

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

APPEAL NO. 910/ATMCD/2017 -Sushil Kumar Gupta Vs. MCD
APPEAL NO. 881/ATMCD/2017 -Mohsin Vs. MCD
APPEAL NO. 566/ATMCD/2018 -Mohsin Vs. MCD
APPEAL NO. 138/ATMCD/2023 -Mohsin Vs. MCD

JUDGMENT

1. These are the four appeals, two of them challenging the order dated 07.09.2017 canceling the sanction building plan of Property No. 1423 (part), Gali Chulhewali, Pan Mandi, Sadar Bazar, Delhi-110006 (here in after referred as subject property) in appeals no. 881/17 and 910/17. The appeal no. 566/18 is challenging the demolition order dated 22.02.2017 in respect of deviations against sanction building plan dated 20.10.2016 and the appeal no. 138/23 is against the demolition order dated 01.03.2023 in respect of unauthorized construction of entire ground to third floor with projection on municipal land and further unauthorized construction of entire fourth floor with projection on municipal land at the subject-property. Appeal no. 910/17 has been filed by one Mr. Sushil Kumar Gupta who sold subject property to Mr. Mohsin who is the appellant in the other three appeals.
2. The brief facts necessary for disposal of these appeals are that one Mohd. Saddiq had borrowed Rs. 25,000/- from Late Sh. Chunnilal the grandfather of appellant Sushil Kumar Gupta and mortgaged his properties for this loan. Mohd. Saddiq could not repay this loan and thus the dispute went to Civil Court where the properties mortgaged with Sh. Chunnilal were directed and sold in auction. The same were purchased in auction by Sh. Hanuman Prasad who was father of the appellant and son of late Sh. Chunnilal.
3. In between, Mohd. Saddiq with an intention to defeat the creditor Mr. Chunnilal, sold / gifted his properties and also executed a deed of Waqf-Alal-Aulad dated 29.04.2026. This dispute also went to Court and lastly the Hon'ble Lahore High Court through its Division Bench set-aside the said alienation by Mohd. Saddiq vide judgment dated 07.06.1935 except for a land

measuring 100 sq. yd. where a mosque had been constructed. It was held by the Hon'ble Lahore High Court that this land measuring 100 sq. yd. shall be waqf property not under Waqf-Alal-Aulad but by virtue of actual dedication to a religious purpose. This judgment of Hon'ble Division Bench was upheld by the Privy Council on 20.10.1983.

4. Further, an award in respect of these properties was passed vide award no. 910/17 dated 08.06.1988 and was made a Rule of Court on 17.09.1990 and was duly registered with the Office of Sub-Registrar, Delhi. The appellant Sushil Kumar Gupta was declared owners of properties bearing no. 1414 to 1423 and 1529/1530, Pan Mandi, Sadar Bazar, Delhi. He sold part of property no. 1423 i.e. the subject property to appellant Mohsin measuring 39 sq. meter vide registered Sale Deed dated 05.02.2016. The appellant Mohsin thereafter obtained a sanction building plan under Saral Scheme on 20.10.2016 for area measuring 39 sq. meter purchased by him. He as such demolished the old structure and constructed the new building as per sanction building plan.
5. The respondent Delhi Waqf Board however got two gazette notifications dated 16.04.1970 and 31.12.1970 in respect of property number 1423 Pan Mandi declaring it to be waqf property. A Suit challenging these two notifications filed by appellant Sushil Kumar Gupta is pending. Delhi Waqf board also filed appeal no. 999/16 before this Tribunal challenging the sanction building plan dated 20.10.2016 accorded to appellant Mohsin and vide order dated 05.05.2017, this Tribunal disposed of that appeal directing MCD to consider the appeal of Waqf Board as representation against sanction building plan and pass order. In pursuance to that direction, the sanction building plan was revoked on 07.09.2017 which order is under challenge in appeals no. 881/17 and 910/17. The respondent MCD also passed two demolition orders in respect of subject property dated 22.02.2017 and 01.03.2023 which are under challenge in the other two appeals.
6. These orders have been assailed on the ground that the cancellation of sanction is improper and without following the process established by law. The MCD failed to appreciate the complete chain of documents relied by the appellants and that the issue of Mosque being already settled by Hon'ble Lahore High Court and Privy Council. The respondent failed to consider the

property tax record of the subject-property as well as of the Mosque showing Mosque existing at municipal no. 1528, Gali Chulhewali. The respondent/MCD failed to appreciate that property no. 1423 is a separate independent property and not a waqf property and the sanction was revoked under pressure and without any material and should be set-aside and further, the sanction building plan should be restored and the demolition orders should be set aside. It was argued for the appellants that property no. 1423 is an independent property. The back lane of the property is a part of the property and a private lane and is not a public lane and is not open to public at large.

7. Ld. counsel for MCD on the other hand argued that there is sub-division of the property no. 1423 and same was done after 08.02.2007 and therefore, this sub-division cannot be recognized in view of the circular of the MCD dated 09.12.2011. It was also argued that there is no layout plan of property no. 1423 and the sanction building plan was obtained under Saral Scheme on misrepresentation of facts. Further, the condition of minimum right of way is not maintained as per circular dated 28.09.2011 and therefore, the sanction building plan was rightly revoked and the construction being unauthorized is liable to be demolished.
8. Ld. counsel for the Waqf Board on the other hand argued that the property is waqf property and the appellants have no right, title or interest in the property. The back lane of the property is a public street and not private street. Respondent no. 3 is statutory body and the subject-property is a notified waqf property since gazette dated 31.12.1970 and any sale, gift etc. of waqf property is void ab-initio and therefore, appeals should be dismissed.
9. I have perused the record. The revocation order dated 07.09.2017 revoked the sanction building plan on following grounds :
 - i) There is no document to show that sub-division of property no. 1423 took place prior to 08.02.2007.
 - ii) Layout plan of property no. 1423 was not submitted
 - iii) The back lane is shown as private gali which should vest with MCD as per circular dated 13.05.2015.
 - iv) Minimum right of way is not as per circular dated 28.09.2011.

10. It has also been mentioned in the impugned order that as per comments of Assistant Law Officer of MCD, the ownership has not been established, though it was not a ground for revocation of sanction building plan.
11. As far as the title of the appellants in property no. 1423 is concerned, at the time of mortgage by Mohd. Saddiq with Sh. Chunnilal, there were no municipal numbers of the properties. Same was the situation till the Hon'ble Division Bench of Lahore High Court set-aside the alienation by Mohd. Saddiq except for a land of 100 sq. yd. where the Mosque was already constructed. This clearly established that the Mosque was there as ordered by Hon'ble Lahore High Court only for an area measuring 100 sq. yd. The grandfather of the appellant Chunnilal and father of the appellant Hanuman Prasad became the owner of the remaining property.
12. Subsequently an award was also passed in favour of the appellant which was also made a Rule of Court vide which the properties no. 1414 to 1423 came to the share of appellant Sushil Kumar Gupta. By that time municipal nos. were also given to the properties. Property No. 1414 to 1423 and 1529/1530 were also mutated in the property tax record in the name of father of the appellant. The Mosque was given municipal no. 1528. Therefore, the contention of the Waqf Board that it is a Waqf Board property and the comments of the ALO that the ownership of the property is not established are baseless. Waqf Board can not become owner only on the basis of notification, specially when there are final judicial pronouncement in favour of the appellant Sushil Kumar Gupta. The appellants thus became the owner of the subject property.
13. Coming to the ground of revocation, the sub-division of a property is to be identified if the same has happened prior to 08.02.2007. The sale deed executed by appellant Sushil Kumar Gupta in favour of appellant Mohsin is dated 05.02.2016 and show that the appellant Mohsin purchased part of this property measuring 39 sq. mtr and the remaining portion of the property remained with Sushil Kumar Gupta. This show that the sub-division of the plot happened much after 08.02.2007 and cannot be recognized in view of clause 3.3 of building bye laws. The appellant Mohsin did not mention this fact while obtaining sanction building plan dated 20.10.2016 under Saral Scheme and therefore it was rightly revoked for a valid reason of misrepresentation of facts.

14. Coming to the other grounds of the private gali being not vested in the Corporation and maintaining minimum right of way, the judgment of Hon'ble Supreme Court in the case of Pd. Chet Ram Vashist Vs. MCD AIR 1995 SC 430 and of our own High Court Shakti Singh Vs. MCD dated 20.12.2011 passed in LPA No. 992 of 2011 are relevant. As per these judgments, any land cannot vest in MCD unless otherwise acquired in accordance with law and further, in the absence of any specific timeline, an owner cannot be asked to leave land for road widening. The same can be done by taking indemnity bond from the owner that he will not raise any objection as and when the part of the property will be required for road widening. In the present case, the MCD did not acquire the private gali owned by the appellants and further, cannot insist that same should be left for road widening without acquiring the same and that to for an uncertain period of time.
15. The next ground for revocation was not submitting the layout plan of the property no. 1423. Admittedly the property tax of the property is paid since long. The property is assessed in municipal records. It has municipal number at least since award was passed on 08.06.1988. How can respondent claim that it is not part of layout plan. A property having municipal number and assessed to property tax since more than 50 years should be there in layout plan. It was for the MCD to explain as why it is not a part of layout plan. The revocation of sanctioned building plan on this ground is not proper.
16. In view of this discussion, the appeals challenging the revocation of sanctioned building plan are dismissed and as a consequence the construction of the subject property becomes unauthorized. The two other appeals challenging the demolition orders are also dismissed.
17. 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 15.04.2026**

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