

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

APPEAL NO. 877/ATMCD/2016

IN THE MATTER OF :-

1. Anil Kumar
S/o Sh. Mitthan Lal,

2. Ajay Kumar
S/o Sh. Rajesh Kumar,
Both R/o E-10, Jyoti Nagar Extension,
100 Foota Road, Shahdara,
Delhi-110094.

.....Appellants

Vs

East Delhi Municipal Corporation
(now known as Municipal Corporation of Delhi)
Through Its Commissioner
Udyog Sadan, Patparganj,
Delhi.

..... Respondent

Date of Filing : 23.09.2016
Date of Order : 28.11.2025

JUDGEMENT

1. This is an appeal against the demolition order passed by the respondent in respect of property bearing no. E-10, Old no. 15, Out of Khasra no. 171, village Ziauddinpur, Jyoti Nagar Extn., main 100 ft. road, Shahdara, Delhi. The brief facts necessary for disposal of this appeal are that the undated demolition order (which is dated 11.05.2016) passed in respect of property no. E-10, Old no. 17, out of Khasra no. 171, village Ziauddinpur, Jyoti Nagar Extension, Main 100 foota road, Shahdara, Delhi, has been challenged by the appellant on the ground that the construction in the property has been carried out as per sanctioned building plan. The respondent without
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considering the same and without giving an opportunity of hearing to the appellant, the demolition order has been passed. Neither the show cause notice nor the demolition order was served upon the appellant and under these circumstances, the demolition order is liable to be set aside.

2. Ld. counsel for the respondent on the other hand argued that the entire construction in the property is in violation of the sanctioned building plan and the appellant failed to demolish the unauthorized construction despite giving assurance to this court and the regularization application was also rejected and therefore, the appeal is liable to be dismissed.
3. Submissions heard. The appellant has raised the objection of non-service of show cause notice and demolition order. The office record shows that the same was sent to the appellant through speed post on 29.04.2016 and 11.06.2016. There is presumption under General Clauses Act that it was duly served and further Section 444 of DMC Act under Clause 1(d) (iii) provides that a notice is deemed to be served if sent by registered post to that person. In these facts, the notice was duly served upon the appellant.
4. Coming to the objection of the appellant that there are no deviations in the building and the same is in accordance to the sanctioned building plan, the comparison of the sanctioned building plan and the plan of the property existing at site filed by the appellant itself show that the sanctioned building plan has an FAR of 241.99 %, whereas the FAR existing in the property is 328.41% ; the proposed covered area on the ground floor as per SBL is 153.65 sq. mtrs, but existing on the site is 176.87 ; on the first floor, the sanctioned area is 153.65, but the existing is 173.52 sq. mtrs ; similarly, on the second floor, the sanction area is 99.27 sq. mtrs against existing 171.29 sq. mtrs. On the third floor, it is 99.27 sq. mtrs as per SBL, but existing area is 164.80 sq. mtrs. The stilt area as per the SBL is 153.65 sq. mtrs, but actual is 176.87 sq. mtrs. The basement is sanctioned as 86.35 sq. mtrs, but the exiting area is 176.87 sq. mtrs. All these are clear-cut deviation in excess as compared to the sanctioned building plan.

5. Further, the appellant has converted the stilt parking into a marble shop which is neither permissible nor compoundable. The basement has been constructed without leaving 2 mtrs. space on right, left and rear side. The appellant did not bother to rectify these deviations despite giving assurance to the court on 04.01.2017.
6. In view of these deviations, which are neither compoundable nor permissible, there are no reasons to set aside the demolition order dated 11.05.2016 which is a well reasoned and valid order.
7. In view of the above, the appeal is hereby dismissed.
8. Record of the respondent, if any, returned along with copy of this order and appeal, file be consigned to record room.

**Announced in the open Court
today i.e. on 28.11.2025**

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