

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

**APPEAL NO. 233/ATMCD/2023 & APPEAL No.234/ATMCD/2023**

**Abhay Goel**

**S/o Sh. Sanjeev Goel,  
R/o 8Y/1, Under Hill Lane,  
Civil Lines, Delhi-110054**

**..... Appellant.**

**Vs**

**Municipal Corporation of Delhi  
Through Its Commissioner,  
Civic Centre,  
Jawahar Lal Nehru Marg,  
Minto Road, New Delhi**

**.....Respondent**

**Date of Filing of Appeal : 28.04.2023  
Date of Judgment : 01.08.2025**

**JUDGMENT**

1. This common judgment will decide the appeal no. 233/24 and 234/23 which have been filed in respect of property bearing No.C-20, 64 (part), M.M. Road, Rani Jhansi Road, New Delhi. The issues involved in both the appeals are common and pertains to same property are decided by way of common judgment.
2. Appeal No.233/23 is filed by the appellant impugning the demolition order dated 28.07.2022 passed by the MCD against the unauthorized construction in the shape of digging/excavation for basement in the existing structure, illegal below the plinth level / at ground floor level.
3. Appeal No.234/2023 is filed by the appellant impugning the sealing order dated 09.09.2022 passed by the MCD against the unauthorized construction in the shape of digging/excavation for basement in the existing structure, illegal exaction of digging of below the plinth level at ground floor level.
4. It is submitted by the Ld. counsel for appellant that they were not given proper hearing and the demolition and sealing orders were not served upon the appellant. He submits that appellant had given various representation to the

MCD to supply the copy of orders and due to non-receipt of impugned order the delay occurred in filing appeals. He submits that appellant has placed on record representation dated 21.09.2022, 24.04.2023 and 26.04.2023 wherein he requested for supply of the impugned orders. Thereafter the appellant filed the appeals on 28.04.2023.

5. In respect of the appeals, it is submitted by Ld. counsel for appellant that MCD has taken contrary stand in their status report. He submits that MCD in status report dated 17.05.2023 stated that the property comprises of ground floor, first and second floor and thereafter in status report dated 09.06.2023 and 20.03.2025 stated that from the Rani Jhansi Road side two floors are visible in the property and from back lane three floors are visible in the property. He submits that the status report clearly shows that the MCD has passed the orders without any clarity in respect of the property in question.
6. He submits that the impugned demolition order was passed on 28.07.2022 and thereafter the sealing order was passed on 09.09.2022. He submits that the impugned order has been passed on the pretext that the appellant has unauthorizedly dug/excavated basement in the property. He submits that appellant has purchased the property in question well before the initiation of proceedings by the MCD and the registered sale deed dated 02.06.2022 filed by the appellant clearly shows that appellant had purchased the basement and the basement existed in the property. He submits that appellant has placed on record the property tax returns of the year 2019 as well as property inspection report of the year 1971 which shows the existence of basement in the property. He submits that appellant was carrying out only repairs in the basement and necessary permission was already obtained on 22.07.2022 and despite obtaining said permission of repairs MCD has booked the property in question.
7. Ld. counsel for MCD submits that the appeals are time barred. He submits that appellant failed to tender any sufficient cause for delay. In respect of the appeals he submits that appellant has unauthorizedly dug the basement without necessary permission and the same is unauthorized.
8. I have heard arguments and perused the record. So far as question of limitation is concerned, the appellant has filed representation dated 24.04.2023 and 26.04.2023 on record. Through said letters the appellant has

requested the MCD to provide the copy of the demolition and sealing orders . MCD sealing record is silent in respect of the service of sealing order. The photographs of affixation proceedings available on record only pertains to show cause notice of sealing. In the absence of any service record the service of sealing order on appellant is not free from doubt.

9. The demolition order is stated to have been sent by post but the postal tracking report is not on record. Affixation proceedings are not witnessed by any public person and original photographs are not filed on record. In these circumstances it is clear that the service of demolition order is also not free from doubt.
10. In view of the aforesaid facts the appellant has been able to tender sufficient cause for condonation of delay. Accordingly, the applications seeking condonation of delay are allowed. Delay is condoned.
11. Ld. counsel for MCD has argued that MCD record contains the photographs of the property which shows that construction was going on at site. Appellant has not denied the construction in the property. It is the case of the appellant that he has obtained necessary permission of repairs from the MCD and the permission was granted by MCD vide letter dated 22.07.2022 (page-36) of the appeal.
12. Appellant has placed on record the tax assessment letter dated 11.07.2019, MCD tax inspection report of the year 1971 and the sale deed dated 02.06.2022 which shows the existence of the basement in the property. All these documents are historical in nature which are prior to the booking of the MCD.
13. In addition to aforesaid, the case of the MCD is also not free from doubt. In the status report dated 17.05.2023 MCD has stated that the property consists of basement, ground floor, first floor and second floor. The relevant extract is re-produced below:-

“That the property bearing no.64 (Northern Side), Rani Jhansi Road (M.M. Road), New Delhi consists of basement, ground floor, first floor and second floor, unauthorised digging/excavation for basement was noticed in the already existing structure and therefore action u/s 344 (1) and 343 of the DMC Act had been initiated in the shape of unauthorized digging/ excavation for basement in the existing structure, illegal exaction/ digging at below the plinth level/at GF level

vide file no.161/C-92/B/UC/KBZ/2022 dt. 18.07.2022. Order of demolition had been passed u/s 343 of the Act on 28.07.2022.”

14. Thereafter in the status report dated 09.06.2023 MCD came up with a different version and informed that from the Rani Jhansi Road side two floors of the property are visible and in the back lane there are three floors are visible in the property. It is also stated that at the time of inspection the property was entered from back lane which opens in ground floor/half basement and floors appeared to be old construction, however, floors have been re-furbished. By this report MCD militated against his own case considering the property structure is old. The relevant extract is reproduced below:

“On inspection, it was noticed that the said property abuts Rani Jhansi Road (MM Road), There is also a lane in the back side of the property and there is a considerable difference of height in front side road and back lane of the property. From the Rani Jhansi Road Side two floors of the property are visible. However, from the back lane there are three floors in the property. At the time of inspection the property was entered from the back lane which open in ground floor/half basement. This floor appears to be old construction, however, the flooring has been re-furnished with tiled etc. It is further submitted that there are only three floors existing in the property. The photographs of the property taken during inspection are also annexed herewith”

15. Thereafter, MCD filed status report dated 20.03.2025. In this report also MCD stated that two floors are visible from Rani Jhansi Road and three floors are visible from back lane. The relevant extract of status report dated 09.06.2023 is reproduced below:

“.....3. That an inspection of the property was carried out on 30.01.2025 in the presence of the appellant. During inspection, the measurement of the covered area of the property in question were taken. There are three floors existing in the property. The measurement of covered area are as under:-

1. Basement	:	111.41 sqm
2. Ground Floor	:	120.52 sqm
3. First Floor	:	125.29 sqm.

4. That due to the topography of the area there is considerable difference in the level of front side road and back lane of the property due to which two floors are visible from Rani Jhansi Road i.e. front side and three floors are visible from the back lane. It is further submitted that the topography of other properties abutting Rani Jhansi Road are similar.”

16. A careful perusal of the aforesaid reports especially the report dated 09.06.2023, clarifies that at the time of inspection MCD found that the back lane opens at ground floor / half basement which is old construction.
17. The appellant has also placed on record the documents which shows the existence of the basement in the property in question prior to booking and covered in scope of protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act. It is the case of the MCD that appellant has dug / excavated new basement, the said fact is neither supported by the MCD report and also belied by the documentary evidence which is filed by the appellant.
18. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 28.07.2022 and impugned sealing order dated 09.09.2022 are set aside.
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 01.08.2025 (J)**

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