

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

APPEAL NO. 863/ATMCD/2017

**Dr. Darshan Kumar
S/o Sh. Brahm Dev
Flat No. 24, Shivalik Apartments
Saraswati Vihar, Pitampura
Delhi-110034**

..... **Appellant**

Versus

- 1. Municipal Corporation of Delhi
Through its Commissioner
Civic Centre, Minto Road
New Delhi**
- 2. The Deputy Commissioner, Rohini Zone
Municipal Corporation of Delhi
Office At:
Sector-5, Rohini, Delhi-110085**
- 3. Assistant Engineer, Building Department
Municipal Corporation of Delhi
Rohini Zone, Rohini, Delhi
Office At:
Sector-5, Rohini, Delhi-110085**

..... **Respondents**

Date of Filing of Appeal	:	14.09.2017
Date of Judgment	:	19.01.2026

JUDGMENT

1. This is an appeal against the demolition order dated 04.08.2017 passed in respect of unauthorized construction at Flat No. 24, Second Floor, Shivalik Apartment, Saraswati Vihar, Pitampura, Delhi. The appellant has challenged this order on the ground that the construction was raised in 2005-06 within permissible limits and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was also stated that respondents should be directed to regularize alleged small deviation in the property.

2. The said appeal was dismissed by my Ld. Predecessor vide judgment dated 24.03.2022 holding that the appellant has failed to place any proof on record to show that the deviations were made prior to 08.02.2007 and therefore, is not entitled any protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. No finding was given regarding Prayer-C of the appeal seeking regularization.
3. This judgment dated 24.03.2022 was challenged by the appellant in appeal. The Hon'ble Appellate Court vide order dated 20.02.2024 remanded the matter back directing this Court to give finding with regard to prayer of regularization.
4. It was argued for the appellant that the construction exist prior to 08.02.2007 and the regularization application of the appellant was not decided and later, when this Tribunal vide order dated 05.02.2020 permitted the appellant to move appropriate application for regularization which was later rejected and therefore, this appeal should be heard even against rejection of regularization application as directed by the Hon'ble Appellate Court and should allow this appeal as the grounds of rejection are untenable and regularization application did not consider that the deviations are compoundable and therefore, the rejection order should be set-aside and the deviations should be regularized. It was further stated that all the documents sought by the respondent in invalid notice were already available with the respondent.
5. Ld. counsel for the respondent on the other hand argued that on the date of this appeal, there was no rejection order qua regularization application and therefore no cause of action and further the appellant failed to comply with invalid notice and therefore, regularization application was rightly rejected.
6. I have perused the record. Even after the matter was remanded back, the appellant did not file any material to show that the deviations in the subject property were done prior to 08.02.2007. The Hon'ble Appellate Court did not set-aside those findings in its judgment dated 20.02.2024. Para 13 of that judgment directed this Court to give finding regarding the regularization prayer as well. Admittedly on the date of this appeal filed on 14.09.2017, there was no order of the respondent rejecting the regularization application. The regularization application was directed to be filed as per rules during pendency of this appeal on 05.02.2020. It means that on the date of appeal,

there was no order appealable under Section 347B of DMC Act. An appeal against orders or notices as mentioned in sub-clause 1 of this Section is maintainable. When on the date of appeal, no order was in existence qua the regularization application of the appellant, the same cannot be challenged in this appeal. Prayer-C of the appeal is relevant in this regard. In this prayer, appellant has sought directions against the respondent to regularize this deviation. There cannot be a prayer in the appeal seeking regularization of deviation. The appeal can be filed only once an order rejecting regularization application is passed. In this case regularization application was rejected on 06.04.2021 and gave a fresh cause of action to the appellant which was not existing on 14.09.2017 when the appeal was filed. The Prayer-C of the appeal was never maintainable as there cannot be an order in appeal directing to regularize the deviation.

7. In these facts, when Prayer-C was never available, there cannot be a finding on this aspect without an order of the respondent. The issue regarding demolition of this deviation has already been decided by my Ld. Predecessor and the Hon'ble Appellate Court did not set-aside those findings. In these facts appeal has no merits and the same is dismissed.
8. 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 19.01.2026**

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