

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

**APPEAL NO. 372/ATMCD/2017 - Shankar Sharma Vs. MCD**  
**APPEAL NO. 373/ATMCD/2017 - Shankar Sharma Vs. MCD**  
**APPEAL NO. 176/ATMCD/2018 - Shankar Sharma Vs. MCD**  
**APPEAL NO. 636/ATMCD/2018 - Shankar Sharma Vs. MCD**  
**APPEAL NO. 637/ATMCD/2018 - Shankar Sharma Vs. MCD**  
**APPEAL NO. 638/ATMCD/2018 - Shankar Sharma Vs. MCD**  
**APPEAL NO. 17/ATMCD/2024 - Shankar Sharma Vs. MCD**

**JUDGMENT**

1. These are seven appeals challenging the following orders in respect of one property bearing number 590, Gali Bal Mukund, Kucha Pati Ram, Bazar Sita Ram, Delhi-110006. (hereinafter referred as subject-property)

A). The Demolition order dated 15.05.2017 in appeal no. 372/17 in respect of unauthorized construction at Ground, First, Second and part Third floor, in the back portion.

B). The demolition order dated 19.03.2018 in appeal no. 638/17 passed in respect of unauthorized construction at ground, first, second and third floor, front portion of the subject-property.

C). The appeal no. 636/18 is in respect of the sealing order dated 30.03.2018 bearing no. 06 passed in respect of unauthorized construction in the back portion.

D).The appeals no. 637/18 is in respect of the sealing order dated 30.03.2018 bearing no. 07 passed in respect of unauthorized construction in the front portion.

E,F,G). These three appeals no. 373/17 and 176/18 and 17/24 are challenging the rejection of regularization applications seeking regularization of the existing construction in the subject-property rejected vide order dated 11.05.2017, 23.02.2018 and 29.12.2023 respectively.

2. The brief facts necessary for disposal of these seven appeals are that the appellant is the owner of subject-property being his ancestral property. As per

appellant, the property was in dilapidated condition and vide letter dated 19.09.2016, the appellant sought permission to carry out necessary repairs. The respondent granted this permission on 26.09.2016 as per clause 6.4.1 of Unified Building Bye Laws (UBBL) and accordingly, the repairs were carried out. It is further claimed that some officials of respondent/MCD visited the subject-property and advised the appellant to get it regularized for which the appellant applied on 02.12.2016. He however received show cause notice dated 05.12.2016 in respect of unauthorized construction in the back portion. It was replied but the respondent passed the demolition order dated 15.05.2017 (challenged in appeal no. 372/17) for the reason that the regularization application dated 2.12.2016 has been rejected on 11.05.2017 (appeal no. 373/17).

3. Further, the respondent however re-opened the regularization application and it was again rejected on 23.02.2018 (appeal no. 176/18) after obtaining comments from Town Planning Department. The appellant on 26.02.2018 filed an online application with Heritage Conservation Committee (HCC) for regularization / compounding of the construction. HCC vide status report dated 31.08.2022 stated that it is for MCD to consider the regularization application since HCC has no authority to regularize. The appellant however received rejection order dated 29.12.2023 (appeal no. 17/24)
4. It was argued by the Ld. Counsel of the appellant that neither appellant nor respondent were aware about the fact that the subject-property has been notified as Heritage Building vide notification dated 29.07.2016 and for that reason the permission for repair was granted on 26.09.2016. The MCD did not reject the regularization applications on 11.05.2017 for the reason that the property is a heritage property. The appellant carried out only repairs as permitted under law and is ready to bring the construction as it was existing prior to repairs. The appellant was ignorant about the heritage character of the property and applied for repairs which were permitted. HCC now has no role to play in regularization of the construction in the subject-property and as per clause 2.8 of UBBL-2016, the whole property or part thereof, can be regularized.
5. It was further argued that the respondent is required to regularize the property as per law. On the aspect of road widening, it was argued that the

respondent is required to acquire the property of the appellant for the purposes of road widening and the appellant cannot be asked to surrender his property without acquisition and only an indemnity bond is required to be given by the appellant at this stage that he will give up his land for road widening as and when required after due acquisition and that cannot be a ground to reject the regularization application. Reliance in this regard has been placed on the judgment of **Shakti Singh Vs. MCD and Ors., LPA No. 992 of 2011** dated 20.12.2011 of Hon'ble Delhi High Court.

6. Ld. counsels for respondent/MCD on the other hand argued that the appellant raised unauthorized construction in the property under the guise of repairs. The permission of HCC was must before carrying out any repair and reconstruction in the property. The appellant demolished the heritage structure and violated annexure –II of UBBL-2016 and he cannot be permitted to take benefit of his own wrong. It was argued that no permission to reconstruct the property can be given unless a written permission from HCC is obtained. Further, the subject-property is situated in special area where minimum width of road has to be maintained and since part of subject-property is falling in the proposed minimum width of road to be maintained, the regularization applications were rightly rejected. The appellant has carried out construction in violation of UBBL-2016 and the appeals are devoid of merits.
7. I have perused the record. It is relevant to note that the appeals no. 373/17, 176/18 and 17/24, all three, challenging the rejection of regularization orders dated 11.05.2017, 23.02.2018 and 29.12.2023 were dismissed by my Ld. Predecessor vide common judgment dated 06.05.2024. This judgment was challenged by the appellant before Ld. Appellate Court and the judgment of this Tribunal dated 06.05.2024 was set-aside vide judgment dated 28.07.2025 and all the three appeals were remanded back with the conclusion that this Tribunal was wrong to conclude that appellant deliberately did not disclose the heritage status of the building while submitting regularization applications. In view of this judgment of Ld. Appellate Court, these three appeals were restored and arguments were heard a fresh.
8. Coming to the merits of these appeals. The appellant admittedly applied for repairs on 19.09.2016 and the same was granted on 26.09.2016 since the

repairs are permitted under Building Bye-laws. As per appellant, he carried out only the repairs as permitted and no fresh construction was raised and he applied for regularization only on the advice of some official of the respondent.

9. In this regard, the documents filed by the appellant are relevant to ascertain as to whether he carried out only the repairs or raised fresh construction in the property. The appellant with his appeal no. 176/18 has filed an assessment order passed under Section 123-D DMC Act dated 31.03.2013. As per this assessment order, the covered area in the property is 265 sq. meters each from ground to third floor. It means that the property had four floors each having covered area of 265 sq. meters. The appellant while applying for regularization of the existing building structure filed a plan containing the area chart of the existing covered area on each floor. The same is available at page no. 1/C of the regularization application dated 02.12.2016. As per this area chart, the covered area on the ground floor is 301.98 sq. meters and on the first, second and third floor is 270.35 sq. meters each. It means that the covered area on each floor increased and substantially on the ground floor. This clearly establishes that it was not a case of repair and renovations as alleged but certainly a case of fresh construction by demolishing the entire heritage property and raising a new building/structure. The argument of the appellant that he carried out only repairs is baseless, malafide and factually incorrect.
10. Coming to the argument that whether the appellant had knowledge of the heritage character or not, on the date when he applied for permission or repairs on 19.9.2016, it is sufficient to mention that at that time even the respondent was not aware that the subject- property has been notified as heritage property vide notification dated 29.07.2016 and that is why the permission for repair was given on 26.09.2016 without forwarding the same to HCC. Appellant however was aware about the same at least on 23.02.2018 when his second application seeking regularization was rejected on this ground.
11. It is also relevant to mention that unauthorized construction from ground to second floor and part third floor (back portion) was booked vide show cause notice dated 05.12.2016 followed by demolition order dated 15.05.2017. At that time, the front portion of the property was old construction and no fresh

construction was carried out in the front portion. The booking of the back portion dated 05.12.2016 clearly show that the front portion of the property was still old at that time. The appellant after this booking, did not stop the unauthorized construction and went on to demolish the front portion. He raised fresh construction even in the front portion which was booked on 05.03.2018 followed by demolition order dated 19.03.2018 in respect of unauthorized construction at the front portion. Undisputedly by that time the appellant was aware about the heritage character of the property.

12. As per para 7 (P) of appeal no. 638/18, the appellant filed an online application with HCC and deposited a sum of 6800/- towards permit fee. This show that by that time appellant had knowledge of the heritage character of the property, yet continued with the unauthorized construction in the front portion which was booked on 05.03.2018. The argument of the appellant that this front portion was earlier referred as old in the previous booking dated 05.12.2016 and was subsequently mentioned as fresh construction is meritless since appellant initially demolished and constructed the back portion booked on 05.12.2016 and later, despite booking, demolished the front portion and raised fresh construction which was booked on 05.03.2018. The appellant deliberately constructed the back and front portion in parts and later, claimed that he was not aware about the heritage character of the property and further he carried out only repairs and no unauthorized construction.
13. Coming to the argument of the land to be given up for road widening. The appellant in this regard has relied upon the judgment of Shakti Singh Vs. MCD (Supra).
14. 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.
15. The Hon'ble Supreme Court in the judgment of Pt. Chet Ram Vashist (Supra) though recognized the right of the respondent to impose a bar on owner in respect of land covered by layout plan but held that this land shall not vest

with corporation free of cost and corporation have a right to manage the land earmarked for school, park etc.

16. In the present case, a part of subject property is falling in road widening. The appellant has been informed about this in rejection letter dated 29.12.2023. The grounds of rejection mentioned in three rejection letters are reproduced herein for the sake of convenience.

A). Letter dated 11.05.2017 in appeal number 373/2017

i) Due to non submission of complete documents regarding (I/N) vide no. EE (B)/CZ/2016/D-3424 dated 19.12.2016 and reminder letter no. EE (B)/CZ/2017/D-3797 dated 02.03.2017 and last and final opportunity letter no. D-108/EE (B) CZ/2017 dated 24.04.2017. These letters were issued and served upon to the owner by way of speed post as well as given to the concerned Architect by hand.

ii) The coverage area is more than the permissible area as per BBL/MPD-2021.

iii) As per the observation from legal department, the ownership documents in favour of Sh. Pyarelal S/o Late Sh. Pt. Bal Mukund are required.

B). Letter dated 23.02.2018 in appeal number 176/2018

i) The subject property is included in the list of Heritage Sites, so notified by the competent authority, the regularization is hereby rejected.

C). Letter dated 29.12.2023 in appeal number 17/2014

i) For the non compliance of the letter no. D/AE (B)/CSPZ/2023/18 dates 07.04.2013

ii) The property is a notified property in the list of Heritage properties notified by the HCC

iii) That the part of the property is falling in the road widening.

17. The relevant question which arises is whether appellant holding a private property can be deprived the right to enjoy the said property for road widening by the government at any undefined time in future. The answer to it is in negative for which one can rely on the judgment of our own High Court passed in Praveen Kumar Vs. MCD 118 (2005) DLT 448, of Hon'ble Supreme Court passed in Raju S Jethmalani and Ors. Vs. State of Maharashtra (2005) 11 SCC 222 and of Hon'ble Bombay High Court in Syed Salim and Ors. Vs. State of Maharashtra dated 30.04.2020 in writ petition no. 4717 of 2019.

18. In view of this legal jurisprudence it is clear that a person cannot be deprived of right of enjoyment of private property without due process of law. The subject-property is owned by appellant who applied for regularization. The application cannot be rejected merely because subject property may be required for road widening in future. The subject-property admittedly has not been acquired nor there is any prospective date of acquisition and therefore, the rejection on the ground that the subject-property will be needed for road widening in future is not sustainable.

19. It was also argued for the appellant that since now HCC has no role to play, the respondent is bound to regularize the property as per clause 2.8 of UBBL-2016. This clause states that any building or part thereof constructed unauthorisedly can be regularized, if the same is within the ambit of building bye-laws and MPD-2021. However, Annexure-II of UBBL-2016 provides terms and conditions regarding conservation, restriction on development, repairs etc. of heritage buildings. As per clause 1.4 of this annexure, no permission to construct new building shall be granted if the unauthorized development is deliberate neglect or damage, to the heritage property.

20. As already discussed, the appellant had knowledge of the heritage character at least on 26.02.2018 when he applied for permission to HCC. Despite that he continued construction in the front portion of the property which was booked on 05.03.2018. This act of continuing unauthorized construction was a deliberate act as contemplated under clause 1.4 of Annexure-II of UBBL-2016 and no permission to construct is to be granted as the word used in this clause is "Shall".

21. In view of this discussion, the entire construction in the property is unauthorized and cannot be regularized under clause 2.8 of UBBL-2016 as sought by the appellant. He deliberately demolished the old heritage structure under the guise of repairs and continued the act of unauthorized construction despite initial booking of the rear portion on 05.12.2016. The appellant does not deserve any equity from the court for his deliberate act of demolishing the property under the guise of repairs and then raising unauthorized construction.

22. Since the unauthorized construction in the subject property cannot be regularized under clause 2.8 of UBBL-2016, there are no merits in the other appeals challenging the demolition and sealing orders passed on account of unauthorized construction.

23. All the appeals are devoid of merits and are dismissed.

24. 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 10.04.2026**

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