

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

APPEAL NO. 412/ATMCD/2024

1. **Saroj Arya**
W/o Sh. Brijesh Arya
R/o 32 Upper Ground Floor
Sukh Vihar, Near DAV Public School
Mausam Vihar
Krishna Nagar
Delhi-110051

2. **Ritu Arya**
W/o Sh. Puneet Arya
R/o 32, Sukh Vihar
Near DAV Public School
Mausam Vihar
Krishna Nagar
Delhi-110051

..... **Appellants**

Versus

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

2. **The Assistant Engineer (Building)**
City/SP Zone, MCD
Nigam Bhawan, 4th Floor
Old Hindu College
Delhi

..... **Respondents**

Date of Filing of Appeal	:	04.06.2024
Date of Judgment	:	08.01.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 17.05.2024 passed in respect of property no. 1961, Katra Lachhu Singh, Chandni Chowk, Delhi-06 and the brief facts necessary for disposal of this appeal are that the appellants purchased this property from ground to third floor on 19.02.2024 by virtue of two Sale Deeds. As per appellants, they were carrying out certain permissible repairs in the property, yet the respondent without serving any show cause notice booked the property for unauthorized construction of entire ground, first, second and third floor nor served the demolition order and this order has been assailed on the ground that neither show cause notice nor demolition order was served. Further, the property is old and occupied prior to 08.02.2007 and only minor repairs were carried out and this construction is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Reliance was placed on several judgments to argue that show cause notice and demolition orders must be served on the owner/occupier.
2. Ld. counsel for the respondent on the other hand argued that admittedly the appellants are not residing in the subject property. The property was being constructed through some builder and the show cause notice was duly received by him on 13.05.2024 but the same was not replied and thereafter, the demolition order dated 17.05.2024 was passed which was also served on the builder/occupier and there is proper service. On merits it was argued that the property was constructed afresh from ground floor to top floor as can be seen from the photographs filed by the respondent and therefore, it is not a case of repair and the property is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 for violation of status-quo qua construction.
3. Ld. counsel for the intervener argued that the appellants carried out fresh construction in the property which caused substantial damage to his property and he approached the Hon'ble High Court through Writ Petition and then only the property was booked for unauthorized construction by the respondent and the appeal should be dismissed.

4. I have perused the record. The appellants are not residing at the subject property nor their residential address of Krishna Nagar, Delhi-51 was available with the respondent. The respondent had only the address of subject property to serve the show cause notice and the demolition order. As per office record of the respondent, the show cause notice and the demolition order sent through speed post in the name of owner/builder returned unserved with the report "insufficient address". The same were never pasted at site. The show cause notice however was received by one N.K. Gupta and the demolition order was received by one Manish Kumar. However, it is not mentioned as to how these two are related to the appellants or to the subject property. The office record is completely silent about their relation to the appellants or to the subject property or whether they were builders or in what capacity, they received the show cause notice / demolition order. In the status report filed by the respondent, on inquiry of the Court as to how the notice was served on N.K.Gupta, it was stated that he informed that he was constructing the property. No such fact is mentioned in the office notings and it simply says that notice was served on N.K.Gupta. The law requires that the notice should be served on the owner/occupier or on the person at whose instance the construction is carried out. Service of show cause notice on the strangers i.e. Mr. N.K. Gupta cannot be said to be service on the appellants when there is no material in the office record that he was related to the appellants or to the subject property. The respondent should have verified about the relation of Mr. N.K.Gupta with the property or the appellants before serving the notice upon him. In this case, the impugned demolition order is liable to be set-aside for non-service of show cause notice. It is relevant to mention that the demolition order was served again on a stranger Mr. Manish Kumar.
5. In these facts the demolition order is set-aside for non service of show cause notice. The matter is remanded back. The demolition order is now considered as show cause notice. Let the same be replied by the appellants within two weeks from today with all their documents. The respondent shall pass speaking order after considering the reply and documents of the appellants and after giving personal hearing to them. The speaking order be

passed within six weeks of conclusion of personal hearing. The appellants shall appear before Quasi Judicial Authority on 22.01.2026 at 02.00 PM with their reply and documents. If they fail to do so, the respondent shall be at liberty to take action in terms of demolition order dated 17.05.2024.

6. 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 08.01.2026**

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