

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

**APPEAL NO. 566/ATMCD/2022**

1. Smt. Alka Agarwal  
W/o Sh. Sushil Kumar,  
R/o House No.10A/34,  
Shakti Nagar, Delhi-7.

2. Sh. Anish Kumar Garg,  
S/o Sh. Jag Mohan Kumar Garg,  
Resident of 10A/33, Shakti Nagar,  
Near Nagia Park, Malka Ganj, Delhi-7

.....Appellant

**Vs**

Municipal Corporation of Delhi  
(Through its Commissioner)  
Civic Centre, Minto Road,  
Near Zakir Hussain College,  
New Delhi-110002.

..... Respondent

<b>Date of Filing of Appeal</b>	<b>:</b>	<b>13.09.2022</b>
<b>Date of Order</b>	<b>:</b>	<b>31.10.2025</b>

**JUDGEMENT**

1. This is an appeal against the order of rejection dated 12.08.2022 vide which the respondent refused the sanction of the building plan in respect of plot No.37, Block 10/A, Shakti Nagar, Delhi. As per respondent the total area of the plot is 318.89 sq.yds. and the appellants are the owner of only 199.2 sq.yds. The remaining portion of the plot is owned by some other individual and since the sanction was not sought for the entire plot nor the signatures of all the co-owners of the entire plot were received, the request for sanction plan was rejected on the ground that the sub-division of the plot is not permitted under clause 4.4.3 of MPD-2021.
2. This rejection order has been challenged in this appeal on the grounds that the appellants purchased area measuring 199.2 sq.yds. of built up property. The

total area of the plot is 318.89 sq.yds. The plot was earlier owned by two brothers Sh. B.S. Mathur and R.S. Mathur who constructed a double storey residential building as per sanctioned plan from DIT. The property was partitioned between these brothers vide partition deed dated 02.03.1959 duly registered on 02.11.1959 and the area measuring 199.2 sq.yds came to the share of R.S. Mathur and the appellants purchased this area from him. The appellants applied for sanction which was granted on 28.06.2019. The remaining portion of the plot is owned by on Ms. Sadna Mathur who filed civil suit as well as appeal before this Tribunal against the sanctioned plan. The respondent issued a work stop notice to the appellant on 01.11.2021. The appellants applied for revised sanction plan which was rejected on 12.08.2022.

3. This order has been assailed on the ground that the appellants have undertaken to abide by the Building Bye-laws and available FAR in respect of the portion owned by them but the respondent in defiance to the law rejected their application under clause 4.4.3 of MPD-2021. It was argued that law has now been settled by the Hon'ble High Court and Hon'ble Supreme Court of India in several judgments that once the property is segregated in separate portion and mutated accordingly, there cannot be any requirement to all the co-owners of the plot to signed the proposed sanction plan and further sanction has been granted in respect of several properties after sub-division of the plot.

4. Reliance has been placed on following judgments :

1. "Kanwal Sibal Vs. New Delhi Municipal Council & Ors.": W.P. (C) 3637/13 dated 27.05.2015.
2. "MCD Vs. Smt. Usha Devi Sharma: 127 (2006) DLT 275 (DB)".
3. "Samir Dev Sharma & Anr. Vs. South MCD": Appeal No. 933/17 dated 18.11.2019 of this Tribunal.
4. "Sneh Lata & Anr. Vs. North MCD".
5. "Sharda Nath Vs. Delhi Administration & Ors., Civil Appeal No. 1161/2009".
6. "EIH Limited Vs. North Delhi Municipal Corporation": W.P. (C) 6232/16 dated 03.10.2016.
7. "Rajeshwar Parshad Vs. Municipal Corporation of Delhi": AIR 1991 Delhi 71.
8. Ashok Kapoor and Ors Vs MCD 2003 DHC 10669.
9. Madan Lal Gupta Vs MCD 2005 (83) DRJ 629.
10. National Insurance Company Ltd. Vs Pranay Sethi (2017) 13 SCR 100.

5. Ld. counsel for the respondent MCD on the other hand has argued that this appeal is not maintainable. As per building bye-laws, the appellants are required to apply for sanction building plan for the entire plot. As per the division deed between B.S. Mathur and R.S. Mathur, the yellow colour portion in the division deed is common to both the parties and both of them have right to use it jointly and therefore, the portion owned by the appellant and Sadna Mathur are not independently demarcated but have common portion. The appellants earlier obtained sanctioned plan of their portion by illegally terming their area as area of entire property and claimed 300% FAR against permissible FAR of 225%. The appellants started construction which was challenged by Sadna Mathur in civil suit and appeal and because of that work stop notice was issued. The revised sanction plan applied was only in respect of part portion of the plot which is not permissible and is prohibited under clause 4.4.3 of MPD-2021. The sub=division of plot is not permissible and judgments relied upon are not applicable and appeal is liable to be dismissed.
6. Having heard the submissions and after perusal the record and the case law on the subject, it is relevant to note that the entire plot No. 10A/37 was owned by two brothers namely B.S. Mathur and R.S. Mathur. The appellants purchased the share of R.S. Mathur and the same was duly mutated in their names. The respondent has claimed that since the area shown in yellow in the partition deed between the two brothers was common, the same cannot be independently demarcated and is common to both. The appellants after purchasing the portion from Mr. R.S. Mathur, became the exclusive owner of area measuring 199.2 sq.yds. In the civil suit filed by the appellants against Sadna Mathur bearing suit No.2302/24, the application of the appellants under Order XXXIX Rule 1 and 2 CPC was allowed on 07.05.2025 and the appellants were permitted to raise boundary wall around their portion measuring 199.2 sq.yds. They raised the boundary wall of their portion. Sadna Mathur filed application under 151 CPC in that suit stating that under the garb of raising

boundary wall the appellants have erected partition wall. This application was rejected on 11.09.2025 holding that the property was inspected by officials of MCD and the wall constructed by the appellants is permissible under Building Bye-laws. Both these orders of the Ld. Civil Court have attained finality being not challenged by Sadna Mathur. In these facts the appellants have constructed boundary wall in respect of the portion owned by them. The arguments of the respondent that as per the partition deed there is some common portion in the property to be used by appellants and Sadna Mathur is of no help either to MCD or to Sadna Mathur who moved an application of her impleadment for the simple reason that the property as owned by the appellants is now being separated by boundary wall and is separate from the remaining portion of the plot.

7. The property in question has been mutated in favour of the appellants on the basis of their documents. It is also admitted that the plot in question was divided and due to that division, the portion purchased by the appellants claimed to be owned by them. The Hon'ble Supreme Court of India in the case of Sharda Nath V/s Delhi Administration & Ors. in Civil Appeal No. 1161/2009 dated 17.10.2019 held as under:

“Learned Counsel for the Delhi Development Authority (DDA) stated that apparently there is no policy on sub-division but as and when court passed order, the same has been implemented. The illustration of such orders passed by the court were handed over by learned counsel for the DDA and that aspect has been verified i.e. LPA No. 429/2013 order dated 31<sup>st</sup> March, 2014 affirmed in SLP (Civil) No. 18783/2014, in the case of Madan Lal Gupta vs Municipal Corporation of Delhi & Ors. Reported in 2005(83) DRJ 629 and in the case of Sunil Kohli & Ors. V. Union of India & Anr. Reported in 2005(83) DRJ 637.”

“The aforesaid thus shows that the Delhi High Court, well versed with the local legal situation, has been passing such orders which have been accepted by the DDA and we see no reason why the same principle should not apply in the present case.

We thus direct that the plot which vests with the two parties divided as per the area mentioned in order dated 26<sup>th</sup> September, 2009 but the FAR would be as available for the whole plot which would be divided in the same proportion in respect of the two portions of the plot.

It would be thus permissible for the two parties to approach the South Delhi Municipal Corporation for sanction of plans in respect of their respective portions of the plot with FAR divided on the whole plot in proportion to the area vested with the two parties in the plot and to carry out construction accordingly. Each of the parties would be separately responsible for their portion of construction and violation, if any. Needless to say that for sanction of the plan 'No Objection Certificate' would not be required by any of the parties from the other party."

8. In view of this law of the land laid down by Hon'ble Apex Court, the appellants have every right to apply for sanction building plan of the portion owned by them. The FAR available to them would be as available for the whole plot which would be divided in the same proportion in respect of the two portions of the plot. Therefore the impugned order dated 12.08.2022 is not sustainable and is liable to be set aside.
  9. The appellants applied for revised sanction plan which was rejected by the order dated 12.08.2022. The respondent therefore is directed to reconsider the revised sanction application of the appellants in view of the law laid down by Hon'ble Supreme Court in the judgments of Sharda Nath.
  10. The appellants be informed about the formalities, if any they are required to fulfill within 02 weeks from today. The appeal stands allowed.
- The record of the respondent be sent 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 31.10.2025**

**(AMIT KUMAR)  
Addl. District & Sessions Judge-cum-P.O.  
Appellate Tribunal, Delhi.**