

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

APPEAL NO. 316/ATMCD/2024

- 1. Ms. Meenakshi
W/o Mr. Manoj Kumar
R/o B 378, TF, Lok Vihar
Pitampura, Delhi-110034**
- 2. Ms. Anshu
W/o Mr. Vinod Kumar**
- 3. Ms. Meena
W/o Mr. Pradeep Aggarwal**

**Both residents of:
H.No. 181 SF, Kohat Enclave
Pitampura
Delhi-110034**

.....Appellants

Versus

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

..... Respondent

**Date of Filing of Appeal : 03.05.2024
Date of Judgment : 01.04.2026**

APPEAL NO. 317/ATMCD/2024

**Ms. Shanti Devi Aggarwal
W/o Mr. Onkar Mal Aggarwal
R/o H.No. 181 SF, Kohat Enclave
Pitampura, Delhi-110034**

.....Appellant

Versus

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

..... Respondent

**Date of Filing of Appeal : 03.05.2024
Date of Judgment : 01.04.2026**

JUDGMENT

1. These are the two appeals against the sealing order dated 21.03.2024 passed in respect of unauthorized construction in the shape of entire Ground Floor, Mezzanine, First Floor, Second Floor, Third Floor and Fourth Floor carried out in the Property No. 1112, Kucha Natwa, Chandni Chowk, Delhi-110006. The brief facts necessary for disposal of this appeal are that the three appellants of appeal no. 316/24 purchased an area measuring about 78.11 sq. yards at the ground floor whereas the sole appellant of appeal no. 317/24 purchased an area measuring 63 sq. ft. on the ground floor from one Mr. Jawaharlal Aggarwal vide two separate sale deeds dated 28.05.2007.
2. As per appellants, they did not carry out any construction in the property after purchasing the same on 28.05.2007. One Mr. Sunil Kr. Gupta filed writ petition(c) no. 4406/23 before the Hon'ble High Court against MCD and the appellants which was disposed off on 11.04.2023 with directions to the MCD to take requisite action in case any unauthorized construction is found in the property of Mr. Sunil Kr. Gupta and the appellants. The respondent thereafter without inspecting the property issued show cause notice dated 09.06.2023 under Section 344(1) read with 343 of DMC Act and another show cause notice dated 05.07.2023 under Section 345A of the DMC Act alleging unauthorized construction in the shape of entire ground floor, mezzanine floor, first, second, third and fourth floor without sanction building plan. Both these notices were duly replied by the appellants but the respondent passed the impugned sealing order dated 21.03.2024 and failed to consider the replies and documents of the appellants.
3. It was argued for the appellants that the respondent failed to appreciate that the construction in the subject property, which are two shops at ground floor, is prior to 08.02.2007 as the property was already booked for unauthorized construction when the sale deed(s) dated 28.05.2007 were executed in favour of the appellants. There is only one shop having mezzanine in the property which belongs to appellants of appeal no. 316/24. It was not the case of the MCD at the time of show cause notice that there is any amalgamation in the two shops owned by the appellants. It was not the case of the MCD that any

passage has been merged in the shops. Further, the show cause notice was not in the names of the appellants. The show cause notices and the orders are silent about the date of alleged unauthorized construction and therefore, the impugned order is liable to be set-aside. Ld. Counsel for the appellants in support of his arguments has placed reliance of following judgments :

1. Prem D. Gupta Vs. MCD 1974 are LR 163.
2. Mahender Singh & Ors. Vs. MCD MANU/DE/0436/1987.
3. Mohinder Singh Gill Vs. Chief Election Commissioner AIR 1978 SC 851.

4. Ld. counsels for the respondent on the other hand argued that the passage in front of the shops has been merged in the shops by the appellants. The size of the passage shown in the sale deed executed in favour of Mr. Sunil Kr. Gupta who was the petitioner before the Hon'ble High Court is much long as compared to the passage existing in the property as on today. The Quasi Judicial Authority considered all the documents and contentions raised by the appellants in their reply and passed a reasoned speaking order. The appellants violated the status-quo order as required to be maintained to seek protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Therefore in the absence of any sanction building plan, the entire construction in the property is unauthorized and the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available for violation of status-quo order and the appeals should be dismissed.
5. I have perused the record. The appellants before me purchased their respective portions through two sale deeds dated 28.05.2007 executed by Mr. Jawaharlal Aggarwal. Mr. Sunil Gupta who filed writ petition before the Hon'ble High Court purchased his shop from Mr. Rajinder Gupta on 18.08.2006 i.e. prior to the sale deed of the appellants. The vendor of the appellants Mr. Jawaharlal Aggarwal and the vendor of Mr. Sunil Kr. Gupta namely Mr. Rajinder Gupta purchased the properties from M/s L.N. Gadodia and Son Pvt. Ltd.
6. The sale deed executed by L.N. Gadodia in favour of Mr. Jawaharlal Aggarwal at page no. 340/C of the office record show that it has a site plan annexed with it. Mr. Jawaharlal Aggarwal purchased a portion measuring

85.11 sq. yd. on 01.06.2005. Out of this area, he sold an area measuring 78.11 sq. yd. to the three appellants in appeal no. 316/24 and one shop of the remaining area measuring around 63.5 sq. ft. was sold to appellant Mrs. Shanti Devi Aggarwal, the other appellant. These sale deeds dated 28.05.2007 show that the property was already booked for unauthorized construction prior to 28.05.2007 for three unauthorized constructions.

7. The first was unauthorized construction of stairs from existing ground floor to mezzanine floor, second being unauthorized construction in the shape of partition wall and fixing rolling shutters in common wall at first floor and thirdly unauthorized constructions of 17 shops by providing partition wall and rolling shutters at ground floor and lowering ground floor level after digging existing level of shops at ground floor.
8. This clearly show that these unauthorized constructions existed at the time of sale deed on 28.05.2007. The respondent was directed to produce the record of this booking which the respondent failed to produce. However with status report dated 31.05.2024, the respondent produced the details/particulars of that booking/file. It shows that on 08.07.2005, the unauthorized construction in the shape of mezzanine floor was booked vide file no. 48/113/B/UC/CZ/05. This clearly show that the mezzanine floor was constructed around June/July 2005 which was prior to the cut-off date of protection i.e. 08.02.2007 available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Further, vide this status report dated 31.05.2024, it was also specified that the mezzanine exist only in the shop of the appellants in appeal no. 316/24 and there was no other shop having mezzanine in this property.
9. Coming to the argument of merging the passage in the shops at ground floor by the appellants, the same was never a part of original booking or the show cause notice. The appellants were never put to notice in respect of alleged merging of the passage in their shops. The sale deeds of the appellants and that of Mr. Sunil Kr. Gupta do not mention about the length of this passage and only mentioned the width of the passage to be around 4 ft. In the absence of particulars of the length of the passage mentioned in the sale deeds, it is difficult to adjudicate if there was any merging of the passage in

the shops by the appellants. Otherwise also, it was never a part of show cause notice.

10. Coming to the aspect of amalgamation of the two shops by the appellants by opening a gate in between, the same was never part of the show cause notice, yet the appellants have volunteered to close that internal gate which amalgamated the two shops. The appellants were never put to the notice of the same. They however is at liberty to close the door which amalgamates the two shops.

11. In view of this discussion, I do not find that any fresh construction being raised in the subject-properties by the appellants at ground and mezzanine floor as claimed in the show cause notice except of amalgamation of two shops which was never a part of show cause notice. The construction being old and prior to 08.02.2007 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 till the Act is in force. Even the booking dated 09/06/2023 records that the construction is old and occupied. There is no date mentioned in the booking of unauthorized construction. The sealing order is therefore kept in abeyance till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. The respondent shall be at liberty to take action once the Act ceases to be in force. The property be desealed within two weeks from today.

12. The appeals stand disposed-off.

13. 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 01.04.2026**

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