

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

APPEAL NO. 725/ATMCD/2016.

**1. Late Smt. Koushilya Bai
Through L.Rs**

**(i) Sh. Bhisham Kanal (Son)
S/o Late Smt. Koushilya Bai
R/o 65-E, Gautam Nagar,
New Delhi-110049.**

**(ii) Col. Gopal Kanal (Son)
S/o Late Smt. Koushilya Bai
R/o 739, Sector-28,
Noida, UP-201303.**

... Appellant no. 1

**2. Sh. Bhisham Kanal
R/o 65-E, Gautam Nagar,
New Delhi-110049.**

....Appellant no. 2

**3. Smt. Asha Kanal
W/o Sh. Bhisham Kanal
R/o 65-E, Gautam Nagar,
New Delhi-110049.**

.. Appellant no. 3

Vs

South Delhi Municipal Corporation

..... Respondent

Date of Filing of Appeal	:	26.07.2016
Date of Order	:	04.11.2025

APPEAL NO. 842/ATMCD/2016.

**1. Late Smt. Koushilya Bai
Through L.Rs**

**(i) Sh. Bhisham Kanal (Son)
S/o Late Smt. Koushilya Bai
R/o 65-E, Gautam Nagar,
New Delhi-110049.**

(ii) Col. Gopal Kanal (Son)
S/o Late Smt. Koushilya Bai
R/o 739, Sector-28,
Noida, UP-201303.

... Appellant no. 1

2. Sh. Bhisham Kanal
R/o 65-E, Gautam Nagar,
New Delhi-110049.

....Appellant no. 2

3. Smt. Asha Kanal
W/o Sh. Bhisham Kanal
R/o 65-E, Gautam Nagar,
New Delhi-110049.

.. Appellant no. 3

Vs

South Delhi Municipal Corporation

..... Respondent

Date of Filing of Appeal	:	08.09.2016
Date of Order	:	04.11.2025

APPEAL NO. 1083/ATMCD/2016.

**1. Late Smt. Koushilya Bai
Through L.Rs**

(i) Sh. Bhisham Kanal (Son)
S.o Late Smt. Koushilya Bai
R/o 65-E, Gautam Nagar,
New Delhi-110049.

(ii) Col. Gopal Kanal (Son)
S/o Late Smt. Koushilya Bai
R/o 739, Sector-28,
Noida, UP-201303.

... Appellant no. 1

2. Sh. Bhisham Kanal
R/o 65-E, Gautam Nagar,
New Delhi-110049.

....Appellant no. 2

3. Smt. Asha Kanal
W/o Sh. Bhisham Kanal
R/o 65-E, Gautam Nagar,

New Delhi-110049.

.. Appellant no. 3

Vs

South Delhi Municipal Corporation

..... Respondent

Date of Filing of Appeal : 15.12.2016
Date of Order : 04.11.2025

ORDER

1. Vide this order, I shall dispose of all the aforesaid three appeals since they relate to the same property and appellants, who are owners of the property are same. The appeal no. 725/16 has challenged the sealing order dated 19.05.2016. The appeal no. 842/16 has challenged the demolition order dated 05.09.2016, whereas the appeal no. 1083/16 is against the order of rejection dated 30.09.2016 vide which the application for regularization of the existing construction was rejected.
2. The brief facts necessary for disposal of these three appeals are that the appellants raised construction in the shape of basement and ground floor of their property bearing no. 65-E, Gautam Nagar, New Delhi-110049. Show cause notice dated 18.03.2016 followed by demolition order dated 19.04.2016 was issued. This order was challenged in appeal no. 598/2016 and my Id. Predecessor remanded that matter back observing regarding service of show cause notice. Thereafter, hearings were given to the appellants as directed and detailed order dated 05.09.2016 was passed. The sealing order dated 19.05.2016 was already under challenge in appeal no. 725/16. The new demolition order dated 05.09.2016 was passed for the reason that regularization of the building plan has already been rejected as a part of the property of the appellants is in purposed road widening as per the regularization plan of the colony and the appellants failed to carry out requisite correction as conveyed to them and therefore, no building plan can be sanctioned and the construction is

without sanction. The regularization application of the appellants was dismissed for the reason that the appellants are required to leave space for proposed road widening from their plot of about 4.4 meters which they failed to do and the building plan cannot be regularized.

3. These orders have been challenged primarily on the ground that the demolition order dated 05.09.2016 does not deal with all the contentions of the appellants. The property of the appellants alleged to be required for road widening cannot be done without proper acquisition of their property and in case, the demand of the respondent is conceded, 25 feet out of 36 feet wide plot will have to be surrendered which is absolutely not possible. The plot of the appellants is a residential plot and was never acquired. The appellants applied for sanction plan under Section 337 of the DMC Act and after expiry of six months, raised the building on the stipulation that the plan is deemed to have been sanctioned and therefore, the appeals are to be allowed and the impugned orders are to be set aside. Reliance in support of the arguments was placed on the judgment of the Hon'ble High Court passed in the case of '**Sarita Gupta & Ors. Vs. MCD, MANU/DE/3035/2019.**
4. Ld. counsel for the respondent on the other hand argued that the earlier matter was remanded back as the show cause notice was not served. Thereafter, reply was given by the appellants which was duly considered. The appellants raised the construction without any sanctioned building plan and took the law in their hand. The respondent has every right to seek part of the plot for road widening. The respondent never approved the building plan as deemed approved by the appellants. The entire building was constructed illegally and is not protected under any law and is liable to be demolished. The building cannot be regularized as the appellants did not adhere to the directions to leave 4 meters out of their property for road widening which was a public cause. MCD has every right to take land of the appellants for purposes of the road widening without prior acquisition and therefore, the appeals are liable to be dismissed. Reliance was placed on the judgment of the Hon'ble Supreme

Court of India passed in the case of '**Pandit Chetram Vashisht vs. MCD, AIR 1995 SC 430**'.

5. The impugned demolition order dated 05.09.2016 reflects that on running page 5, it was mentioned that the Building Plan Committee held a meeting on 01.09.2015 presided by Dy. Commissioner of the respondent and the Committee arrived at the decision that a meeting at the level of building headquarter was held and building plan can be released after taking affidavit from the appellants that the portion of the land effected in widening of road shall be handed over to the concerned agency as and when required. It was also recorded that the appellants vide their requests dated 01.09.2015 agreed to leave 2 meters unexcavated portion, as per policy of the department and hence, this issue does not need further consideration. It means that the respondent agreed to release the building plan after taking affidavits from the appellants that they will hand over the portion of land for road widening as and when required. No reason is mentioned in the order dated 05.09.2016 as to why such affidavits were not taken.
6. Admittedly, the proposal for road widening as per the layout plan issued by DDA, is pending since 2015 and since last 10 years, same has not been implemented in the colony. The possession of the land of the appellants cannot be taken without acquiring the same. The Hon'ble High Court in the judgment of Sarita Gupta (Supra), held that the respondents (MCD) failed to cite any provisions of law or precedent that the petitioners can be deprived of their land without acquisition and payment of requisite compensation. Similarly, in the judgment of Pandit Chet Ram Vashisht (Supra), the Hon'ble Supreme Court of India in para 6 observed as under :-

“6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court

that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

7. The Hon’ble Supreme Court of India observed that the resolution of the Standing Committee that the area specified in layout plan for park and school shall vest in the Corporation free of cost is not in accordance with law. It further held that the Corporation by virtue of the land specified as open space may get a right as custodian but has no right to the effect of the transfer of the property that the transferor ceases to be the owner. It means that the respondent cannot claim that it has become owner of the property and shall pay compensation to the appellants only when it will formally acquire the property which may take years.
8. It was sufficient with the respondent to take affidavits from the appellants that the portion of land affected in the road widening will be handed over to the Corporation as and when required, which was rightly decided by the Building Plan Committee on 01.09.2015 presided by the then Dy. Commissioner, South Zone, MCD as mentioned in the order dated 05.09.2016. The demolition order carried out in violation of this decision of the Building Committee as well as the rejection of the regularization application on the sole ground is contrary to even to the decision of the Building Committee of the respondent. The appellants applied for Sanction under Section 337 of DMC Act. The same was not rejected within 60 days as stipulated and is deemed to be accorded. The

appellants did not receive any communication of rejection and rightly raised construction after expiry of 60 days. Whether the construction so raised is permissible, has to be seen and decided by respondent when regularization was applied for by appellants, keeping in view the decision of Building Committee dated 01.09.2015.

9. In view of these, all the three impugned orders are liable to be set aside. All the three appeals are allowed.
10. The respondent is directed to pass fresh orders after considering the decision of the Building Committee dated 01.09.2015 of taking requisite affidavits/undertaking from the appellants in respect of the proposed portion of their property to be used for road widening purposes.
11. Needless to say that personal hearing shall be given to the appellants before passing any fresh orders.
12. Record of the respondent, if any, be returned along with copy of this order and appeal file be consigned to record room.

**Announced in the Open Court
Today i.e. on 04.11.2025**

**(AMIT KUMAR)
District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi**