

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

APPEAL NO. 842/ATMCD/2023

**Smt. Bimlesh Dahiya
W/o Sh. Jitender Singh Dahiya
R/o 855, Tilak Gali, Kashmere Gate
Delhi-110006.**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	29.12.2023
Date of Judgment	:	23.01.2026

JUDGMENT

1. This is an appeal challenging a sealing order dated 22.09.2023 passed in respect of property no. 855, Tilak Gali, Kashmere Gate, Delhi-110006. The brief facts necessary for disposal of this appeal are that this property was booked for unauthorized construction on 24.07.2023 in respect of unauthorized construction from ground to third floor with projections on municipal land and the demolition order dated 08.08.2023 was passed. The appellant challenged this demolition order in appeal no. 841 of 2023 and vide order dated 30.09.2024, the matter was remanded back for fresh adjudication after giving personal hearing to the appellant.
2. In the meantime, show cause notice dated 17.08.2023 under Section 345 A of DMC Act was issued and was sent by speed post to the owner/occupier and was delivered to the addressee (Mr. Araav). And Thereafter the impugned sealing order dated 22.09.2023 was passed. The sealing action was taken on 22.12.2023.
3. This sealing order has been challenged in this appeal primarily on the ground that show cause notice was never served upon the appellant. The same was

received by one Araav who has no concerned with the appellant or with the subject property. It was argued for the appellant that appellant has already filed her affidavit that there is no family member, named, Araav in her family and show cause notice was not served on her and therefore the sealing order should be set-aside like the demolition order dated 08.08.2023.

4. On behalf of the respondent, it was argued that notice duly received by the appellant. It was sent at her correct address and was duly received by her. The respondent did not have any other address of the appellant to serve her at that address and therefore it was a case proper service. It was further stated that the sale deed of the appellant dated 20.02.2018 show only three floors whereas the property as per site plan filed by the appellant is upto fourth floor and therefore same was constructed much after 07.02.2007 and is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was also stated after the matter was remanded back in appeal relating to demolition order, a fresh order dated 16.12.2024 has been passed by the AE(B) concerned and protection upto second floor has been provided under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 as per documents of the appellant and the protection for third and fourth floor is not available for the subject property.
5. I have perused the record. The appellant has questioned the service of show cause notice. As per office record the show cause notice was sent by speed post to the owner/occupier at the address of the subject property i.e. 855, Tilak Gali, Kashmere Gate. The track consignment report show that the item was booked on 18.08.2023 and since the addressee was not found there on 19.08.2023, the intimation was served. Thereafter, the delivery was attempted on 21.08.2023 and was duly delivered to the addressee/Araav. Once the intimation was served on 19.08.2023 at the correct address of the property, the same came to the knowledge of the appellant on that day and thereafter was received on 21.08.2023 on her behalf. The appellant cannot claim that it was not served on her once the intimation was delivered on 19.08.2023 and was received on 21.08.2023. Once the intimation was delivered of this consignment, it was the duty of the appellant to receive it from the concerned post office. The appellant had knowledge of this post and

was duly received on her behalf. Merely, filing of the affidavit that the appellant does not know Araav will not prove that notice was not served upon her. She did not reply to this notice and thereafter the sealing order was passed.

6. Coming to the merits of the case. The sale deed through which the appellant purchased this property dated 25.01.2018 show that she purchased only three storey building. It means that as on 25.01.2018 there were only three floors in the property i.e. ground, first and second. The site plan annexed with this appeal at page 45 shows there are five floors in the property. It means that those third and fourth floor were added subsequently after purchase dated 25.01.2018. The appellant has not filed any documents to show that third and fourth floor existed in the property when she purchased the property on 25.01.2018 or that the third and fourth floor are existing prior to 07.02.2007. The protection in the absence of a sanctioned building plan is available only under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 for which property should be in existence prior to 07.02.2007. Contrary to it, the sale deed shows the third and the fourth floor were raised after 25.01.2018 when the appellant purchased ground, first and second floor.
7. In view of the above, the appeal is devoid of merits.
8. The appeal is dismissed. The sealing order dated 22.09.2023 is upheld.
9. 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 23.01.2026**

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