the property in question, there is no provision to consider the reply/representation submitted by the owner/occupier. The department is duty bound to take action, against the unauthorized construction after passing the demolition order, if no stay has been granted by the competent court of law.

18. Despite the said legal opinion, the JE Mr. Abadan Jamal; AE Mr. R. K. Meena; Executive Engineer Mr. Lalit Sharma and the Superintendent Engineer Mr. P. K. Jain and the Deputy Commissioner Mr. Sandeep Kumar went ahead to annul the judgment dated 18.08.2015 (Appeal No. 472/2015) by providing protection to the second floor of the property in question.
19. A perusal of the said office noting dated 18.12.2024 (at page 10/N & 11/N) shows that there is no whisper or discussion of the judgment dated 18.08.2015 passed by this Tribunal. There is no discussion about the legal opinion given by the JLO (Law Officer) MCD.

It is apparently clear from the said file noting that the file had been moved by suppression of facts and completely ignoring legal opinion. The suppression of facts also become patently clear from the status report dated 25.09.2024 filed before the Civil Court in CS/SCJ 406/2015. In the said report also, the MCD officials suppressed the fact regarding the dismissal of the appeal no. 472/2015 by judgment dated 18.08.2015 in respect of the demolition order pertaining to second and third floor by this Tribunal. The MCD officials in para 6 of the status report in flagrant violation of the judgment of this Tribunal informed the Ld. Civil Court that they are in process of considering documents to consider the protection which may be available to second and third floor. It is clear from the file noting as well as status report dated 25.09.2024 that the judgment dated 18.08.2015 was suppressed by the MCD officials intentionally because they wanted to exercise their ill will to consider the representation for providing protection to the property in question. In case the judgment of this Tribunal would have been highlighted in office noting as well as status report, it would have been an obvious road block for the MCD officials, as they cannot review their own order or annul the judgment of this Tribunal or sit as an Appellate Authority in respect of the judgment passed by this Tribunal.

20. Ld. Counsel for the MCD has argued that in their reply they have clarified that the cut off date for protection in respect of the Village Abadi areas was enhanced to 01.06.2014 by way of amendment which came into effect from 26.12.2014. He submits that the demolition order was passed by the MCD on 29.08.2014 and therefore, the MCD vide file noting dated 18.12.2024 considered the matter for providing protection to second floor of the property in question.

21. Though aforesaid arguments seems to be attractive but does not hold ground. The MCD record shows that the First Information Report of the construction of second and third floor was recorded on 29.08.2014 (at page 8/C). The First Information Report records that all kind of building material was found at the spot. As per the booking of the year 2007 only first and second floor were constructed in the property and therefore it was patently clear that a fresh construction of second and third floor was continuing which was recorded in First Information Report dated 29.08.2014. Thereafter show cause notice dated 19.08.2014 was issued and demolition order was passed on 08.09.2014. The said construction of second and third was done after the cut off date of 01.06.2014 therefore, the question of providing protection (even if there was an amendment) does not arise. In addition to aforesaid, the judgment in appeal no. 472/2015 was passed by this Tribunal on 18.08.2015. MCD has opposed the appeal in the Tribunal and supported their demolition order. The said proceedings were after the amendment dated 26.12.2014. The Tribunal passed the judgment after that amendment come into force and there was no occasion for the MCD to re-open the matter and annul the judgment. Moreover, the submissions made in the reply are afterthought as the file notings do not make any mention about the said reasoning. To make the things more grave, the file notings do not mention anything about the judgment dated 18.08.2015 in Appeal No. 472/2015 and there is complete suppression by MCD officials.

22. By providing protection to the second floor vide office noting dated 18.12.2024, the MCD officials the JE Mr. Abadan Jamal; AE Mr. R. K. Meena; Executive Engineer Mr. Lalit Sharma and the Superintendent Engineer Mr. P. K. Jain and the Deputy Commissioner Mr. Sandeep Kumarnot only reviewed their own demolition order but

annulled the judgment dated 18.08.2015 passed by this Tribunal by practically usurping the powers under section 347 D of the DMC Act, 1957 which is only available to the court of Ld. Principal District & Sessions Judge, Delhi.

23. It is clear from the record that the aforesaid action taken by the MCD officials i.e JE Mr. Abadan Jamal; AE Mr. R. K. Meena; Executive Engineer Mr. Lalit Sharma and the Superintendent Engineer Mr. P. K. Jain and the Deputy Commissioner Mr. Sandeep Kumar is absolutely illegal and *prima facie* contemptuous. By office noting dated 18.12.2024 the MCD officials not only reviewed their own order but have annulled the judgment of this Tribunal by usurping the jurisdiction by complete suppression of facts and ignorance of explicit legal opinion given by the JLO. It is patently clear from the record that MCD officials i.e. the JE Mr. Abadan Jamal; AE Mr. R. K. Meena; Executive Engineer Mr. Lalit Sharma and the Superintendent Engineer Mr. P. K. Jain and the Deputy Commissioner Mr. Sandeep Kumar have willfully disobeyed and annulled the judgment of this Tribunal which *prima facie* attracts the action under the Contempt of Courts Act, 1971.

24. In view of the aforesaid, the protection which has been provided to the second floor by the MCD vide file noting dated 18.12.2024 is illegal, contemptuous and arbitrary exercise of powers. The demolition order dated 03.10.2010 against the ground floor and first floor became final as it was not contested. The demolition order dated 08.09.2014 in respect of second and third floor was upheld by this Tribunal by judgment dated 18.08.2015 in appeal no. 472/2015. No remedy against the said judgment was sought by the appellant under Section 347D. MCD do not have any power to review or annul the judgment of this Tribunal and the proceedings done by the MCD vide file noting dated 18.12.2024 are *prima facie* contemptuous and in complete violation of law. In

compliance of the judgment passed by this Tribunal the property in question is liable to be demolished and the protection granted to the second floor by the MCD vide MCD noting dated 18.12.2024 goes into the teeth of the judgment dated 18.08.2015 and completely illegal.

25. The present appeal is filed against a Vacation Notice issued under Section 349 of DMC Act, 1957. Section 343 as well as Section 347B of the DMC Act, 1957 does not provide any mechanism for appeal against the Vacation Notice and the present appeal is not maintainable. The relief sought by the appellant is time barred. Appellant admittedly did not prefer any appeal against the judgment dated 18.08.2015 (Appeal no. 472/2015). The appellant cannot be permitted to take a by pass route by challenging the Vacation Notice.

26. In view of the aforesaid, the appeal is not maintainable and liable to be dismissed. MCD is directed to take necessary action against the property in question in compliance of judgment dated 18.08.2015 in appeal no. 472/2015.

27. The MCD officials have moved an application under Section 151 CPC on 26.05.2025 tendering their unconditional apology and praying that the contempt proceedings be not initiated. Accordingly, MCD officials i.e. the JE Mr. Abadan Jamal; AE Mr. R. K. Meena; Executive Engineer Mr. Lalit Sharma and the Superintendent Engineer Mr. P. K. Jain and the Deputy Commissioner Mr. Sandeep Kumar are directed to show cause and submit their reply as to why the proceedings under Contempt of Court Act, 1972 be not initiated against them.

**Announced in the open Court
today i.e. on 29.07.2025 (s)**

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