

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

APPEAL NO. 272/ATMCD/2013

Smt. Ramwati Devi (Since deceased)
Through her Legal Heirs

I) **Sh. Anil Kumar Sharma**
S/o Late Sh. C.R.Sharma

II) **Sushil Kumar Sharma**
S/o Late Sh. C.R. Sharma
Both are R/o B-53, Kanti Nagar,
Delhi-110051

..... **Appellant**

Versus

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

2. **The Deputy Commissioner**
Municipal Corporation of Delhi
Shahdara South Zone, Karkardooma
Delhi-110092

..... **Respondents**

Date of Filing of Appeal	:	27.05.2013
Date of Judgment	:	24.12.2025

JUDGMENT

1. This is an appeal challenging the sealing order dated 22.06.2012 passed in respect of the property of the appellant bearing property no. B-5, Kanti Nagar, Main Road, Delhi. The brief facts necessary for disposal of this appeal are that a sealing order dated 24.05.2010 was passed against this property which was challenged by the appellant in appeal no. 150/11. Vide order dated

12.12.2011 that sealing order was quashed and matter was remanded back with directions to the respondent to give personal hearing to the appellant. In those proceedings, one Sh. R.D. Gaur participated on behalf of the appellant and after conclusion of the hearing, the impugned sealing order was passed.

2. This order has been challenged by the appellant on the ground that the village where the subject property is situated does not come under NCT of Delhi and DMC Act does not apply. This property was constructed in 1971 and was only repaired in 2006 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The MCD issued same letter bearing no. 1176 dated 22.06.2012 to three different persons and at three different addresses. These letters were prepared on 22.06.2012 after two days of signing on 20.06.2012. Appellant has already filed application under order 340 CRPC to take action against the respondent for fabricating documents. There is no provision under DMC act to remand back the matter as done on 12.12.2011 in appeal no. 150/11. Even in this appeal, the letter of personal hearing was never served upon the appellant. As per report of CIC, this property was sealed by MCD through letter of CIC but no such complaint by CIC has been placed on record. The original show cause notice dated 27.02.2010 was issued in the name of Shri Chet Ram who had already passed away on 13.06.2006. That notice was replied by the son of the appellant on 03.03.2010. The appellant has been regularly paying house tax, water tax to the respondent, yet the property was sealed. There is no basement in the property which can be verified from the RTI filed before CIC by the appellant where the respondent stated that it seems that ground floor of the property looks like basement from one side and ground floor from the other side. The appellant has filed an application for regularization of the property but the respondent rejected the same. No survey was ever conducted by the respondent in respect of the subject property and therefore, the appeal should be allowed and the sealing order should be quashed.

3. Ld. counsel for the respondent on the other hand argued that after remanding the matter back in appeal no. 150/11, the appellant was given opportunity to file reply and personal hearing but the appellant did not appear. One Shri R.D. Gaur appeared for the appellant and time for inspection at site was fixed

for 30.01.2012 and the site was inspected. The property consists of basement, ground floor and walls & columns on the first floor. The appellant through her reply dated 06.08.2010 available in the office file has mainly contended that the property was constructed prior to 2006 but no supporting document was filed. From the record, it was found that there is no sanction building plan and there exists unauthorized construction of hall at basement and ground floor and walls & columns on the first floor. Therefore, the sealing order was passed. There is no infirmity in the order. Mentioning of same no. 1176 on three letters was a clerical mistake which was subsequently noted and corrected and there is no fabrication of document as alleged and the appeal should be dismissed.

4. I have perused the record. The appellant at very late stage raised the objection that the subject property does not come under NCT of Delhi and DMC Act does not apply. In this regard, reliance was placed on the list of 65 villages included in the province of Delhi. On the basis of this list, it was argued that the subject property is not governed by DMC Act. The Sale Deed dated 24.06.1971 shows that the appellant purchased this subject property situated in village Chandavli alias Shahdara in the abadi of Shalimar Park, Ilqa Shahdara. At Serial No. 47 of Schedule of the Delhi Laws Act 1915, the name of the Village Chandavli alias Shahdara is duly mentioned. It means that village Shahdara was added to the State of Delhi vide this notification. It was only by mistake that Chandavli alias Shahdara was mentioned as Chandrawali alias Shahdara in the Sale Deed. Further, the appellant has been paying property tax and water tax of this property under DMC Act and therefore, cannot claim that the property is not governed by DMC Act.
5. It was also argued for the appellant that the letter no. 1176 dated 22.06.2012 was forced and fabricated since three letters of the same number and date were issued to three different persons at three different addresses. It was stated for respondent that it was a clerical mistake. Office record of MCD shows that letter no. 1176 dated 22.06.2012 was issued to the appellant. The Dy. Commissioner approved the sealing order on 20.06.2012 and signed it on the same day. The letter was however formally given diary no. and was issued on 22.06.2012 and bears the date of 22.06.2012. On the same day,

two more letters were signed by the Dy. Commissioner and they bear the same number 1176 in the uncorrected orders available in record. The errors were corrected and thereafter, proper no. 1177 and 1178 were given to those two letters issued to Smt. Chanchal Gupta and Smt. Magan Mala Jain. The copy of the dispatch register filed on record along with copy of those orders show that the order of the appellant was no.1176, of Smt. Chanchal Gupta was 1177 and of Smt. Magan Mala Jain was 1178. Since all the three letters were signed on 20.06.2012, there was a clerical error of putting same no. 1176 on these three orders. That clerical mistake was later rectified and therefore, there exists no fabrication in respect of the impugned order and this allegation of the appellant is baseless.

6. The other argument of the appellant is that there is no basement in the property and the same is old and occupied. The appellant in this regard relied upon some proceedings before CIC where it was stated on behalf of the respondent that the property from one side looks like basement and from the other side, it looks like ground floor. The appellant in the appeal claimed that there is no basement in the property. In this regard, the regularization application filed by the appellant is relevant. The appellant submitted her regularization application on 17.01.2014 seeking regularization of existing additions/alterations. This application was filed through registered license architect Mr. Surya Mohan. Along with this application, the appellant filed her Sale Deed and existing Site Plan for basement and ground floor and under construction first floor. This site plan shows a basement in the property having a huge hall and three halls on the ground floor. This site plan also shows that rear portion of the basement is unexcavated. Therefore, even as per the case of the appellant there exist a basement in the property and the same is unexcavated on one side. The same is contrary to the story of the appellant that there is no basement in the property. Her own site plan filed with the regularization application and which bears her signature show existence of basement in the property. Further, on one side of the basement, a portion abutting to road is unexcavated and that is why from one side it looks like basement and on other side, it looks like ground floor. However, in

any case, the story of the appellant that there is no basement stands demolished by her own site plan filed with regularization application.

7. It was also argued for the appellant that even after remanding the matter, the appellant was not given proper hearing and why Shri R.D. Gaur was permitted to appear for her. In this regard, the contents of the appeal are relevant. The appellant in this appeal has stated that Shri R.D.Gaur is her relative and Appellant, Shri R.D.Gaur and her Counsel appeared continuously with respondent on all the dates yet this order was passed. The same is sufficient to hold that proper hearing was given to the appellant.
8. The last contention of the appellant is that the property is constructed old and only repair work was done in 2006 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Admittedly, the appellant will be entitled to protection only if it is shown that the existing construction is old & existing since prior to 08.02.2007 and she has not violated the status quo qua construction. The Sale Deed dated 24.06.1971 show that a plot measuring 200 sq. yds. was purchased by the appellant. She must have raised construction thereafter. The Inspection Form of the Property Tax Department of MCD filed by the appellant herself show that there were 08 rooms in the property on the ground floor sometime in 1983. And thereafter, the appellant kept on depositing tax of this ground floor construction continuously. There was no change in the rateable value and the property tax deposited by the appellant. The appellant along with her regularization application also filed house tax receipt for the year 2013-14. The only tax paid was Rs. 188/-. She also filed property tax return of 2013-14 showing construction only at the ground floor having covered area of 50.13 sq. mtr. This shows that even as per the case of the appellant, there was construction only at ground floor in the year 2013-14 and only of about 50 sq. mtr. This clearly shows that there was no construction in the property in 2013-14 except of covered area of 50.13 sq. mtr. for which property tax was paid. If the basement was constructed much prior to 2006, why it was not mentioned in Property Tax Returns remains unanswered.
9. The appellant along with her regularization application dated 17.01.2014 filed site plan showing one hall existing in the entire basement and three halls on

the ground floor. It shows that the basement was constructed later on as the same was not mentioned in the property tax returns. Even the construction at ground floor of three halls and a balcony is different from the house tax inspection report which shows existence of 08 rooms in the property. The appellant under the guise of repairs raised fresh construction in the property much after 08.02.2007. The appellant, therefore, is not entitled to protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

10. The impugned sealing order does not suffer from any infirmity.
11. The appellant has failed to establish any fabrication of documents by the respondent.
12. The impugned sealing order is upheld.
13. The appeal is dismissed.
14. 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 24.12.2025**

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