

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

APPEAL NO. 425/ATMCD/2014

- 1. Salwan Education Trust
G-10, Marina Arcade
Connaught Circus
New Delhi-110001
Through Shri Paramjit Khanna
Secretary of the Trust and
Authorized Signatory**

- 2. Salwan Public School
Pt. Girdhari Lal Salwan Marg
Old Rajinder Nagar
New Delhi-110060
Through Maj. (Retd.) S. K. Kohli
Director and Authorized Signatory**

.....Appellants

Versus

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

..... Respondent

Date of Filing of Appeals : 22.05.2014
Date of Judgment : 08.04.2026

JUDGMENT

1. This is the appeal against the demolition order dated 24.04.2014 and speaking order dated 02.04.2014 passed in respect of unauthorized construction carried out in the Property known as Salwan Public School, Old Rajinder Nagar, New Delhi-110060 in the shape of Ground Floor and First Floor, right side portion of the building. The brief facts necessary for disposal of this appeal are that the appellant no. 1 is a society running a school in the

name of appellant no. 2 at Old Rajinder Nagar, New Delhi on a land allotted to the trust.

2. As per appellants, the trust constructed the school building in 1952-53 and the building is in existence in the same shape, size and extent since then. As per appellants except of permissible repair from time to time, no other construction has been raised in the building. It is claimed that in August 2013, plaster and concrete from the roof had fallen and as per the report/advice of Structural Engineer, repairs were carried out under bye-laws 6.4.1 of UBBL-1983. The appellants have informed the respondent about these repairs and renovation through letter dated 19.08.2013 and only repairs and renovations were carried out. The respondent however, booked the property vide show cause notice dated 5.02.2014 which was duly replied vide reply dated 12.02.2014 and reply dated 11.03.2014, yet the respondent passed the impugned demolition order dt. 24.04.2014 and the speaking order dated 2.04.2014.
3. These orders have been challenged on the ground that it is an old school building where no fresh construction was raised as booked by the respondent. The show cause notice was not in compliance to the directions passed by the Hon'ble Supreme Court in the case of In Re: Directions in the Matter of Demolition of Structures 2024 INSC 866 dated 13.11.2024. The burden is on the respondent to show as to when and what unauthorized construction was raised, which the respondent has failed to show. The respondent was duly informed about the repairs vide letter dated 08.08.2013 and 19.08.2013. The respondent failed to consider the replies given to show cause notice as well as the documents submitted with the reply. It was argued that the roof was relaid to the same extent and was only reconstructed which is permissible under building bye-laws and it is not a case of fresh construction as claimed by the respondent and therefore, the impugned order should be set-aside.
4. Ld. counsel for the respondent on the other hand argued that the judgment of the Hon'ble Supreme Court is not retrospective in operation. The identity of unauthorized construction was never an issue raised by the appellant before Quasi Judicial Authority. The appellants are well aware about the unauthorized construction raised in the property which was clearly depicted in the rough sketch prepared on the show cause notice. The appellants have

included the area of fins existing in the property in the covered passage and have increased the cubic content of the covered area and as such, have raised fresh construction. The appellants did not comply with provisions of Section 334 of the DMC Act and therefore, the appeal is meritless.

5. I have perused the record. The appellants have claimed that no fresh construction has been raised in the school building and only repairs and renovation has been carried out to the same extent which was existing since 1952-53. In this regard reliance was placed on the property tax returns filed by the appellants from time to time. A perusal of the property tax returns (PTR) show that in the PTR form for the year 2006-07, the construction existing on the ground and first floor of the senior wing building is around 502.29 sq. mtr. on each floor i.e. in the senior wing building, the covered area was around 1004 sq. mtr. which also includes the round shape tower having covered area of 51 sq. mtr. The same is also reflected in the self-assessment return form for the year 2004-05 at page 41 of the appeal. This area for the senior wing building remained same in 2007-08, 2008-09 2009-10, 2011-12, 2012-13.
6. However, as per affidavit of existing construction directed to be filed by this Tribunal on 20.02.2017, the covered area at the senior wing building increased to 679.69 sq. mtr. at the ground floor and 703.53 sq. mtr. at first floor which means that the total covered area in the senior wing building increased to 1383.22 sq. mtr. from 1004 sq. mtr. existing till 2012-13. This clearly show that under the guise of repairs, the appellant not only constructed a fresh building by demolishing the old structure but also increased the covered area from 1004 sq. mtr. to 1383.22 sq. mtr. A covered area of almost 380 sq. mtr. was increased on the pretext of repairs and renovations. The same cannot be said to be repairs and renovations permitted under bye-law 6.4.1 of UBBL-1983.
7. It ex-facie show that the status-quo as required to be maintained for seeking protection of unauthorized construction under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 was violated by the appellants and once the same is violated, the protection available under this Act goes. Admittedly, there is no sanctioned building plan with appellants.

8. Coming to the argument of violating the directions passed by the Hon'ble Supreme Court in the case of In Re: Directions in the Matter of Demolition of Structures 2024 INSC 866 dated 13.11.2024, these directions have been passed on 13.11.2024 whereas the subject-property was booked more than 10 years before on 05.02.2014. The respondent could not have apprehended about these directions which are not retrospective.
9. Otherwise also in the present case, the Principle of natural justice were duly followed. The show cause notice dated 05.02.2014 was replied twice by the appellants on 12.02.2014 and 11.03.2014. The opportunity of personal hearing was also provided and thereafter, detailed speaking order dated 02.02.2014 was passed. Same was followed by a formal order dated 24.04.2014. In these facts it cannot be said that opportunity of being heard was not provided to the appellants or their contentions were not considered.
10. Coming to the argument of the appellants that the unauthorized construction was not described in the show cause notice dated 05.02.2024. I have perused the show cause notice. The unauthorized construction was properly specified by marking the said construction in red and same is clearly depicted without any ambiguity. Otherwise also it was never an issue raised by the appellant before the Quasi Judicial Authority that the unauthorized construction is not informed to them specifically.
11. Further, the photographs available in the office record show that fresh construction was raised in the property and it is not a case of renovation and repairs as claimed for the appellants. The appellants raised fresh construction in the building. The appeal therefore is devoid of merits. The same is dismissed and the demolition order is upheld.
12. 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 08.04.2026**

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