

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

APPEAL NO. 233/ATMCD/2025

- 1. Ms. Tara Kaur Mann**
W/o Sh. Nalin Sayal
D/o Late Sh. Gurnihal Singh Mann
R/o 1 Friends Colony West, Nehru Nagar,
Sriniwaspuri, Delhi – 110065
Presently at
602, Aradhna Apartments,
R. K. Puram, Sector -13, New Delhi -110066
 - 2. Ms. Sehaj Kaur Mann**
W/o Sh. Jai Singh
D/o Late Sh. Gurnihal Singh Mann
R/o 1 Friends Colony West, Nehru Nagar,
Sriniwaspuri, Delhi – 110065
Presently at
Green Fields School,
New C Block, Raja Ji Puram,
Luckhnow, UP-226017.
 - 3. Ms. Kismat Kaur Mann**
W/o Sh. Gurab Singh
D/o Late Sh. Gurnihal Singh Mann
R/o C-4/60, SDA Hauz Khas,
New Delhi -110016.
 - 4. Ms. Raminder Kaur**
W/o Late Sh. Sukhinder Pal Singh Mann
R/o B-363, New Friends Colony,
New Delhi -110065
Presently at
House No. 1, Friends Colony,
West, New Delhi -110065
- Appellants**

Versus

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

..... Respondent

Date of Filing of Appeal: 15.04.2025
Date of Judgment : 04.08.2025

JUDGMENT

1. The present appeal has been filed by the appellants impugning the demolition order dated 28.02.2025 passed by the MCD under Section 343 of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) in respect of the unauthorized construction in the shape of subdivision of plot by erecting a partition wall and infringement in set back in the shape of toilet room and porta cabin and raising of structure over porch at 1st floor against SBP no. 386/B/HQ/79 dated 30.05.1979 bearing property House No. 1, Friends Colony, West, New Delhi -110065.
2. It is submitted by Ld. Counsel for the appellants that MCD has not passed the order against the proper parties. He submits that Mr. Gurnihal Singh Mann had already died on 06.12.2024 before the order was passed.
3. He submits that the property is old structure built as per the sanctioned building plan. He submits that after the partition of the property, pursuant to the directions of the Hon'ble High of Delhi the appellants had erected the wall in question in order to protect their shares of property. He submits that the one of the porta cabin is already removed. He submits that as per the UBL, 2016 the porta cabins are permitted to be erected in the property and MCD had wrongly booked the same. He submits that the demolition order was not served upon the appellants.
4. Ld. counsel for the MCD submits that the proceedings were initiated vide show cause notice dated 03.07.2024 which was addressed to Sh. Gurnihal Singh Mann and Mr. S. Govind. Mr. Gurnihal Singh Mann

was alive at that juncture. He submits that Mr. Gurnihal Singh Mann participated in the proceedings before the MCD and submitted a detailed reply dated 08.07.2024 (at page 15/C of MCD record). He submits that MCD considered the said reply on merits and passed the impugned order. The legal heirs of Mr. Gurnihal Singh Mann never informed MCD about his death and they cannot take objection in this regard at this juncture. He submits that in respect of objection regarding non-service of demolition order, the MCD has placed on record the copy of postal receipts which clearly shows the service of the demolition order through posts and there is a presumption in favour of the article sent through registered post. He submits that the father of the appellants submitted a detailed reply before the MCD and participated in the proceedings and the appellants cannot take the plea of non-service at this juncture.

5. He submits that Mr. Gurnihal Singh Mann in his reply dated 08.07.2024 admitted that the wall erected by him is a load bearing wall and he also stated that he is taking steps for regularization / permission of the partition wall. He submits that admission of the load bearing wall as partition wall clarifies the sub division of the plot. He submits that as per Clause 1.4.81 of UBBL, 2016 the interior partition of wall is defined to be non load bearing and in case of load bearing walls prior sanction of MCD is required before erecting the same. In respect of the allegations regarding infringement in the set back in the shape of toilet room and porta cabin and raising of structure over porch, he submits that sanctioned building plan of the property clearly shows that the porch is an open area which cannot be covered. He submits that appellants have failed to tender any explanation in that regard. He submits that as per Clause 7.17.2 (e) portable watch and ward cabins are permitted only at entry and exist only but in present case appellants have constructed the

rooms in the set back in violation of the UBBL, 2016. He submits that as per the Master Plan MPD 2021 the encroachment in the set back area is non-compoundable.

6. It is further submitted by Ld. Counsel for MCD that appellants on the one hand are contesting the appeal and on the other hand given an undertaking on 25.07.2025 before the MCD that they are currently in process of removing the structure alleged to be beyond the sanctioned plan.
7. I have heard the arguments and perused the record. Perusal of record shows that the show cause notice dated 03.07.2024 was issued to Mr. Gurnihal Singh Mann and Mr. S. Govind. The service of the said show cause notice is not in dispute. Mr. Gurnihal Singh Mann through his advocate submitted a detailed reply dated 08.07.2024 (at page 15/C). The said reply was considered by the MCD and the demolition order was passed. It is admitted by the appellants that they never intimated MCD about the death of their father. In these circumstances when MCD has given hearing to the then owner and had passed the order on merits the proceedings cannot be vitiated only on the ground that the legal heirs did not intimate about the death to the MCD. It is settled legal principle that no one can be permitted to take advantage of their own wrongs. The legal heirs never bothered to intimate the MCD about the death of their father and from the record it is clear that the MCD followed the due process of law while passing the order.
8. It is the case of the MCD that appellants have caused sub division of the plot by erecting a partition wall. In order to appreciate, it will be prudent to reproduce the relevant extract of the reply dated 08.07.2024 submitted by Mr. Gurnihal Singh Mann through his advocate before the MCD (at page 13/C of the MCD record) which is as under:-

“The erection of the wall which is alleged to be subdivision was necessitated as for last many years, Indrave Singh Mann was threatening to demolish the entire structure including my client's portion of the building. Had there been no wall raised to support the roof, then the entire building would have fallen. My client is taking appropriate steps for regularization/permission for the partition wall”.

9. From the reply it becomes clear that the structure has been constructed after the cut off date and it is not covered under the ambit of protection. From the reply, it becomes clear that the wall is a load bearing wall. Clause 1.4.81 of UBBL, 2016 defines the partition wall as the one which is non-load bearing. In case of erection of a load bearing wall, the necessary permission as per DMC Act, 1957 and UBBL, 2016 is required as it tantamount to structural changes. In the aforesaid reply it is admitted that as no permission was taken from MCD and therefore the father of the appellants were conscious to take appropriate steps for regularization / permission of the partition wall. Once the appellants have admitted that the wall requires regularization / permission, now they cannot be permitted to take the plea that the erection of wall falls in the definition of repairs. Even otherwise, a load bearing wall as per Clause 1.4.81 of UBBL, 2016 do not fall in that category. In the said reply, it is categorically admitted that the load bearing wall in question is a partition wall therefore, the case of the MCD that the aforesaid wall intends to sub divide the plot gets corroborated in view of the clear admission. From the record, it becomes clear that the wall in question is load bearing with intention to sub divide / partition the plot without any sanctioned / permission and is an unauthorized structure and liable to be demolished.
10. So far as the question of construction of structure in the porch at first floor is concerned, the appellants have failed to tender any explanation in this regard. It is argued that the said structure is in

complete violation of sanctioned building plan. As the said structure is in violation of the sanctioned building plan and appellants have failed to clarify the same, therefor the same is unauthorized and liable to be demolished.

11. In respect of the structure constructed in the set back area and porta cabin, the UBBL, 2016, Clause 7.17.2 (e) mandates that the watch and ward cabins can only be erected at the entry and exist points. The said cabin have to be movable. During the course of arguments appellants admitted that they have removed one of the cabin but the other structure is still there in the set back area. Master Plan of Delhi 2021 mandates that the set back area is mandatory. The coverage of set back area is not permitted and is in violation of sanctioned building plan. Appellant has failed to tender any reasonable explanation in respect of erection of the structure in the set back area and it needs to be demolished being unauthorized.
12. In view of the above facts and circumstances, the appeal is dismissed and the impugned demolition order dated 28.02.2025 is upheld.
13. 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 04.08.2025 (s)**

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