

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

APPEAL NO. 866/ATMCD/2018

- 1. Smt. Krishna Devi
W/o Shri Jai Bhagwan
R/o 39-B/5, Onkar Nagar
Tri Nagar, Delhi-110035**

- 2. Smt. Suman Sharma
W/o Late Shri Rakesh Sharma
R/o 3129/227, Chander Nagar
Tri Nagar, Delhi-110035**

- 3. Shri Kapil Raj Mali
S/o Shri Rameshwar Dayal Mali
R/o 39-B/5, Onkar Nagar
Tri Nagar, Delhi-110035**

..... Appellants

Versus

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

..... Respondent

Date of Filing of Appeal	:	29.11.2018
Date of Judgment	:	20.02.2026

JUDGMENT

1. This is the appeal challenging the demolition order dated 21.06.2018 passed in respect of unauthorized construction carried out in Property No. 39-B/05, Onkar Nagar, Tri Nagar, Delhi in the shape of entire Ground Floor, First Floor, Second Floor, Third Floor, Fourth Floor & Fifth Floor. The brief facts necessary for disposal of this appeal are

that appellant no. 1 is the owner of upper ground floor, appellant no 2 is the owner of second floor and appellant no. 3 is the owner of third floor of this property. Appellant no. 1 purchased the upper ground floor vide Sale Deed dated 29.06.2007 whereas appellant no. 2 purchased the second floor on 06.11.2013 and appellant no. 3 purchased the third floor on 13.04.2017. The property was booked for unauthorized construction in the shape of ground to fifth floor on 07.06.2018 on complaint. On inspection, it was found that it is residentially occupied and there is no sanction building plan. Subsequent thereto, the impugned demolition order was passed. Prior to this appeal, the appellants filed appeal no. 802/18 but that appeal was withdrawn on 10.12.2018 since in that appeal, only the vacation notice dated 17.10.2018 was challenged.

2. The appellants in the present appeal have challenged the demolition order on the ground that the property is old and occupied and the impugned order was never served upon the appellants. The property is assessed to the house tax for which tax has been regularly deposited by the appellants and the impugned order did not consider any of these aspects and the impugned order should be set-aside. It was stated that at the time of inspection, no fresh construction was found at site. The property is old and occupied and protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is available.
3. Ld. counsel for the respondent on the other hand argued that admittedly there is no sanction building plan of the subject-property. The property tax returns of the property are subsequent to 08.02.2007 which is the cut-off date for protection of unauthorized construction for the subject-property being situated in regularized colony and therefore, the appellants have failed to establish that same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and therefore, the appeal should be dismissed.
4. I have perused the record. The show cause notice dated 07.06.2018 was issued in the name of owner/occupier and was sent by post mentioning owner/occupier. The demolition order records that effort was made to serve the notice but the owner/occupier refused to take the notice and it was pasted on site. Who was the owner/occupier, who refused the same is not mentioned.
5. As per record, the property for different floors is mutated separately in the name of the appellants in the property tax record of the respondent. The respondent therefore was duty bound to serve the show cause notice

and the demolition order separately on owner/occupier of each floor. Appellant no. 1 has no concern with other floors and similarly, appellants no. 2 & 3 are also not concerned with the other floors of the property. The show cause notice dated 07.06.2018 was sent through post in the name of owner/occupier. As far as the aspect of pasting is concerned, neither there are any photographs nor any witnesses to this pasting nor there are any office notings to reflect as to at which part of the subject-property, the notice was pasted. The proceedings under Section 343 and 344 of DMC Act are completely silent on this aspect.

6. In the present case, the principles of natural justice were violated as neither the show cause notice nor the demolition order was served upon the appellants.
7. In these facts, the appeal is allowed and the demolition order 21.06.2018 is set-aside. The matter is remanded back with the directions to the appellants to appear before the Quasi Judicial Authority with their reply and documents on 16.03.2026 at 02.00 PM. The Quasi Judicial Authority shall provide opportunity of personal hearing to the appellants and shall pass speaking order within six weeks of conclusion of personal hearing.
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 20.02.2026**

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