

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

APPEAL NO. 680/ATMCD/2013

**Deepak Vats
Son of the late Hari Narain Vats
Resident of 10/5, Yogamaya Mandir
Ward No. 1, Mehrauli
New Delhi**

..... Appellant

Versus

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

..... Respondent

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| Date of Filing of Appeal | : | 10.09.2013 |
| Date of Judgment | : | 21.01.2026 |

JUDGMENT

1. This is an appeal challenging the demolition order dated 04.09.2013 passed in respect of the Property No. 10/5, Yogmaya Mandir, Mehrauli. New Delhi. The brief facts necessary for disposal of this appeal are that the appellant is the owner of this property whereas the intervener is his real brother. The property was booked for unauthorized construction of ground and first floor and raising of boundary wall in the rear side on 16.04.2013 recording that the property is occupied residentially & old, and structure completed. It was booked on a High Court case. Show cause notice of the same date was issued which was replied by the appellant and thereafter, the impugned order dated 04.09.2013 was passed. Partial demolition action was taken on 13.09.2013 and 16.09.2013 and complete action could not be taken.
2. The appellant has challenged this order on the ground that the entire property is about 960 sq. yd. and constructed area is only 390 sq. yd. It is a single storey structure without any basement and first floor. There is only a store room on the first floor and water tank above the stair case mummy existing

since more than 50 years ago. It was argued that the show cause notice was issued because of a Writ Petition filed by one Shri Rajesh Sharma bearing CWP No. 2120/13 and he is a friend of intervener Shri Ashok Vats who is real brother of appellant. The respondent filed status report dated 01.05.2013 in that Writ informing that no fresh construction in the property. It was stated that only renovation work was done in the property. It is claimed that this demolition order was passed in a mechanical fashion without application of mind. The demolition order was passed only because of order dated 04.09.2013 passed by Hon'ble High Court in Writ Petition No. 5563 of 2013 filed by the brother of the appellant before Hon'ble High Court. It was further argued that the Writ Petition filed by Rajesh Sharma was withdrawn on 17.07.2013. The appellant filed an IA in the Writ Petition No. 5563/13 and vide order dated 18.9.2013 the Hon'ble High Court clarified that it has expressed no opinion on the merits of the matter nor any directions have been issued to demolish the property. The property of the appellant is protected under Special Provision Act and is old and occupied. The brother of the appellant thereafter withdrew the Writ Petition No. 5563. Later the brother of the appellant again filed Writ Petition No. 12008/16 alleging fresh construction. MCD carried out more demolition on 14.03.2017 and the appellant again approached the Hon'ble High Court and vide order dated 17.03.2017, the Hon'ble High Court stayed further demolition. The brother of the appellant withdrew this Writ Petition. It is claimed that no further construction was raised in the property as alleged by the brother of the appellant and Writ Petition was filed in view of personal enmity and therefore, the impugned demolition order should be quashed.

3. Ld. counsel for MCD on the other hand argued that all the documents filed by the appellant were considered while passing the demolition order. The property tax record filed by the appellant does not reflect any construction in the property. The respondent has clarified its stand in the status report dated 10.12.2021 and the demolition order suffers no infirmity and appeal should be dismissed.
4. Ld. counsel for the intervener on the other hand argued that until June 2013, the property of the appellant comprised only ground floor with tin shed but in July 2013, the appellant started raising large scale construction of additional

floors and several complaints were filed by the intervener and thereafter, Writ Petition No. 5563/13 was filed. The Hon'ble High Court vide order dated 04.09.2013 sought status report from the respondent MCD and thereafter, only the action was taken. The property was completely demolished on 13.09.2013 and 16.09.2013 and therefore, this appeal is infructuous. Thereafter, the appellant raised fresh construction in the property and the intervener again approached the Hon'ble High Court in Writ Petition No. 12008/16 and again cosmetic demolition action was taken. The appellant has illegally reconstructed the demolished portion and therefore, second Writ was filed and the property is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and therefore, the appeal should be dismissed.

5. I have perused the record. The property as per the record of the MCD was not completely demolished on 13.09.2013 and 16.09.2013 as argued by the intervener. The office noting of the respondent dated 16.09.2013 mentions that complete action could not be taken due to shortage of time. Therefore, the plea of the intervener that entire structure was demolished in 2013 is baseless.
6. Record further shows that the respondent MCD on 21.12.2016 in Writ Petition No. 12008/16 stated before the Hon'ble High Court that the construction is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was also stated that no further action has been taken after 16.09.2013. The Hon'ble High Court thereafter on 17.03.2017 directed to maintain status-quo till next date of hearing. This Writ Petition was withdrawn by the intervener herein on 16.01.2019 despite his claim that property was reconstructed in 2016. There is no material on record to show that the same was reconstructed in January 2016 as claimed by the intervener. The photographs filed by the intervener of the alleged construction do not reflect any fresh construction in the property and it can be seen from the photographs of the appellant that only a small platform was raised to station the generator. The same does not amount to any fresh unauthorized construction.
7. Further, the MCD in its status report dated 22.09.2017 has stated that the property in question is a part of unauthorized colony. That being so, the

construction existing prior to 01.06.2014 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. There is no material on record to establish that the status-quo in respect of construction in the subject-property was violated by the appellant after 01.06.2014. The appellant did not reconstruct the demolished portion as claimed by the intervener. The MCD record has no material to show any construction raised by the appellant after 01.06.2014 except of a status report filed before Hon'ble High Court in W.P.(C) No. 12008/16.

8. The construction therefore is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The demolition order is however 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 once the Act ceases to be in force.
9. The appeal is disposed of.
10. 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 21.01.2026**

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