

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

APPEAL NO. 476/ATMCD/2017

**Smt. Veena Rani
W/o Harish Kalra
R/o 2450 Ground Floor
Hudson Lines, Kingsway Camp
G.T.B Nagar, Delhi-110009**

..... **Appellant**

Versus

**Municipal Corporation of Delhi
Through its Commissioner
Civic Centre, Minto Road
New Delhi**

..... **Respondent**

Date of Filing of Appeal	:	21.06.2017
Date of Judgment	:	22.12.2025

APPEAL NO. 510/ATMCD/2017

**Sh. Vivek Aggarwal
S/o Sh. Ramesh Aggarwal
R/o 2450 First Floor
Hudson Lines, Kingsway Camp
G.T.B Nagar, Delhi-110009**

..... **Appellant**

Versus

**Municipal Corporation of Delhi
Through its Commissioner
Civic Centre, Minto Road
New Delhi**

..... **Respondent**

Date of Filing of Appeal	:	13.07.2017
Date of Judgment	:	22.12.2025

JUDGMENT

1. Vide this common judgment, I will dispose of these two appeals relating to same property but of different floors challenging common demolition order dated 11.06.2017. The appellant in appeal no. 476/17 is the owner of the ground floor whereas in appeal no. 510/17, the appellant is the owner of first floor. The brief facts necessary for disposal of these two appeals are that a show cause notice dated. 08.03.2017 was issued in respect of unauthorized construction on the ground, first, second and third floor of property no. 2450, Hudson Lanes, Kingsway Camp, Delhi. The same was duly replied by the owners of the ground, first, second and third floor and after giving opportunity of personal hearing to them, the impugned demolition order dated 11.06.2017 was passed. This order has been challenged by the appellants on the ground that the actual coverage on the ground floor is 111.89 sq. mtr. against 130.99 sq. mtr. recorded by the respondent in the impugned order and similarly the actual coverage on the first floor is 112.66 sq. mtr against 120.96 sq. mtr. recorded on the first floor in the impugned order and therefore, the impugned order failed to appreciate the actual covered area. It was argued that the area under canopy and stairs at ground floor and of the balconies on the first floor cannot be considered in FAR under UBBL-2016 7.2.4.1 and therefore, the respondent is wrong in including the area of canopy and the balconies in the covered area. The construction existing in the property is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The owner of the second floor raised unauthorized construction by extending the balcony on the second floor and construction on the third floor which was complained by the appellants and the respondent without verifying the facts and taking any action against the second and third floor, booked the entire property. It was therefore submitted that the appeal should be allowed.
2. Ld. counsel for the respondent on the other hand argued that the demolition order is specific about the construction existing on every floor vis-a-vis the construction shown in the property tax return of the year 2006-07. The appellants raised fresh construction after 08.02.2007 as visible from the

demolition order and therefore, the property cannot claim protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 as the status quo as existing on 08.02.2007 was violated.

3. I have perused the record. As per the impugned order, the construction on the ground floor as per property tax return for the year 2006-07 is 111.89 sq. mtr. and on the first floor is 112.66 sq. mtr. The construction existing at the time of booking on the ground floor was 130.99 sq. mtr. and on the first floor was 120.96 sq. mtr. For the first floor, there is excess coverage of about 8.30 sq. mtr. and for the ground floor, it is 19.10 sq. mtr. The demolition order protected the construction on the ground floor to the extent as shown in property tax return of 111.89 sq. mtr. and 112.66 sq. mtr. on the first floor under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being constructed before 08.02.2007.
4. The basic contention between the parties is whether the area of canopy and stairs at the ground floor and the balconies on the first floor are required to be protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 or not. As per UBBL-2016, under clause 7.2.4 for residential areas, the balcony within plot line up to the maximum width of 1.5 mtr. is free from FAR. Similarly, two canopies in residential building of more than one storey are permitted at ground floor and are free from FAR. This show that the area under canopy and the balconies to this extent are permitted under UBBL-2016 and are free from FAR.
5. Further, the photographs filed by the appellants show that the same extent of construction in the property as on today as existing in 1996. There is no change in the building structure at ground and first floor since 1996. The show cause notice dated 08.03.2017 itself records that the property is old and occupied. The photographs show new construction at second and third floor and no change in the building structure at ground and first floor since 1996. The appellants did not include the area under canopy and balcony in their property tax return of 2006-07 but there is no material on record to show that the status quo was violated at ground and first floor after 08.02.2007.

6. As per record, one Local Commissioner was also appointed in this case who filed the report and as per her report, the front set-back at the ground floor is 9x24 feet which includes the stairs of 3 feet and 9 inch walls on both sides. There were two shafts in the property measuring 2 feet 7 inch x 8 feet and 2 feet 7 inch x 2 feet 9 inch. Similarly, on the first floor, the front side balcony was 8 x 24 feet and rear side balcony was 11 x 5 feet. The same are permissible under UBBL- 2016 and cannot be included in FAR. Though, MCD filed objections to this report but the objections were silent as to how the Local Commissioner's report is wrong and cannot be relied upon.
7. In these facts, the entire ground and first floor is entitled to protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being in existence prior to 08.02.2007. The impugned demolition order dated 11.06.2017 is kept in abeyance for ground and first floor till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force.
8. The appeals are disposed of.
9. The respondent shall be at liberty to take action once this act ceases to be in force.
10. 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 22.12.2025**

**(AMIT KUMAR)
Addl. District & Sessions Judge
PO: Appellate Tribunal, MCD, Delhi**