

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

APPEAL NO. 376/ATMCD/2019

APPEAL NO. 377/ATMCD/2019

**Shri Arjun Kumar
Proprietor of M/s Sky Associates
8233, 1st Floor, Jhansi Road
Near Filmistan Cinema
Delhi-110006 Through its Attorney
Shri Sudish Kumar**

..... **Appellant**

Versus

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

..... **Respondent**

Date of Filing of Appeal : 11.06.2019
Date of Judgment : 10.02.2026

JUDGMENT

1. These are the two appeals challenging the sealing order dated 07.06.2019 in appeal no. 376/19 and the demolition order dated 02.11.2018 in appeal no. 377/19 passed in respect of unauthorized construction carried out at first to fifth floor in the Property bearing No. 5037-38, Rui Mandi, Sadar Bazar, Delhi-110006 The brief facts necessary for disposal of these appeals are that this property was purchased by a partnership firm M/s Sky Associates on 08.05.1995 by virtue of registered Sale Deed. The construction at that time was consisting of only ground, first and second floor.
2. As per appellant further construction was raised thereafter. The property was inspected by the inspector of Assessment and Collection Department on 25.02.2002 when the property was constructed up to fourth floor. The Dy. Assessor & Collector, MCD passed assessment order dated 21.11.2005

wherein the construction at the third & fourth floor and additional construction at the second floor was added in the assessment of property tax w.e.f. 01.04.2001. It is further claimed that a show cause notice dated 27.05.2005 was also issued to the appellant by the Dangerous Building Department, MCD notifying that the property from ground to fourth floor and tin shed at fifth floor is in dilapidated condition and requires strengthening, repair and reconstruction as early as possible.

3. It is further stated that the appellant got a building plan sanctioned for the property but could not raise construction because of two small portions of the property being owned by third parties prior to the Sale Deed of the appellant. Because of that, the property could not be reconstructed as per sanction building plan. The appellant had also paid one time registration, conversion and parking charges as the street where the subject-property falls was notified as commercial street. The respondent however served show cause notice dated 16.05.2018 upon the appellant which was replied by the appellant and the appellant was assured that MCD will compare and verify the records of House Tax Department. Thereafter, nothing was heard from the respondent till fourth week of March, 2019 when another show cause notice under Section 345A of DMC Act dated 14.03.2019 was received. The same was duly replied but there were specific threats given by officials of the respondent for which appellant was constrained to file Writ Petition No. 5218 of 2019 before Hon'ble High Court.
4. That Writ was disposed off on 14.05.2019 since it was stated by the respondent that no final order has been passed. The appellant was given liberty to challenge the order as and when passed. Thereafter when the sealing order dated 07.06.2019 was passed, the appellant came to know about the demolition order as well and therefore, these two appeals have been filed on the ground that the respondent ignored the fact that the entire construction is old and occupied and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was argued for the appellant that despite obtaining sanction building plan, the appellant could not raise construction because of two Sale Deeds of the small portions of the property in favour of third parties and the construction

existing in the property is old and occupied as per property tax record and therefore, the appeal should be allowed.

5. Ld. counsel for the respondent on the other hand argued that sanction building plan was taken by the appellant only for first and second floor for residential use but fresh construction was raised up to fourth floor and tin shed on the fifth floor which is contrary to sanction building plan and therefore, is liable to be demolished. It was also argued that partial demolition action was taken on 13.03.2019 and this fact is in the knowledge of the appellant, yet the appeals are not filed on time and are barred by limitation.
6. I have perused the record. As far as the aspect of limitation is concerned, the appeal no. 376/19 challenging the sealing order dated 07.06.2019 was filed on 11.06.2019 and there is no delay. The other appeal challenging the demolition order dated 02.11.2018 was filed on 11.06.2019 claiming that the demolition order was never served. As per office record, this order dated 02.11.2018 was received by Sudish Kumar who was authorized by the appellant to appear before the Quasi Judicial Authority and therefore, the non-service of demolition order as submitted for the appellant is baseless. Show cause notice was duly replied by appellant. However, the delay is condoned to adjudicate the matter on merits.
7. Coming to the merits of the appeal. Admittedly the appellant obtained sanction building plan only in respect of first and second floor of the property for residential purposes in November 2011 and January 2012. It is also undisputed that no construction was done as per the sanction building plan and the appellant claim that he could not do so because of two old Sale Deeds of two small portions existing prior to the Sale Deed of the appellant. When and how the appellant came to know about these two Sale Deeds is not mentioned in the appeal. It is relevant to note that the owners of those two small portions are in possession of their respective portions. It cannot be believed that the appellant who purchased the property on 08.05.1995, did not make any inquiry from the vendor or from those third parties in possession of their respective portions as to how they are in possession of those portions when the entire property was sold to the appellant in 1995. Every prudent purchaser while purchasing an immovable property shall make inquiry about the right title and interest of the persons in possession of that property. So

the appellant cannot show ignorance that when he applied for sanction building plan of the subject-property, he was not aware that there are two other parties, who are owner of two portions in the subject-property.

8. The appellant deliberately withheld the sanction building plan as the same would have shown that the sanction plan was obtained only for the portion of the subject-property which was owned and possessed by the appellant.
9. Be that as it may, the house tax assessment report and the construction existing as on date in the property are not same and show that fresh construction has been raised at least on the third and fourth floor of the property. The house tax inspection and assessment show that as on 25.02.2002 when the inspection was carried out and as on 21.11.2005 when the assessment order was passed, there existed four rooms, kitchen, passage, lavatory and bathroom with stairs for residential purposes on the third and the fourth floor. Admittedly there was no tin shed at the fifth floor. As per the affidavit and the site plan filed by the appellant along with this appeal, there exist 11 shops on the third floor and 10 shops on the fourth floor and a huge tin shed measuring 37 feet 2 inch x 34 feet x 2 inch on the fifth floor of the property. There exist no kitchen, lavatory and bathroom on the third and fourth floor which was there in November 2005. This clearly show that existing construction for residential purposes at third and fourth floor was demolished and fresh construction was raised after 21.11.2005 when the Dy. Assessor & Collector, Property Tax Department passed the assessment property tax order.
10. The appellant converted four rooms, kitchen, lavatory, bathroom on third and fourth floor to 11 shops on third floor and 10 shops on the fourth floor and a huge tin shed on the fifth floor was constructed. The burden was on the appellant to show as to when this fresh construction was raised. The appellant withheld deliberately the subsequent property tax return documents (PTR) which if produced, would have shown as to when the fresh construction at least on third and fourth floor were raised. It will be also relevant to mention that there were four rooms with a passage on the second floor as well as on 21.11.2005 and as on date there are 11 shops on the second floor in place of four rooms. This also shows that fresh construction was raised even at the second floor.

11. The appellant therefore reconstructed the property not only on the third and fourth floor but also did so on the second floor. He further changed the dwelling units on the third and fourth floor to commercial shops. This all was done after 21.11.2005 and it was for the appellant to show that the same was carried out prior to 07.02.2007 to claim benefit under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant deliberately concealed the documents which would have shown otherwise.
12. In view of the same the appellant cannot claim protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. He did not raise construction as per sanction building plan obtained only for first and second floor and raised false plea that he was not aware about the two Sale Deeds of some small portions of the subject-property in favour of third parties.
13. In these facts the appeals therefore are devoid of merits. Both the appeals are dismissed and the impugned orders are upheld.
14. 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 10.02.2026**

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