

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

APPEAL NO. 237/ATMCD/2014

Ram Pyari (Now Deceased)
Through

1. **Sh. Sudesh Kumar**
S/o Late Sh. Chatru Ram
R/o House No. 19, C.S.P., DDA Flats, Humayunpur
Safdarjung Enclave, New Delhi-110029
2. **Sh. Vinod Kumar**
S/o Late Sh. Chatru Ram
R/o House No. 19, C.S.P., DDA Flats, Humayunpur
Safdarjung Enclave, New Delhi-110029
3. **Sh. Ashok Kumar**
S/o Late Sh. Chatru Ram
R/o House No. 19, C.S.P., DDA Flats, Humayunpur
Safdarjung Enclave, New Delhi-110029
4. **Sh. Subodh Kumar**
S/o Late Sh. Chatru Ram
R/o House No. 19, C.S.P., DDA Flats, Humayunpur
Safdarjung Enclave, New Delhi-110029
5. **Smt. Veena Balmiki**
W/o Tilak Raj
R/o 401/1BD Budh Vihar, Munirka Village,
South West Delhi, Delhi-110067
6. **Smt. Meena**
W/o Sunil Kumar
R/o T-352-D-3, Munirka Village
South West Delhi, Delhi-110067

..... Appellants

Versus

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

..... Respondent

Date of Filing of Appeal	:	18.03.2014
Date of Judgment	:	14.01.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 10.03.2014 passed in respect of second and third floor of Property No. 19, CSP DDA Flats, Humayunpur, Safdarjung Enclave, New Delhi-110029. The brief facts necessary for disposal of this appeal are that this property was booked for unauthorized construction on 09.03.2010 on complaint for unauthorized construction in the shape of first, second and third floor. A demolition order dated 18.03.2010 was passed for first, second and third floor of the subject-property. This order was challenged by the appellant in appeal no 699 of 2013. This Court vide order dated 03.01.2014 remanded the matter back with directions to the respondent to pass fresh speaking order within 03 months after considering the reply of the appellant. Thereafter, personal hearing was given to the appellant and after considering the reply and documents, the impugned demolition order dated 10.03.2014 was passed in respect of second and third floor of the subject property. The respondent gave protection to the first floor of the property under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being in existence prior to 2007.
2. This order has been challenged by the appellant on the ground that the respondent failed to consider that the property is an old construction since 1985. The telephone connection, the ration card and the gas connection receipts were not considered. This Court asked Archaeological Survey of India to determine the age of the building and vide report dated 28.11.2014, ASI mentioned that the building is as old as 15–20 years which establishes that the construction is old. The cut-off date under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 for the subject-property has to be 01.06.2014 being located in urbanized village Humayunpur and not 08.02.2007. The appellant has also placed on record the video recording of the marriage of her son solemnized in

April 1998 which proves that the property was constructed up to third floor way back in 1998 and therefore, the impugned demolition order is liable to be set-aside.

3. Ld. counsel for the respondent on the other hand argued that only a plot of 30 sq. yd. was allotted to the husband of the appellant by DDA and as on date, there is an encroachment of 36 sq. yd. on the government land. The appellant in her reply dated 15.03.2010 admitted that some construction was done in the property which has been demolished twice by the respondent and this admission is sufficient to dismiss this appeal as the status-quo was violated by the appellant herself in respect of construction in the property. The appellant did not file any property tax return to show the extent of construction in the property nor any electricity bills were filed to show how many floors were in the property and the status report of the respondent dated 19.01.2018 is clear and specific to the extent of encroachment and unauthorized construction after the cut-off date of 08.02.2007 and therefore, the appeal has no merits and should be dismissed.
4. I have perused the record. The cut-off date as available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is a question to be adjudicated. The appellant claims that the same is 01.06.2014 as the property is situated in urbanized village Humayunpur whereas the respondent claims it to be 07.02.2007 as the property is located in colony carved out by DDA. In this regard the allotment letter of the subject-property in the name of husband of the appellant Mr. Chatru Ram is relevant. This letter shows that plot bearing no. 19 in Safdarjung (CSP Scheme) was allotted to the husband of the appellant by DDA on 11.02.1971. This plot was provided in lieu of Jhuggi No. 339 West Kidwai Nagar, New Delhi. It shows that the plot was allotted in Safdarjung Enclave and not in Humayunpur Village as claimed by the appellant. DDA allotted the plot in a regularized colony and the cut-off date under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 shall be 08.02.2007. The respondent might have been writing CSP Quarters, Humayunpur in its notices but the same does not change the location and nature of the locality. The property was in a colony of DDA and therefore, the cut-off date will not be 01.06.2014 as argued for the appellant.

5. Coming to the report of ASI, this report is not a conclusive findings but certainly helps the Court in determining the approximate age of the property. As per this report, the building is around 15-20 years old as on the date of inspection on 13.01.2015. Giving the benefit of this report to the appellant, the tentative year of construction comes to 1995-2000. Further, the video of the marriage ceremony of the son of the appellant of April 1998 show that the property was constructed up to third floor even in 1998. The respondent was directed to see this video and file status report. In status report dated 07.01.2025, the respondent confirmed that the property was existing even at that time up to third floor. Which means that the construction up to third floor is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being in existence before 08.02.2007. This status report however states that the extent of construction is not same as existing on site and even the elevation from ground to second floor is not matching. In that case, the burden is on the respondent to show that when the existing construction of 1998 was altered. The judgment of Masonic Club Vs MCD requires the respondent to spell out the date of alleged unauthorized construction.
6. The show cause notice under which the property was booked on dated 09.03.2010 was issued on complaint and records that the construction is old and occupied. No fresh construction at the time of booking on 09.03.2010 was noticed by the respondent. The respondent also demolished slab of the second floor and sunshade at second floor in pursuance to the initial booking dated 09.03.2010.
7. Ld. counsel for the respondent argued about the letter dated 15.03.2010 of the appellant where she admitted of raising some construction in the property. It was stated that she admitted that fresh construction was raised in the property. I have seen that letter. The appellant in that letter mentioned about some encroachment adjacent to the property stated to be demolished twice by the Encroachment Department of MCD. She did not mention that any unauthorized construction was raised in the property and specifically stated that the property was constructed up to third floor since last 25-30 years.
8. In view of this discussion, the appellant has shown that property up to third floor is in existence prior to 08.02.2007 and is protected under National Capital Territory

of Delhi Laws (Special Provision) Second Amendment Act, 2011 till the said Act is in force.

9. In these facts the demolition order dated 10.03.2014 is upheld but kept in abeyance till National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. The respondent shall be at liberty to take action against the property once the Act ceases to be in force. However, the appellant is required to maintain status-quo qua construction in the subject-property.
10. Appeal is disposed of.
11. 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 & Sessions Judge-cum-P.O.
Appellate Tribunal, Delhi**