

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

APPEAL NO. 223/ATMCD/15

**Smt. Shanti Devi,
W/o Sh. Gyan Chand Jain
R/o BD-32B, Shalimar Bagh,
New Delhi-110088.**

..... Appellant

Vs

**North Delhi Municipal Corporation.
Through its Commissioner,
Civic Centre, 17th floor,
Jawahar Lal Nehru Marg,
New Delhi**

.....Respondent

Date of Filing of Appeal : 20.04.2015
Date of Order : 02.02.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 26.03.2015 passed in respect of unauthorized construction in the shape of deviations against standard DDA plan and floor constructed at terrace of property No.BD-32-B, Shalimar Bagh, Delhi.
2. The brief facts necessary for disposal of this appeal are that vide show cause notice dated 16.03.2015 the unauthorized construction was booked on Hon'ble L.G. complaint mentioning that the same is old and occupied. No reply was received from the appellant and therefore the demolition order was passed.
3. This order has been challenged by the appellant on the ground that the appellant constructed third floor portion which bears No.BD-32-C before 2006 and also got the electricity connection installed separately for the third floor and has been

paying house tax for the second and third floor since then and much prior to 2007 and therefore, the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is available. It was also stated that the show cause notice dated 16.03.2015 was duly replied on 23.03.2015 yet the same was not considered and the demolition order dated 26.03.2015 was passed. It was argued for the appellant that the demolition order should be set aside on this ground alone and further the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is available.

4. On behalf of the respondent it was argued that even if the story of the appellant that construction in the property was raised much prior to 08.02.2007 is believed, the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available since the construction at site as on today is much more than shown in the house tax record. The entire third floor which has been given number BD-32-C does not exist in municipal record and a fake number has been provided by the appellant to the third floor. It is stated that since the status quo has been violated by raising fresh construction, the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available and appeal should be dismissed.
5. I have perused the record. The show cause notice dated 16.03.2015 was duly replied by the appellant and the same was received in the office of the respondent on 23.03.2015. This reply is not available in office record but has been annexed by the appellant with this appeal. The demolition order records that no reply has been received. Non-consideration of reply in itself is a good ground to allow this appeal. However, the matter is considered on merits. Record shows that the electricity at the third floor was energized on 01.10.2006 and this third floor though unauthorized and given house No.32-C, BD Block is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being in existence much prior to 07.02.2007. The date of electricity energization of the second floor is 28.06.1988 which is also prior to 07.02.2007.

6. Coming to house tax record, the appellant has placed on record house tax documents to show that the third floor was added in the property in 1992-93 and the house tax inspection report dated 01.04.1993 show that three rooms, kitchen and open verandah were constructed in 1992-93. Therefore, the construction of the second and third floor being in existence prior to 07.02.2007 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
7. Ld. counsel for the respondent argued that the total covered area of the second floor as on date is 63.63 sq.mtr and of the third floor is 45.48 sq.mtr. which is much more than the area shown in the house tax record and therefore, additional construction has been raised subsequently. The house tax record shows that the covered area of the second floor in the year 2017 was 42 sq.mtr. which increased to 48.05 sq.mtr. in 2018. The third floor, however remained the same as 42 sq.mtr. The status report of respondent dated 04.03.204 shows that at second floor the covered area is 63.63 sq.mtr and at the third floor is 45.48 sq.mtr. As far as the third floor is concerned the house tax record shows 42 sq.mtr and the status report says 45.48 sq.mtr. There seems to be no much difference in the covered area of third floor. Coming to the second floor, the difference is much higher as the house tax record shows it as 48.05 sq.mtr. whereas the status report shows it as 63.63 sq.mtr. Ld. counsel for the appellant submitted that it happened only because the verandah was never included by the appellant in the area for the purposes of calculating house tax. The area of the verandah as per respondent is 19.28 sq.mtr. if this area is deducted from the total area of second floor, the covered area shall come around 44.35 sq.mtr. The arguments of the appellant counsel appears to be plausible as the appellant did not include this covered verandah in the property tax return.
8. Apart from this difference, the other construction in the property is much prior to 07.02.2007 and therefore, is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
9. In these facts, the demolition order is upheld but it kept in abeyance till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment

Act, 2011 is in force. The respondent is at liberty to take action once the Act ceases to be in force. Appeal stands disposed of.

**Announced in the Open Court,
Today i.e. on 02.02.2026**

**(AMIT KUMAR)
District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi**