

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

APPEAL NO. 706/ATMCD/14

**1. Anoop Arora
S/o Sh. L.N. Arora,
R/o 4079, Kucha, Diwali Singh,
Ajmeri Gate, Delhi.**

**2. Savitri Gupta
W/o Sh. Pradeep Gupta
R/o 1554, Rodgran, Farash Khana
Delhi.**

..... Appellant

Vs

**Municipal Corporation of Delhi.
Through its Commissioner,
17th Floor, Dr. S.P.M. Civic Centre,
Minto Road, New Delhi.**

.....Respondent

**Date of Filing of Appeal : 15.09.2014
Date of Order : 16.04.2026**

JUDGMENT

1. This is an appeal challenging the demolition order dated 11.09.2014 booking unauthorized construction of a room on first floor and raising walls on the roof of the first floor of property No.3973, Chowk Ajmeri Gate Delhi-110006.
2. The brief facts necessary for disposal of this appeal are that the appellants purchased this property on 04.11.2012 vide registered sale deed from the erstwhile owners Smt. Manju, Smt. Sushila and Sh. Pradeep Kumar consisting of first floor comprising three rooms, one store, balcony and open courtyard and entire second floor with two rooms and open terrace.

3. As per appellants the property being more than 100 years old was in dilapidated condition and was renovated which was duly informed to the respondent vide letter dated 25.02.2013. In March 2013 late Mr. Bhagwan Dass Bhutani a resident of the ground floor owner filed a civil suit against the appellant alleging unauthorized construction. MCD filed written statement in that suit stating that the property was inspected on 11.03.2013 and it was found that the owner has replaced roof of some portion at first floor permissible under Clause 6.4.1 of Delhi Building Bye-laws and no unauthorized construction was noticed. The Ld. Civil Court also appointed a Local Commissioner who inspected the premises on 07.03.2014 and gave his report stating that no fresh construction was found at the property. Further the second floor of the property was booked vide show cause notice dated 11.03.2013 and a demolition order was passed in respect of the unauthorized construction at second floor which was challenged by the appellants in appeal No.276/13 where MCD filed status report stating that the unauthorized construction at second floor has been removed by the appellants themselves and no action is now required. In view of that status report that appeal was disposed of as satisfied on 03.10.2013.
4. It was argued for the appellants that this fresh booking vide show cause notice dated 08.07.2014 of unauthorized construction of a room at first floor and raising walls at the roof of first floor is without any basis as the MCD in the above mentioned written statement stated that there is no unauthorized construction at first floor. The Ld. Local Commissioner also stated the same. The earlier demolition order was only in respect of second floor which was demolished by the appellants themselves and that appeal was disposed of. It was argued that no fresh construction has been raised by the appellants at first floor as booked in this demolition order and the construction is old and occupied existing much prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
5. Ld. counsel for the respondent on the other hand argued that fresh construction was raised at the first floor after orders were passed in appeal No.276/13. The appellants have deliberately concealed the property tax record which would show

unauthorized construction at first floor by covering open courtyard and therefore the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available.

6. Ld. counsel for the intervener on the other hand argued that the sale deed of the appellants will show that there was open courtyard at the first floor of the premises at the time of sale on 04.11.2012 and that courtyard has now been covered by the appellants. The unauthorized construction at first floor was never removed. The report of the Local Commissioner appointed in that civil suit shows that fresh construction was raised by raising heights of the walls at first floor. The appellants deliberately withheld the sale deed and the property tax record from this court which would show the open courtyard now being covered and therefore the appeal should be dismissed.
7. I have perused the record. The respondent earlier booked the unauthorized construction at second floor in the form of rooms vide show cause notice dated 11.03.2013. It was followed by a demolition order dated 20.05.2013. That demolition order was challenged by the appellants in appeal No.276/13 and the appeal was disposed of on 03.10.2013 since the appellants themselves removed the booked unauthorized construction at the second floor. The respondent at that time did not book unauthorized construction at the first floor and that booking was confined only to the first floor.
8. The intervener Late Mr. Bhutani filed a Civil Suit No. 29/2012 claiming unauthorized construction in the property where MCD filed written statement on 18.03.2013 stating that unauthorized construction at second floor has been booked on 11.03.2013. In respect of first floor it was stated that the appellants have replaced the roof of some part at first floor permissible under Clause 6.4.1 Delhi Building Bye-laws. The Ld. Civil Court also appointed a Local Commissioner who in his detailed report stated that there are new walls at the first floor and the roof is newly constructed. He also reported removal of one old partitioned wall and fresh stairs leading to second floor. This report of the Local Commissioner clearly shows that fresh construction was raised at the first floor may be in the form of fresh stairs leading to second floor. No explanation has

been furnished by the appellants regarding this observation of the Local Commissioner about new walls and fresh stairs leading to second floor.

9. Though, admittedly the MCD did not book unauthorized construction at the first floor at the time of booking unauthorized construction at the second floor on 11.03.2013, the same does not preclude MCD from booking the unauthorized construction at the first floor. There may be some negligence or connivance on the part of MCD in not booking the unauthorized construction at first floor at the time of booking unauthorized construction at second floor on 11.03.2013 but the MCD has every right to book it subsequently if there is some unauthorized construction at first floor.
10. The appellants deliberately did not file the copy of the sale deed on record of this appeal which would have demolished their case. This sale deed records that there is a site plan attached to the sale deed where the sold property has been shown in red. Copy of the sale deed along with site plan was filed by the intervener and the same was not disputed. This sale deed shows that apart from three rooms, store and balcony there was also an open courtyard measuring 15'6"X16'3" at the first floor with stairs in the middle of the courtyard going to the second floor. This is a registered document and the contents of the documents cannot be disputed. This sale deed clearly shows that as on 04.11.2012 there was an open courtyard with in between stairs at first floor. If the same is compared with the site plan filed by the appellants of the subject property, it will be clear that the wall between the room and the open courtyard has been demolished and a one big hall measuring around 26'X13'3" has been constructed at first floor by covering the open courtyard. Further, the partition wall between the store and a room towards balcony has been removed and a single room has been raised.
11. This comparison read along with the report of the Local Commissioner will show that new walls as mentioned by the Local Commissioner have been constructed at first floor a new roof has been constructed by covering the open courtyard and new stairs has also been constructed. The site plan filed with the appeal shows that the location of the stairs from the middle of courtyard has been shifted to the

end of the property. The Local Commissioner has also reported fresh stairs leading to the second floor.

12. Though, it is correct that this unauthorized construction was not booked while booking the second floor unauthorized construction, but the documents shows that the unauthorized construction was raised at the first floor as well after 04.11.2012 and thus the status quo qua construction as required to be maintained to avail the benefit of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 was violated by the appellants. The appellants cleverly covered the courtyard, raised fresh stairs at first floor along with unauthorized construction at second floor and managed to get the booking of unauthorized construction of the second floor only. The unauthorized construction at first floor in the shape of covering open courtyard and raising fresh stairs has been duly established on record which was booked vide show cause notice dated 08.07.2014, which was duly replied and the reply was also considered and thereafter the impugned demolition order dated 11.09.2014 was passed.
13. I do not find any ground to set aside the impugned order. The unauthorized construction at first floor is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appeal is dismissed.
14. 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 16.04.2026**

**(AMIT KUMAR)
District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi**