

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

APPEAL NO. 539/ATMCD/23

**Sh. Vinod Kumar,
S/o Late H.C. Garg,
R/o 606, Neemri Colony, Ashok Vihar,
Delhi-110052.**

..... Appellant

Vs

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

..... Respondent

Date of Filing of Appeal	:	17.08.2023
Date of Order	:	14.01.2026

JUDGMENT

1. The demolition order dated 07.01.2020 passed in respect of coverage of common shaft at second floor by construction of staircase and bathroom in house No.606, Neemri Colony, Delhi is under challenge in this appeal.
2. Ld counsel for the appellant has argued that as per admitted case of the respondent, the first and second floor are old and occupied and there is no staircase to reach the second floor as originally only the ground and first floor existed in Neemri Colony and therefore, staircase is essential requirement which existed since the second floor was in existence and no fresh construction was raised. Otherwise also staircase is necessity and is not unauthorized construction. The reply dated 13.01.2020 given to the show cause notice dated 26.12.2019 was not even considered by the respondent. The alleged coverage

of shaft is only on papers and the shaft is still open existing in the rear portion of the building and therefore the demolition order should be set aside.

3. Ld counsel for the respondent MCD argued that the show cause notice duly served by pasting on 27.12.2019 was replied only on 16.01.2020 and could not be considered as the demolition order was passed on 07.01.2020. Otherwise also it was stated that even the reply does not contain any material permitting construction of staircase in the shaft.
4. Ld. counsel for the intervener argued that respondent MCD has mentioned in the written statement filed in the Civil Suit that there was fresh construction in the shaft area by the appellant which was booked and there are no merits in the appeal which should be dismissed.
5. I have perused the record and the photographs. Admittedly the photographs shows construction of staircase in the shaft area which is common area and not owned either by the appellant or by the intervener. The construction of the first and second floor is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being existed prior to 08.02.2007. However, the same does not protect the contraction in the common shaft area even presuming that the same was constructed prior to 08.02.2007 though the record reveals that the same was fresh construction being raised at the time of booking in December, 2019. The office record of the respondent clearly show that it was fresh construction raised in 2019 and is not entitled for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Even if it is believed as argued for the appellant that staircase is an essential requirement to reach second floor, the same ha to be done in accordance with Building Bye-laws with the prior approval of MCD and that too not in the shaft area which is meant for other essential necessities like sewage and water pipe lines.
6. The appellant has failed to establish as to how the construction in the common shaft area of the staircase is permissible under law or is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appeal is devoid of merits same stands dismissed.

7. 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 14.01.2026**

**(AMIT KUMAR)
Addl.District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi**