

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

**APPEAL NO. 991/ATMCD/2024**

**APPEAL NO. 992/ATMCD/2024**

**Sh. Joginder Nath (Deceased) through his L.Rs.**

**(i) Sh. Narinder Nath S/o Virinder Nath**

**(ii) Sh. Devender Nath S/o Virinder Nath**

**Both R/o 64, Arjun Nagar  
Safdarjung Enclave  
New Delhi-110029**

**..... Appellants**

**Versus**

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

**..... Respondent**

**Date of Filing of Appeal : 08.11.2024  
Date of Judgment : 22.04.2026**

**JUDGMENT**

1. These are the two appeals challenging the two orders dated 09.10.2024 rejecting applications for regularization of the existing structures of property no. H-192, Arjun Nagar, Safdarjung Enclave, New Delhi in appeal no. 991/24 and of property no. 192/1, Arjun Nagar, Safdarjung Enclave, New Delhi in appeal no. 992/24.
2. The brief facts necessary for disposal of these two appeals are that late Sh. Joginder Nath who was the paternal uncle of the appellants applied for regularization of buildings built upon these two plots measuring 125 sq. yd. each in Khasra No. 75, Village Humayunpur, New Delhi now known as Arjun Nagar, New Delhi. This colony Arjun Nagar was regularized in 1980 and both

these plots are shown in the approved layout plan. The applications for regularization were however rejected vide letters dated 20.04.2023 and the same were challenged in appeal no. 304/23 for property no. 192/1 and in appeal no. 305/23 for property no. H-192. Both these appeals were allowed vide orders dated 19.10.2023 and matters were remanded back for deciding the same afresh within one month. The respondent thereafter reopened the regularization applications of these two properties and again rejected the applications vide impugned letters dated 09.10.2024. Sh. Joginder Nath mean while passed away before 09.10.2024 and the appellants who became owner by virtue of his Will, pursued the regularization applications and have filed these appeals. The basic ground for rejections are mentioned in the letter dated 13.09.2024, vide which the appellants were asked to surrender the area of the plots affected in right of way (ROW) required to be maintained at minimum 5.0 meter wide. Since the appellants did not surrender the requisite area of their plots, the regularization applications were rejected.

3. The appellants who are the two brothers have challenged these rejection letters on the ground that they have not violated any policy guidelines. They have already removed non-compoundable deviations in the properties. The appellants cannot be asked to surrender the part of their plots for road widening without being acquired by due process of law. The demand of the respondent to surrender the private land owned by the appellants is illegal in view of the judgment passed by Hon'ble Delhi High court in Writ Petition(C) No. 8859/2011 dated 18.09.2019 titled as Sarita Vs. MCD. It was argued for the appellants that there is no encroachment on the existing road and the demand for surrender of land in already regularized colony as a prior condition is violative of Article 300 A of Constitution of India and therefore, the impugned rejection letters should be set-aside and the properties should be regularized.
4. Ld. counsel for the respondent on the other hand argued that the Town Planning Department of the MCD inconsistency with the governing circular dated 06.07.2022 opined that the minimum ROW of road of 5.0 meter is essential on both sides of the road and therefore, the appellants were rightly asked to surrender the area of plots affected in ROW through letter dated 13.09.2024 which they failed to surrender. The appellants refused to comply

with this prerequisite condition of surrendering the land and therefore their regularization applications were rightly rejected. It was argued that appellants are required to maintain minimum ROW of 5.0 meter on the road abutting their plots and since they refused to do the same the regularization was rejected and the appeals are therefore devoid of merits. Reliance was placed on the judgment of Hon'ble Delhi High Court passed in LPA-519/2014 dated 12/03/2015 titled as Angela Jaitely & another vs. Kailash Mehndiratta & others.

5. I have perused the record. The appellants earlier challenged the rejection of regularization dated 20.04.2023 in two appeals no. 304/23 for property no. 192/1 and appeal no. 305/23 for property no. H-192. The respondent in that rejection order dated 20.04.2023 rejected the regularization application since the appellants failed to comply with the invalid notice dated 22.03.2022. In this invalid notice, the appellants were asked to submit documents indicating the date of sub-division of property as their documents did not reflect the date of sub-division. Vide these letters dated 20.04.2023 the regularization applications were rejected for want of compliance of notification of the respondent dated 17.01.2011 which was pre-requisite and the appellants did not comply. This notification dated 17.01.2011 talks about the sub-division of the property and states that the sub-division prior to 07.02.2007 shall only be recognized. The grounds for rejection as on 20.04.2023 were never about maintaining ROW of 5.0 meter as is the case in the present rejections.
6. Be that as it may, the earlier rejection orders dated 20.04.2023 were set-aside by this Tribunal vide detailed orders dated 19.10.2023. This court observed that this plot was sub divided in two plots in 1971 itself. Further, the appellants removed all the non-compoundable deviations mentioned in the order dated 21.09.2023 passed by Hon'ble High Court in Writ Petition (C) No. 991/2020 and as such, the matters were remanded back to be decided afresh.
7. The respondent while rehearing the appellants after remand back, raised this fresh issue of minimum ROW for the first time and matter was referred respondent to Building Department (HQ), Law Department and finally to the Town Planning Department, MCD. The respondent also referred the issue, to the Law Department, as to whether the judgment of Hon'ble Delhi High Court

passed in the case of Sarita Gupta Vs. MCD (Supra) is applicable to the facts or not. The office record shows that the Town Planning Department vide office note dated 06.08.2024 mentioned that as per approved regularization plan, the building lying on both sides of road is straight, whereas as per existing site condition provided by the zonal office, there is a zigzag on the opposite side. The Building Department Vide note dated 08.07.2024 has opined that it seems the owner or plot holder of the opposite side has partly encroached upon the government land/ public land.

8. This noting of the Building Department dated 08.07.2024, as mentioned in the office note dated 06.08.2024 by the Town Planning Department, show that there is some encroachment by the owner or plot holder on the government/public land of the opposite side and not by the appellants. Admittedly there is no encroachment on the public land by the appellants and the respondent is asking the appellants to surrender their private land to maintain minimum ROW of 5.0 meter, without following the due process of law.
9. Let the case law on this aspect be examined. The Hon'ble Delhi High Court in the case of Sarita Gupta Vs. MCD (Supra) while discussing several other judgments held that a private land cannot be taken over by MCD without acquiring it or paying any compensation. It was held that the subject land which does not belong to MCD or to the government and therefore, the owners of the private land cannot be deprived of their land without following the due process of law. The Hon'ble High Court in this judgment relied upon the judgments of Hon'ble Supreme Court passed in the case of Pt. Chet Ram Vashist Vs. MCD (1995) 1 SCC 47, Raju S. Jethmalani & Ors. Vs. State of Maharashtra & Ors. (2005) 11 SCC 222, M.Naga Venkata Lakshmi Vs. Vishakhapatnam Municipal Corporation (2007) 8 SCC 748.
10. The Hon'ble Supreme Court in the case of Pt. Chet Ram Vashist (Supra) in para 4 of the judgment observed that the power of the Corporation cannot be construed to mean that it shall sanction a plan only if owner surrenders a portion of land and transfer it in favour of Corporation free of cost. This clearly means that the respondent cannot reject the regularization application only for the reason that the appellants have failed to surrender their land free of cost for proposed road widening.

11. The Division Bench of Hon'ble Delhi High Court in LPA No. 992/2011 dated 20.12.2011 titled as Shakti Singh Vs. MCD and Ors. held that if a street is to be widened as per development plan and private land is required for street widening, appropriate compensation has to be paid. The Hon'ble High Court directed MCD to process the regularization application with reference to FAR as per MPD-2021 and bind the appellant by the indemnification already given to MCD that if in future, for road widening, any portion of land from the plot is required, the appellant would surrender the same. The same could have been done by the respondent in the present appeals as well, following the directions given by the Hon'ble Division Bench in the case of Shakti Singh vs. MCD (Supra).
12. Coming the judgment passed in the case of Angela Jaitly & another (supra), the Hon'ble High Court in that case was more on the aspect of entitlement of FAR if a portion of plot is kept for road widening. It was not an issue before Hon'ble High Court as to whether private land can be asked to be left for road widening without acquiring the same, as a condition precedent for issuing sanctioned building plan or regularization of existing structure. This issue was rather dealt in the case of Shakti Singh (supra).
13. The appellants are not claiming FAR on the gross plot area and are claiming FAR only on the net area after leaving the portion affected under road widening. This clearly show that the appellants are willing to give up the area of plot for road widening as and when required by the respondent for their futuristic vision. The rejection of regularization applications on this ground is not correct and liable to be set aside.
14. In these facts both the appeals are allowed. Respondent is directed to process the applications for regularization of the appellants without insisting on surrendering the portion of their plot which will come under road widening. The appellants shall file indemnity bond with MCD to the effect that if in future, any portion of the land of the plots is required for road widening, the appellants would surrender the same. Let the regularization applications be reopened and regularized with reference to FAR permitted under law. The appellants shall fulfill formalities if any left. Same be done in time bound manner in six weeks from today.

15. Record of the respondent, if any, be returned along with copy of this order and appeals files be consigned to record room.

**Announced in the open Court  
today i.e. on 22.04.2026**

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