

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

APPEAL NO. 103/ATMCD/2023

1. **Sh. Nand Ram**
S/o Sh. Bharat Singh

2. **Sh. Surender Kumar**
S/o Sh. Nand Ram

Residents of :
H.No. 160-161, New Manglapuri
M.G.Road, Mehrauli
New Delhi-110030

..... Appellants

Versus

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

..... Respondent

Date of Filing of Appeal	:	01.03.2023
Date of Judgment	:	16.03.2026

JUDGMENT

1. This is the appeal challenging the sealing order dated 20.11.2019 passed in respect of unauthorized construction carried out in the Property No. 152 (In front of Pillar No. 49), New Manglapuri in the shape of demolition of old constructed staircase without permission of MCD and construction of Iron spiral staircase from Basement to Second floor in old constructed building / structure. The brief facts necessary for disposal of

this appeal are that the appellant no. 1 is the owner of shop no. 152 which is the subject-property. His brother filed a Civil Suit No. 725/2002 against the appellant for permanent injunction with one of the reliefs that the appellants should be restrained from using the gali measuring 5 ft. 4 inch towards M.G. Road. That suit was completely decreed in appeal bearing RCA No. 2/14 and in execution thereof, the iron jaal and staircase in that gali were removed in Execution Petition No. 347/17 and the decree dated 25.4.2016 passed in RCA No. 2/14 was completely executed.

2. As per appellant he was carrying out repair and maintenance work in the subject- property after removal of iron jaal and staircase but on false complaint of the brother of appellant no. 1, the property was booked. The appellant duly replied the show cause notice under Section 345A of DMC Act dated 10.05.2019 but his reply was not considered and this sealing order was passed. It was argued for the appellant that sealing order was never served upon the appellant and the property was unlawfully sealed on 09.01.2023 and therefore he filed this appeal and also prayed not only for setting aside the impugned order but also for condonation of delay on the ground that the impugned order was never served upon him.
3. Ld. counsel for MCD on the other hand argued that the appellants tampered with the seal and on regular inspection, it was found that seal has been tampered and the property was resealed on 09.01.2023 and an FIR was also registered in this regard. The appellants had constructed spiral iron staircase in the property from ground to second floor and unauthorized construction still exist in the property and therefore, the appeal should be dismissed.
4. Ld. counsel for the intervener argued that there is an inordinate delay of about 03 years in filing this appeal and the delay is unexplained and cannot be condoned. The appellants had raised unauthorized construction

in the form of staircase. The staircase is unauthorized whether of stone or iron. The fresh staircase is without any sanction. The appellants tampered with the municipal seal. The unauthorized staircase has compromised with structural safety of the building and therefore, the unauthorized construction should be demolished and the appeal should be dismissed.

5. I have perused the record. The property was booked for unauthorized construction in the shape of demolition of old staircase and construction of iron spiral staircase from basement to second floor on 23.04.2019. Thereafter, the proceedings under 345A of the DMC Act were initiated through show cause notice dated 10.05.2019 and the impugned sealing order dated 20.11.2019 was passed. As per status report filed by the respondent before Hon'ble High Court in Writ Petition No. 3862 of 2019 titled as 'Kanwal Singh Vs. MCD', the property was sealed on 20.11.2019 and same were found tampered on 23.01.2020 and was resealed on 09.01.2023. The respondent did not reseal the property immediately after it was found tampered on 23.01.2020 and waited for almost three years for resealing the property which was done on 09.01.2023. Whether the seal was tampered or not, the fact remains that the property was lying unsealed for almost three years and can always give impression that the fresh sealing or resealing on 09.01.2023 has been done in pursuance to some recent orders. This appeal was filed on 01.03.2013 and therefore, the appellant has a legitimate reason to get the delay condoned, though the order of sealing dated 20.11.2019 was served upon appellant no.2 on that day itself under his signatures. The property cannot be kept sealed for all times to come only on the grounds of delay. The delay therefore is condoned subject to cost of Rs. 10,000/- to be deposited within two weeks with the Registry of this Court.

6. Coming to the merits of the case, admittedly a decree was passed against the appellant in RCA No. 2/14 vide judgment dated 25.04.2016 and the staircase & the iron jaal was directed to be removed. In execution of this decree, the appellants removed the staircase and iron grill and the decree was satisfied on 31.07.2019 in execution no. 347/17.
7. The appellants constructed spiral iron stairs within their property from ground to second floor to access the upper floors through these iron stairs built within the property. The status report filed by the respondent dated 07.08.2025 states that a joint inspection was conducted in the property on 28.04.2025 and there are no non-compoundable deviations on the basement and ground floor and there are non-compoundable deviations of 3.35 sq. mtrs. on the first and second floor. Undisputedly these deviations on first and second floor of 3.35 sq. mtrs. were never booked and the booking is only of spiral iron stairs from basement to second floor. As per original booking dated 23.04.2019, the other construction in the property is old and the entire construction and structure is old.
8. After demolition of staircase and iron jaal in pursuance to judgment and decree passed in RCA No. 2/14, the appellants had no access to the upper floors of the property and constructed the spiral iron stairs. The property admittedly is a small property having area of less than 32 sq. mtr. and cannot be regularized as per UBBL-2016. The property cannot be kept sealed forever and only spiral iron stair case has been constructed within the four corners of the property to access the upper floors. Once the stair case and iron jaal was demolished, the construction of spiral stair case within the property cannot be said to be unauthorized nor the property can be kept sealed till the same is taken over by the government for the purposes of road widening as required by the Town Planning Department as per the status report dated 07.08.2025.

9. In view of the same sealing order dated 20.11.2019 is set-aside. Let the property be de-sealed within two weeks after depositing of Rs.10,000/- with the Registry of this Court towards condonation of delay cost and the appeal is allowed.
10. 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 16.03.2026**

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