

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

**APPEAL NO. 209/ATMCD/2018**

- 1. Smt. Indu Grover  
W/o Sh. Anil Grover  
R/o N-60, IInd Floor  
Front Portion  
West Patel Nagar  
New Delhi-110008**
- 2. Smt. Neelam Pahuja  
W/o Sh. Inderjeet Pahuja  
R/o N-60, IInd Floor  
Back Portion  
West Patel Nagar  
New Delhi-110008**

**..... Appellants**

**Versus**

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

**..... Respondent**

**Date of Filing of Appeal : 22.03.2018  
Date of Judgment : 09.03.2026**

**APPEAL NO. 210/ATMCD/2018**

**Sh. Mahesh Gupta  
S/o Late Sh. C.P. Gupta  
R/o N-60, IIIRD Floor  
West Patel Nagar  
New Delhi-110008**

**..... Appellant**

**Versus**

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

**..... Respondent**

**Date of Filing of Appeal : 22.03.2018  
Date of Judgment : 09.03.2026**

**JUDGMENT**

1. These are the two appeals challenging the demolition order dated 22.08.2013 passed in respect of unauthorized construction carried out in Property No. N-60, Second Floor & Fourth Floor, West Patel Nagar, New Delhi in the shape of room, kitchen, bath at Second Floor & Fourth Floor. The brief facts necessary for disposal of these appeals are that the appellants No. 1 & 2 of appeal no. 209/18 are the owner of front portion and the back portion respectively of the second floor of this property whereas appellant Mr. Mahesh Gupta in appeal no. 210/18 is the owner of third floor with terrace right of this property. Vide show cause notice dated 20.01.2012 unauthorized construction of the third floor with projection at municipal land was booked. Thereafter the demolition order dated 01.02.2012 was passed of unauthorized construction at third floor with projection at the municipal land. Subsequently vide fresh show cause notice dated 05.07.2013, the unauthorized construction in the shape of room, kitchen and bath at second floor and construction at fourth floor was booked. This show cause notice was replied by appellant Mr. Mahesh Gupta. The husband of appellant Smt. Indu Grover who is appellant no. 1 in appeal no. 209/18 also appeared before the

Quasi Judicial Authority for personal hearing. Both of them also submitted their documents and thereafter, the impugned demolition order dated 22.08.2013 was passed. The office record of the respondent contains the title documents of Mr. Mahesh Gupta and Smt. Indu Grover.

2. This demolition order has been challenged by the appellants on the ground that same was never served upon the appellants and earlier a vacation notice was served upon the owner of the fourth floor i.e. Mr. Mahesh Gupta and demolition action was taken at the fourth floor. The remaining construction in the property is within the paramount meter settled by the respondent and the construction is old and occupied and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was argued for the appellants that the subject-property falls in special area as defined under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and any construction raised up to 01.06.2014 is protected under this Act and therefore, the appeals should be allowed and the impugned demolition order should be set-aside. It was argued for the appellants that as per office order dated 29.01.2021 issued by L&DO, the property can be regularized which is C-type tenements and since the policy decision in this regard has already been taken, the appellants should be permitted to get their construction regularized.
3. Ld. counsels for the respondent on the other hand argued that even if, it is considered that the property falls in the special area, the cut-off date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is 08.02.2007 and not 01.06.2014 as claimed by the appellants. The documents of the appellants show that their predecessor in interest Smt. Rita Rani raised construction on the roof of first floor onward after 2011 and therefore, the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available as admittedly there is no sanction building plan. The subject-property is C-type tenements where the construction is permissible only at ground and first floor and therefore, the appeals are devoid of merits.
4. I have perused the record. The subject-property is in West Patel Nagar, New Delhi and is C-type tenements allotted by L&DO. As per the government policy, only ground floor

and first floor are permissible. The appellants have claimed that the subject-property is in special area and the cut-off date protecting the construction under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is 01.06.2014. For appreciating this aspect, let us examine Section 3 of this act which provides the relevant cut-off dates for different areas in Delhi.

5. In this regard, it will be better to reproduce the relevant portion of Section 3 (2) for ready-reference and for the sake of convenience :

**Section 3. Enforcement to be kept in abeyance –**

**(1) (a) to (g)\*\*\*\***

**(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any Court, status quo-**

**(i) as on the 1<sup>st</sup> day of January, 2006 in respect of encroachment or unauthorized development;**

**(ii) in respect of unauthorized colonies, village abadi area (including urban villages) and their extensions, which existed on the 31<sup>st</sup> day of March, 2002 and where construction took place even beyond that date and (upto the 1<sup>st</sup> day of June, 2014), mentioned in sub-section (1);**

**(iii) in respect of special areas as per the Building Regulations for Special Area, Unauthorized Regularized Colonies and Village abadis, 2010; and**

**(iv) in respect of all other areas with the National Capital Territory of Delhi as on the 8<sup>th</sup> day of February, 2007, shall be maintained.**

**(3)\*\*\*\*\***

6. Ld. counsel for the appellant has argued that cut-off date for Special Area, Unauthorized Regularized Colony and Village Abadis provided under sub-clause (iii) of sub-section 2 of section 3 of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is 01.06.2014. A bare perusal of this provision will show that cut-off date as on 08.02.2007 has been provided under sub-section 2. After sub-clause (iii) of sub-section 2, the legislature has used the word 'and', which means that sub-clause (iii) & (iv) are to be read together. Under sub-clause (i), the date has been

given as 01.01.2006, in sub-clause (ii) the dates have been given as 31.03.2002 and construction beyond this date up to 01.06.2014. There is no 'and' used between sub-clause (i), (ii) and (iii) after the mark of semicolon, but in between sub-clause (iii) & (iv), the word 'and' has been provided after the semicolon which means that the cut-off date for Special Area, Unauthorized Regularized Colony, Village Abadi and all other area in NCT is 08.02.2007. Sub-clause (iii) & (iv) of sub-section 2 of Section 3 are to be read together.

7. In view of this, the cut-off date even for special area is 08.02.2007 and not 01.06.2014 as claimed by the appellant.
8. Let us now examine the title documents of the appellants. The appellant Mahesh Gupta purchased the third floor from Smt. Rita Rani on 17.02.2012 through registered Agreement to Sell Deed. This agreement records that the year of construction of the third floor is 2011. This agreement also records that Smt. Rita Rani purchased entire terrace roof rights of the first floor and above from Smt. Rekha Aggarwal on 03.12.2011 and thereafter, she constructed entire second floor (2 units) and third floor at her own costs and expenses. This registered Agreement to Sell proves that Smt. Rita Rani purchased only the rights of construction on the roof of first floor and above on 03.12.2011 and thereafter constructed the second and third floor which admittedly is after 08.02.2007.
9. Similarly the appellant Smt. Indu Grover purchased the front portion of the second floor on 14.02.2012 from Smt. Rita Rani. As per the registered Agreement to Sell 14.02.2012 Smt. Rita Rani purchased the first floor roof rights and above from Rekha Aggarwal on 03.12.2011 and thereafter constructed the second floor. The year of construction as per this document is 2011. Likewise the appellant Neelam Pahuja purchased the back portion of second floor from Smt. Rita Rani on 01.03.2012. The year of construction again is 2011.
10. The title documents of all the appellants show that their predecessor Smt. Rita Rani purchased entire terrace roof right of first floor and above from Smt. Rekha Aggarwal on 03.12.2011 and thereafter, Smt. Rita Rani constructed second and third floor and sold these floors to the appellants. The protection as already discussed for the

subject-property under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is for construction raised up to 08.02.2007. In the present case, the second, third and fourth floor were constructed much after this date and admittedly after 03.12.2011 when Smt. Rita Rani became the owner. The subject-property is therefore not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Whether it falls in special area or in plotted development makes no difference as the cut-off date for both is 08.02.2007.

11. It was also argued for the appellants that the Property Tax Department of MCD issued a notice seeking property tax arrears from 2004 onwards which show that the property is existing prior to 08.02.2007. This notice issued by MCD is a general notice seeking recovery of arrears of property tax and does not prove that the second and third floors are existing since 2004. The title documents of the appellants clearly show that the second, third and fourth floor were raised much after 03.12.2011. In these facts, there are no merits in the arguments of the appellants that protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is available to them.
12. It was also argued for the appellants that the show cause notice and the demolition order were not served upon them. Record show that the show cause notice dated 05.07.2013 was duly served by way of pasting at the subject-property for which the photographs were taken and are available in the office record. Appellant Mahesh Gupta even submitted his reply and also appeared before the Quasi Judicial Authority along with husband of appellant Indu Grover. They both submitted their title documents as noted in the proceedings dated 06.08.2013 and thereafter demolition order dated 22.08.2013 was passed. Service through pasting is proper service and therefore, the appellants were duly served with the show cause notice.
13. In view of these facts, there are no merits in these appeals and the same are dismissed and the impugned orders are upheld. The protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available for the subject-property.

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 09.03.2026**

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