

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

APPEAL NO. 215/ATMCD/2022
APPEAL NO. 216/ATMCD/2022

Smt. Kela Wati
W/o Lt. Sh. Ramphal
R/o House No. 29, Village Moti Bagh
Arakpur, Nanak Pura
New Delhi-110021

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	20.04.2022
Date of Judgment	:	06.01.2026

JUDGMENT

1. Vide this order I will dispose of these two appeals challenging the demolition order dated 11.11.2021 in appeal no. 215/22 and the demolition order dated 22.02.2022 in appeal no. 216/22 passed in respect of House No. 29, Village Mochi Bagh, Arakpur, Nanak Pura, New Delhi 110021. The brief facts necessary for disposal of these two appeals are that the appellant is the owner of this property stated to be constructed in the shape of ground, first and second floor. It is claimed that the appellant carried out some repair and renovation works in the property as permissible under building bye-laws but on the complaint of one Virender Kumar alleging unauthorized construction, the respondent booked the property of the appellant and passed the demolition orders. It was argued for the appellant that none of the show cause notices nor the demolition orders were served upon the appellant and the appellant came to know about the order dated 11.11.2021 only on that

day when certain demolition works were carried out in the property of the appellant. The Principles of Natural Justice were violated by the respondent and further, it was not considered that the structure is old and only to make it habitable, certain repair and renovation works were carried out. The respondent also ignored the fact that construction existing prior to 08.02.2007 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 from any punitive action and therefore, these two orders were challenged in these appeals.

2. Ld. counsel for the respondent on the other hand argued that notices were duly served by pasting and the demolition was done as per law. The appellant under the guise of repairs, carried out fresh construction from the ground floor which was booked and demolition action was taken and there are no merits in these appeals.
3. I have perused the record. The demolition order dated 11.11.2021 in appeal no. 215/22 was passed in pursuance to show cause notice dated 01.11.2021. The property was booked in the shape of unauthorized construction on the ground floor and raising walls / columns on the first floor. The show cause notice records that the officials of the respondent went to serve notice on 02.11.2021 when none was available. Again attempt was made on 03.11.2021 when none was available and thereafter, it was served by pasting on 05.11.2021. Prior to that, the property was booked on 06.09.2021 for unauthorized construction of raising columns on the ground floor. This show cause notice was also served by pasting. Under Section 444 of DMC Act, it has been provided that notice can be served by way of pasting, in case the addressee is not available at site. Pasting therefore is proper mode of service and same has been held to be proper service by our own High Court in the following judgments:

- 1) Paramjeet Kaur V/s. MCD 1994 (56) DLT 720
- 2) Narender Prasad Dube V/s. Union of India 1999 (81) DLT 378.
- 3) Hari Dutt Vashistha V/s. MCD 1978 (2) ILR (Delhi) 28.
- 4) Usha Devi Sharma V/s. MCD 2020 (271) DLT 76.

In view of this law, service by way of pasting is proper service.

4. Coming to appeal no. 216/22, the show cause notice dated 07.02.2022 was duly served by way of pasting on 15.02.2022 and in this case, even the photograph of the said pasting was obtained and the same is available at page no. 27/C of the office record. Therefore, in both the appeals, the show cause notices and the demolition orders were duly served on the appellant.
5. Coming to the merits of the case, the appellant claims that only repair and renovation works were carried out in the property but the material on record does not show the same. The property was initially booked when unauthorized construction on the ground floor was done on 06.09.2021. The appellant did not stop and it was again booked on 01.11.2021 for ground floor and walls / columns of the first floor. The appellant even thereafter did not bother and the property was again booked on 07.02.2022 for unauthorized construction of the first floor and raising walls / columns on the second floor. The respondent took photograph at the time of booking which show that fresh construction was being raised in the property from ground floor level. The appellant also filed photograph at page no. 32 and 33 of her appeal where the property on the right side of the subject property is visible. These photographs when compared with the photographs taken by the respondent at the time of booking show the same property on the right side of the subject property. It is clearly visible from these photographs that fresh unauthorized construction was raised in the property since 06.09.2021 which was much later to the cut-off date of 08.02.2007 or 01.06.2014 as available for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
6. The appellant by raising fresh construction since 2021 violated the status-quo order and therefore, not entitled to protection as available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
7. The show cause notices and the demolition orders were duly served. The protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available for violation of status-quo order after the cut-off date. Admittedly, there is no sanction building plan.

Therefore, both the demolition orders dated 11.11.2021 and 22.02.2022 are upheld.

8. The appeals are without any merit and are dismissed.
9. 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 06.01.2026**

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