

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

APPEAL NO. 899/ATMCD/2024

1. Sh. Chandra Shekhar
S/o Sh. R. J. Lal
R/o 103-G, Khasra No. 109/1,
Village Zamrudpur,
New Delhi -110048.
2. Ms. Raj Bala
W/o Sh. Chandra Shekhar
R/o 103-G, Khasra No. 109/1,
Village Zamrudpur,
New Delhi -110048.

..... Appellants

Versus

Municipal Corporation of Delhi
Through its Commissioner
17th Floor, Civic Centre,
S.P. Mukherjee Marg,
New Delhi-110002.

..... Respondent

Date of Filing of Appeal : 08.10.2024
Date of Judgment : 04.08.2025

JUDGMENT

1. The present appeal has been filed by the appellants being aggrieved from the sealing of stilt to third floor of the property bearing No. 103-G, Khasra No. 109/1, Village Zamrudpur, New Delhi. It is clarified by the appellants that they are pressing the present appeal only for the portion from stilt to third floor and the appeal in respect of the fourth floor is pending before the Court of Ld. Principal District & Sessions Judge, South District, Delhi. Ld. Counsel for the MCD submits

that there is no embargo on the jurisdiction of this Tribunal to hear the appeal in respect of the portion from stilt to third floor. Accordingly, in view of the submissions of both the parties, it is clarified that the scope of this judgment is limited to stilt to third floor of the property in question and no observation is made in respect of the fourth floor.

2. It is submitted by Ld. Counsel for the appellants that the property from stilt to third floor was sealed by the MCD on 05.06.2023 without providing any hearing and without passing any sealing order. He submits that the MCD record is absolutely silent in that regard and there is no file noting to justify the sealing action.

3. It is submitted by Ld. Counsel for appellants that initially the property was booked by sealing order dated 21.12.2014. Appeal bearing no. 275/2015 was filed. Order dated 11.03.2016 (at page 159 of the appeal) records that MCD in their status report confirmed that protection was provided to property under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the controversy was brought to rest.

4. He submits that thereafter in the year 2021 MCD vide file noting dated 06.03.2021 alleged the breach of status quo (at page 6/C of the MCD record) and the sealed the property on eight points on 02.03.2020. The said action of the MCD was challenged in appeal no. 129/21 and 130/21. The Tribunal vide judgment dated 26.04.2022 (at page 161 to 174 of the appeal) set aside the demolition order and the sealing order observing that without issuing any show cause notice and without providing any hearing, MCD cannot re-activate the sealing orders. The Tribunal also directed de-sealing of the property and MCD in compliance thereof issued de-sealing order dated 06.05.2022 (at page 175 of the appeal) and de-sealed the property. He submits that at that juncture controversy in respect of property in question once again came to rest.

5. He submits that thereafter MCD passed a demolition order dated 21.07.2022 (at page 178 of the appeal) only against the alleged unauthorized structure in the stilt portion and part fourth floor. He submits that the said order did not disturb the protection /mutation is available to the stilt to third floor and its scope was only limited to the fourth floor and some alleged structure in stilt floor. He submits that the MCD in status report dated 23.03.2023 confirmed that the structure in stilt floor has removed. The appeal in respect of the fourth floor is pending before the Court of Ld. Principal District & Sessions Judge, South District, Delhi. He submits that bare perusal of demolition order shows that the floors from stilt to third floor were not in dispute and the protection was not disturbed.
6. He submits that thereafter MCD issued work stop notice dated 28.03.2023 (at page 192 of the appeal) in respect of the property in question wherein it is stated that some construction work is going on in the property. He submits that the said work stop notice was challenged in appeal no. 336/23 and vide judgment dated 22.09.2023 the work stop notice was set aside and the Tribunal gave a finding that appellant has only carried out internal repairs which comes within the purview of exemption provided in Clause 2.0.1 (d) of UBBL, 2016.
7. He submits that MCD has never disturbed the protection available to the property from stilt to third floor which is evident from the demolition order dated 21.07.2022. He submits that the allegations of structural changes as stated in work stop notice dated 28.03.2023 have been set aside by this Tribunal vide judgment dated 22.09.2023 in appeal no. 336/2023. He submits that there is no file noting in MCD record justifying sealing action dated 05.06.2023. He submits that despite the directions of the Tribunal vide judgment dated 26.04.2022 in appeal no. 129/21 and appeal no.130/21, MCD did not bother to issue any show

cause notice or grant hearing before sealing the property. He submits that there is no file noting as well as there is no sealing order on the MCD record and the action is absolutely arbitrary and unjustified.

8. Ld. Counsel for the MCD admits that initially the stilt to third floor were booked but in appeal no. 275/15 vide order dated 11.03.2016 MCD informed the Tribunal that protection has been extended to the property. He submits that thereafter MCD alleged the breach of status quo, as recorded in office noting dated 06.03.2021, and revived the sealing and demolition action. The said action was challenged in appeal no. 129/21 and 130/21. The Tribunal allowed those appeals vide judgment dated 26.04.2022 and the property was directed to be de-sealed. MCD in compliance of the judgment issued letter dated 06.05.2022 to de-seal the property.
9. Ld. Counsel for MCD also admits that the demolition order dated 21.07.2022 was only in respect of the some structure in the stilt portion and the part fourth floor and the protection granted to the stilt to third floor is not disturbed by the said order and the scope of the said order is only limited to part fourth floor and the structure in the stilt portion. He confirms that as per status report dated 23.03.2023 the structure in stilt portion was removed and in respect of the fourth floor the matter is pending before the Court of Ld. Principal District & Sessions Judge, South District, Delhi.
10. It is admitted by Ld. Counsel for MCD that in respect of sealing action dated 05.06.2023, from which the appellant is aggrieved, there is no file noting on MCD record. He admits that no show cause notice and no sealing order has been passed before that sealing action. He submits that the justification in respect of the sealing action is provided in work stop notice dated 28.03.2023 as the appellants were carrying on some

construction / structural work in the property and therefore the MCD has sealed the property for breach of status quo.

11. I have heard the arguments and perused the record. From the facts and circumstances it is admitted position that property from stilt to third floor was booked by the MCD. Being aggrieved from the same appellants filed appeal no. 275/15. The order dated 11.03.2016 records that MCD gave protection to the property under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the controversy came to rest at that time.
12. Thereafter in the year 2021 MCD revived the proceedings vide file no. 06.03.2021 (at page 6/C). Being aggrieved of the same appellants filed appeal no. 129/21 and 130/21. My Ld. Predecessor vide judgment 26.04.2022 allowed the appeal and directed for de-sealing of the property. It was observed that the MCD has not issued any show cause notice and provided any opportunity of hearing and principle of natural justice have been violated. The relevant extract of the said judgment is reproduced here-in-under:-

9. As per the respondent, the previous orders of demolition and sealing were re-activated. The approach adopted by the respondent is not in consonance with the law. A person against whom the statutory authority has intended to take action is having constitutional right to know at least as to what was his wrong, therefore, issuance of show cause notice and granting the liberty of being heard to the appellant and following principles of law, which cannot be ignored.

10. The respondent in the instant case, however has neither issued any show cause notice nor passed any fresh demolition/sealing order but claimed that appellant has breached the status quo order, therefore, protection under the National Capital Territory of Delhi Laws (Special Provision) Act 2014 was withdrawn and previous demolition and sealing orders were reactivated.

11. The action of respondent is thus not in consonance with the law and is required to be set aside. If appellant has raised any new construction, which is not covered under the National Capital Territory of Delhi Laws (Special Provision) Act 2014, then the respondent is at liberty to take action against the said act of the appellant but such action could only be taken by issuing show cause notice in compliance of Section 343 or 345 (1) of the DMC Act and further in conformity with the principle of natural justice, granting opportunity to the

appellant of being heard. The respondent however has not conferred the opportunity to the appellant of being heard, which is not sustainable in law.

12. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The noting dated 01.03.2021 of JE (B) South Zone is set aside. The property sealed on 02.03.2021 is ordered to be desealed within one week from today. The respondent can however take action against any unauthorized construction, if raised by the appellant in accordance with Section 345 of the DMC Act.

13. In compliance of the said judgment the MCD vide letter dated 06.05.2022 issued directions for de-sealing of the property and once again the controversy came to rest.

14. Thereafter, MCD has issued fresh demolition order dated 21.07.2022. The said order do not whisper anything about the protection which was granted to the stilt to third floor. Its scope is only limited to part portion on the fourth floor and some fresh structure in the stilt portion. As per status report of MCD dated 23.03.2023 the structure in stilt portion stands removed. The issue in respect in third floor is pending before the Court of Ld. Principal District & Sessions Judge, South District, Delhi.

15. From the aforesaid it becomes clear that MCD till 21.07.2022 has not passed any order in respect of the protection granted to the property from stilt to third floor and has also complied the judgment in appeal no. 129/21 and 130/21 by issuing letter dated 06.05.2022 for de-sealing. It is argued by Ld. counsel for the MCD that the present sealing action was done on 05.06.2023 on the basis of breach of status quo as recorded in work stop notice dated 28.03.2023. Ld counsel for the MCD submitted that though there is no separate office noting or show cause notice and sealing order is not passed, but the justification for the sealing action is recorded in work stop notice dated 28.03.2023.

16. The aforesaid arguments made by Ld. Counsel for the MCD does not seem to be attractive. This Tribunal vide judgment dated

26.04.2022 in appeal no. 129/21 and 130/21 has categorically stated that any action with regard to protection should have done after due process of law and in compliance of principle of natural justice. MCD record shows that before carrying out sealing on 05.06.2023 MCD officials had not made any file noting. No show cause notice or sealing order has been passed by the MCD. MCD has justified their sealing action on the basis of ground cited in the work stop notice dated 28.03.2023. The said work stop notice was challenged in appeal no. 336/23 and my Ld. Predecessor vide judgment dated 22.09.2023 had clarified that the appellants had carried out repairs which are permissible as per UBBL, 2016 and the work notice was set aside. The premises on the basis of which the property was sealed is already been set aside by this Tribunal vide judgment dated 22.09.2023 and despite that the MCD has continued with the sealing action, without providing any opportunity of hearing and without passing any order. The sealing action dated 05.06.2023 goes into the teeth of the directions issued by Ld. Predecessor in judgment dated 26.04.2022. Despite the directions of this Tribunal, MCD did not bother to follow due process of law and did not give opportunity of hearing to the appellants before reaching any logical conclusions. Any action by the MCD was supposed to be in compliance of directions contained in judgment dated 26.04.2022 and it is clear that the MCD has failed to adhere the directions. MCD has also acted in ignorance of the judgment dated 22.09.2023 in appeal no. 336/23 by continuing with the sealing action despite the fact that the work stop notice dated 28.03.2023 was set aside by this Tribunal. It is clear that sealing action dated 05.06.2023 is violative of the judgment of this Tribunal and cannot be upheld and accordingly set aside. Property i.e. stilt to third floor to which MCD has granted protection be de-sealed.

17. 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