

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

APPEAL NO. 222/ATMCD/2017

APPEAL NO. 866/ATMCD/2017

APPEAL NO. 615/ATMCD/2018

**1. Sudhir Madan
S/o Suraj Prakash Madan**

**2. Sushil Madan
(Since Deceased)
Through his Legal Heir**

**Smt. Poonam Madan
W/o Late Sushil Madan**

**3. Smt. Vertika Madan
W/o Shri Sudhir Madan**

**All AT:-
3229, Gali Vikram
Kucha Hafiz Banna
Bahadurgarh Road
Bara Hindu Rao
Delhi-110006**

.....Appellants

Versus

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

..... Respondent

**Date of Filing of Appeal : 31.03.2017, 15.09.2017
And 27.08.2018**
Date of Judgment : 02.04.2026

JUDGMENT

1. These are the three appeals against the demolition order dated 16.12.2016 in appeal no. 222/17 and the demolition order dated 18.05.2017 in appeal no.

866/17 in respect of unauthorized construction carried out in the Property No. 3229, Gali Vikram, B.G. Road, Delhi-110006 in the shape of First Floor, Second Floor and walls & columns at Third Floor with projection on municipal land and the rejection order dated 23.07.2018 rejecting the application seeking regularization of the property in question in appeal number 615/2018.

2. The brief facts necessary for disposal of these appeals are that the appellants are the owners of this property by virtue of sale deed dated 05.11.2003 and 17.06.2006. As per appellants, the property was in dilapidated condition and on their application, the permission to renovate and repair was granted by respondent on 28.09.2012. It has been stated in the appeal that due to financial constraints, the appellants could not repair till May-June 2016. Thereafter, noticing huge cracks and apprehending danger to the lives, the appellants engaged a contractor for repairs who advised that the property should be reconstructed and the appellants therefore got the damaged portion of the property demolished and reconstructed. The officials of the respondent visited the property on 03.03.2017 and took some action on the upper floors. Smt. Sunita Madan who is sister-in-law of appellant no. 1 filed Writ Petition No. 1282/2017 against the appellants claiming herself to be the co-owner of the property. Thereafter, the appellants received a show cause notice dated 28.03.2017 and on inquiry, they were provided the copy of demolition order dated 16.12.2016 challenged in appeal no. 222/17.
3. The appellants submitted a detailed reply to the show cause notice dated 28.03.2017 and thereafter, another demolition order dated 18.05.2017 was passed which has been challenged in appeal no. 866/17. The appellants applied for regularization of the said construction but the same was rejected on 05.04.2017. The appellants filed a letter dated 28.06.2017 to reopen the regularization application and the regularization application was reopened and was finally rejected on 23.07.2018 which is the subject- matter of appeal no. 615/18.
4. These three orders have been challenged on the ground that the application for regularization was rejected in arbitrary manner without issuing any invalid notice which was obligatory on the respondent. The respondent was required to pass speaking order for rejecting the regularization application. The

respondent failed to appreciate that the regularization application cannot be considered only because the width of the existing lanes adjoining the subject-property is 6 feet 8 inch and 6 feet 3.5 inch. It was argued that the property is situated in special area whose redevelopment plan is yet to be prepared. It was argued that in view of the judgment of Hon'ble Delhi High Court passed in the case of Shakti Singh Vs. MCD & ors. dated 20.12.2011 in LPA No. 992 of 2011, the appellant cannot be asked to surrender their private land for street widening unless the same is acquired by the respondent. The MCD can take undertaking from the appellants that they would surrender their land or any portion thereof for road widening, as and when the same is required in future. The regularization application cannot be rejected on this ground. It was further argued that the circular of the respondent dated 27.04.2011 making it mandatory to provide stilt is not applicable to the subject-property as the property abuts non-motorable road where a four wheeler vehicle cannot enter and there is no purpose to built a stilt floor in the property. It was also argued that the appellants are the absolute owners of the property by virtue of sale deeds and therefore, the rejection of regularization on this ground is also without any basis.

5. In appeal no. 222/17 it was argued that the show cause notices dated 22.11.2016 was never served upon the appellants and the demolition order was passed without providing an opportunity of being heard. In appeal number 866/2017 it was stated that the reply to show cause notice was not considered and demolition order was passed arbitrarily.
6. Ld. counsels for the respondent on the other hand argued that the deficiencies in the regularization application were pointed out to the appellants vide proper invalid notice and same was rejected on 05.04.2017. The appellant applied for reopening on the basis of the judgment title as "Shakti Singh Vs. MCD" and the same was considered but was finally rejected on 23.08.2017 as this judgment was not applicable to the facts of the matter. It was argued that the appellants are required to have a stilt floor in the property as the area of the plot is more than 100 sq. mtr. Further, the minimum ROW for non-trafficable road has to be 15 feet whereas the existing width of the lanes are only 6 feet 8 inch & 6 feet 3.5 inch. The road width has to be maintained as per law which is 15 feet and therefore, the application for

regularization was rightly rejected for non-compliance of these two mandatory requirements. It was further argued that the show cause notices were duly served prior to passing demolition orders. The appellants as per their own case have reconstructed the property without sanction and later sought regularization which has been rejected and therefore, there are no merits even in the appeals challenging the demolition orders.

7. I have perused the record. Undisputedly, the appellants have reconstructed the property even as per their own case. The appellants have mentioned in the appeal that they sought permission to renovate on 28.09.2012 but after about four years reconstructed the property allegedly as per advice of their contractor. The property was booked for unauthorized construction vide show cause notice dated 22.11.2016 in the shape of unauthorized construction at ground floor and further raising walls & columns at the first floor. The show cause notice was issued in the name of Mr. Jai Prakash and was sent to him by speed post. How Mr. Jai Prakash is related to the property is not explained during arguments nor it was mentioned in the office file as to why the show cause notice dated 22.11.2016 was sent to Mr. Jai Prakash. The show cause notice therefore was never served nor issued in the name of appellants. Further, the demolition order dated 16.12.2016 was not sent by post and is stated to be pasted at site but there is no proof of pasting in the form of photograph or witnesses to this pasting. Therefore, the demolition order dated 16.12.2016 in appeal number 222/2017 is liable to be set-aside for the reason that neither the show cause notice nor the demolition order was issued in the name of the appellants nor were served upon them.
8. Coming to the appeal no. 866/17, the show cause notice dated 28.03.2017 was issued in the name of one Jai Prakash and Mr. Sudhir Madan who is appellant no. 1 in this appeal. This show cause notice was in respect of **unauthorized construction** of first and second floor with walls & columns for third floor. It means that the unauthorized construction continued even after the first booking dated 22.11.2016. This show cause notice was replied by the appellants on 31.03.2017 and thereafter, the demolition order dated 18.05.2017 was passed. This demolition order dealt with the contentions of the appellants and was passed since the regularization application has already been rejected. I do not find any infirmity in this demolition order since

the construction was raised without any sanction and in the absence of it being regularized, the same is liable to be demolished. This appeal therefore is dismissed.

9. Coming to appeal no. 615/18 challenging the rejection order dated 23.07.2018. The respondent rejected the reopening of the regularization application which was initially rejected on 05.04.2017. The appellants did not challenge the order dated 05.04.2017 but applied for reopening on 14.09.2017. It was rejected on five grounds including not maintaining the minimum width of road at 15 feet by leaving space for road and not constructing stilt in the property. The other grounds were some ownership dispute with Ms. Sunita Madan.
10. As far as the ownership dispute is concerned, the appellants had filed complete chain of documents regarding their ownership and the two sale deeds conferring title to them. Merely because a Writ Petition was filed before the Hon'ble High Court, the same does not mean that the appellants do not have a title in the property or their title is under dispute. Their title documents along with indemnity bonds are sufficient to show their ownership.
11. Coming to the ground of maintaining mandatory stilt in a plot having area of more than 100 sq. mtr. The respondent issued a circular dated 27.04.2011 making it mandatory for a building raising fresh construction to have provision of stilt equivalent to proposed ground floor coverage. This circular was challenged before the Hon'ble High Court in Writ Petition (Civil) No. 4598 of 2010. This Writ Petition was disposed off on 29.05.2014 with directions that till a final decision is taken by the Competent Authority on this circular, the circular shall continue to operate. It means that this circular still continue to operate and stilt floor is required mandatorily in a property having area of more than 100 sq. mtr. The argument of the appellants that it is a non-motorable road and because of the existing width of the road, no four wheeler vehicle can even reach the property is of no help since this circular does not distinguish between a motorable and non-motorable road and further, a stilt parking can be used for parking vehicles which are not four wheelers i.e. two wheelers and certainly two wheelers can reach the subject-property. The appellants therefore are required to have a stilt floor in the property as per this circular which still operates.

12. Coming to the next contention of having a minimum 15 feet equal widening road on both sides as against 6 feet 8 inch and 6 feet 3.5 inch existing in the property. The appellants have relied upon the judgment passed in the case of Shakti Singh (Supra) whereas the respondent have relied upon the judgments of Hon'ble Division Bench of our own High Court passed in LPA 519/14 dated 12.03.2015 titled as **Angela Jaitly and Anr. Vs. Kailash Mehndiratta and Ors. and one passed in South Delhi Municipal Corporation Vs. Pawan Garg and Ors. 2019: DHC: 2246 – DB and of Honble Supreme Court passed in the case of Pt. Chet Ram Vashist Vs. MCD 1995 SCC (1) 47.**
13. I have perused these judgments. In the case of Shakti Singh (Supra) vide judgment dated 20.12.2011, the Hon'ble High Court dealt with an issue of surrendering private land for street widening in village abadi of village Basai Darapur. The Hon'ble High Court noted that MCD does not have policy to determine single entity of a plot nor have any approved plotted layout of any village abadi site and on those facts held that the appellants can submit indemnification for surrendering portion of their plot, if required in future. This judgment is distinguishable on facts.
14. In the later judgment of Angela Jaitly (Supra), the Hon'ble High Court referred about new Building Regulations for Special Area in para 10 read with para 7 of the judgment and held that in view of clause-C of these regulations, an area measuring 12.95 sq. meters has to be kept apart for road widening and thereafter, the respondent no. 1 can claim FAR accordingly. The Hon'ble Supreme Court in the judgment of Pt. Chet Ram Vashist (Supra) also recognized the right of the respondent to impose a bar on owner in respect of land covered by layout plan. Though the Hon'ble Supreme Court held that this land shall not vest with corporation free of cost but held that corporation have a right to manage the land earmarked for school, park etc.
15. In the present case, the minimum width of road for non-trafficable road is to be maintained at 15 feet equal widening on both sides in case there is no alignment plan of the road. The existing widths of adjoining roads are 6 ft. 8 inch and 6 feet 3.5 inch. The appellants were already informed about the same while rejecting the regularization application on 05.04.2017 when the invalid notice was not complied with. They applied for reopening of the rejected application which was again rejected on 23.07.2018 and the

appellants therefore cannot claim that no invalid notice was issued. The invalid notice was issued prior to rejection dated 05.04.2017 which should have been challenged by the appellants. The argument of not issuing invalid notice prior to 23.07.2018 is meritless.

16. In view of this discussion, the appeals no. 866/17 & 615/18 are dismissed. Record be sent back. As far as appeal no. 222/17 is concerned, the same is allowed and the demolition order dated 16.12.2016 is set-aside for non-service of show cause notice. The matter is remanded back with liberty to the appellants to submit their reply and documents to the show cause notice within 15 days from today for which they shall appear before the Quasi Judicial Authority on 20.04.2026 and speaking order be passed after giving personal hearing to the appellants within eight weeks after conclusion of personal hearing.
17. All the appeals stand disposed of.
18. Record of the respondent, if any, be returned along with copy of this order and appeal files be consigned to record room.

**Announced in the open Court
today i.e. on 02.04.2026**

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