

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

APPEAL NO. 714/ATMCD/2022

Raj Rani
W/o Sh. Basant Lal
R/o 5596/1, New Chandrawal
Old Subzi Mandi
Delhi-110007

..... **Appellant**

Versus

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

..... **Respondent**

Date of Filing of Appeal	:	22.11.2022
Date of Judgment	:	15.01.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 28.10.2022 passed in respect of Property No 5596/1, New Chandrawal, Old Subzi Mandi, Delhi booked for unauthorized construction in the shape of ground to fifth floor with projection on municipal land at each floor. The brief facts necessary for disposal of this appeal are that the appellant purchased this property on 31.07.2008 by virtue of Sale Deed consisting of two rooms and two bath with common verandah on the ground floor, two rooms with courtyard and bathroom on the first floor. As per appellant, after purchasing the property she renovated the house consisting of ground floor, mezzanine floor and first to fourth floor within the permissible height and as per building bye-laws.
2. She received show cause notice dated 20.12.2021 which was replied on 29.12.2021 and the demolition order dated 29.12.2021 was passed. She preferred appeal against this order dated 29.12.2021 and this appeal was allowed on 04.02.2022 and matter was remanded back with directions to give

personal hearing to the appellant and thereafter, the impugned speaking order was passed.

3. It was argued for the appellant that the show cause notice does not disclose when the construction was carried out and in view of the judgment of Hon'ble High Court given in Masonic Club Vs. MCD 2001 1AD (Delhi) 911, the demolition order is not sustainable. It was stated that the appellant purchased two floors and got the property mutated in her name and the entire construction was carried out before 01.06.2014 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The details of the construction are mentioned in the Sale Deed and appellant is only on the ground and first floor and there is no unauthorized construction. It was also argued that Local Commissioner was also appointed in Civil Suit No. 2522 of 2021 to examine and determine the age of construction of the properties in Katra bearing no. 5596/1, New Chandrawal and the Local Commissioner in his report dated 07.03.2024 stated that the property in this katra have been constructed between 1987-2004 and therefore, same being old construction is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
4. Ld. counsel for the respondent on the other hand argued that the order of Masonic Club judgment was passed in 2001 when National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 was not there and after this Act, the onus is on the appellant to show the date of construction. As on date the property consist of six storey structure and the burden is on the appellant to show when this construction was raised. The LC report cannot be considered as the Local Commissioner was not an expert to determine the age of the building nor he has mentioned the particulars of the persons examined by him to determine the age of the property. The appellant purchased ground and first floor but admittedly mezzanine floor between ground and first floor exist in the property which must have been constructed after 31.07.2008 when the Sale Deed was executed in favour of appellant. The appellant has failed to show that it was constructed before 01.06.2014 and therefore, the appeal is without merits and should be dismissed.

5. I have perused the record. The entire property no. 5596/1 was booked for unauthorized construction on 20.12.2021 in the shape of ground to fifth floor and projection on municipal land on each floor. Thereafter, the demolition order dated 29.12.2021 was passed. This order was challenged by the appellant in appeal no. 30/22 and vide order dated 04.02.2022, the matter was remanded back. After giving personal hearing to the appellant and after considering the documents, the impugned order was passed. This order records that the ownership document of the appellant dated 31.07.2008 are of 35 sq. yd. comprising of two rooms, verandah with common right of courtyard and two bath on the ground floor and two rooms with courtyard and bath on the first floor. The property at site consist of ground to fifth floor and there is no document to show that when this construction was raised. The Plan submitted by the appellant with her reply show area of 47 sq. yd. against 35 sq. yd. mentioned in the Sale Deed. The unauthorized construction has been raised after 01.06.2014.
6. I do not find any infirmity in this order as it is for the appellant to establish when additional construction was raised in the property after she purchased the ground and first floor on 31.07.2008. Her documents and pleadings establish that additional construction was raised after purchasing the property. As per Sale Deed dated 31.07.2008, there was no mezzanine floor between ground and first floor when it was purchased by the appellant. As per sub-para 2 of para 7 of the appeal, the property as per appellant contains four floors i.e. ground, mezzanine (below 7 feet height), first floor, second floor, third floor and fourth floor. It means that even as per appellant, she raised mezzanine floor between ground and first. The Site Plan filed by the appellant with the appeal shows existence of one hall on the mezzanine floor. It was for the appellant to show when this mezzanine floor was constructed.
7. Coming to the report of the Local Commissioner. The local commissioner is an advocate practicing in District Courts having no expertise or means to determine the age of a building. In his report, he stated that he gathered relevant information regarding the age of construction of the building within the locality, and as per the version of the residents, the age of the katra was said to be of pre-independent era. The report is silent on the particulars of the persons examined by him nor their statements were recorded and even nor

the authenticity of any such material or information was verified by the Local Commissioner. He was not having any knowledge or expertise to determine the age of the building and therefore, his report cannot be relied upon.

8. Coming to the house tax record submitted by the appellant, the appellant has filed PTR of the property for the year 2014-15 showing ground floor, first and second floor having covered area of 29.28 sq. mtr. on each floor. Thereafter, PTR of the year 2019-20 was filed showing construction from ground to fourth floor of covered area of 29.28 sq. mtr. on each floor. This clearly shows that third and fourth floors were added between 2015-2019 i.e. after the cut-off date of 01.06.2014. The documents of the appellant are contrary to the case of the appellant.
9. Further, subsequent PTR of 2022-23 show that there is ground floor and mezzanine floor having covered area of 39.29 sq. mtr. each, first floor having covered area of 41.67 sq. mtr., second floor having covered area of 40.68 sq. mtr., third floor having covered area of 41.61 sq. mtr. and fourth floor having covered area of 10.42 sq. mtr. This reflects that further construction was raised after the year 2019-20 in the subject-property.
10. These documents show that unauthorized construction was raised in the property much after 01.06.2014 which is the cut-off date available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and as such protection under this Act is not available to appellant.
11. In these facts, the appeal is devoid of merits and is dismissed and the demolition order dated 28.10.2022 is upheld.
12. 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 15.01.2026**

**(AMIT KUMAR)
Addl. District & Sessions Judge-cum-P.O.
Appellate Tribunal, Delhi**