

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

**APPEAL NO. 1014/ATMCD/2024**

**Hari Om Upadhyay  
S/o Sh. Pooja Ram Upadhyay  
R/o H. No.101, Street No. 5  
Block-C, Mukund Vihar  
Karawal Nagar  
Delhi - 110094**

..... **Appellant**

**Versus**

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

..... **Respondent**

**Date of Filing of Appeal : 18.11.2024**  
**Date of Judgment : 04.05.2026**

**JUDGMENT**

1. This is an appeal challenging the demolition order dated 21.10.2024 in respect of unauthorized construction carried out in the Property No. C-101, Gali No.5, Mukund Vihar, Karawal Nagar, Delhi – 110094 in the shape of entire Basement, Ground Floor, First Floor and Second Floor with projection on municipal land.
2. The brief facts necessary for disposal of this appeal as narrated in the appeal are that the appellant purchased a plot measuring 50 sq. yd. in 1994 through GPA, Agreement to sell etc. from one Smt. Munni Devi and raised construction of ground, first and second floor. As per appellant, he was carrying out repairs at the ground floor of the property in August 2024 as the level of ground floor was 8-9 inched below the road level and issue of water

logging was there, but the respondent booked the property through show cause notice dated 17.09.2024 for unauthorized construction in the shape of entire basement, ground, first and second floor with projection on municipal land. The appellant duly replied the show cause notice and later without considering the reply of the appellant, the impugned demolition order was passed on 21.10.2024.

3. The demolition order has been challenged primarily on the ground that the construction is old and occupied and much prior to 01.06.2014 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. There is no basement in the property and without any inspection, the respondent booked the property and did not consider the reply of appellant and passed impugned demolition order which should be set aside.
4. Ld. counsels for MCD and the intervener have argued that the appellant has made illegal and unauthorized construction in the property for which the intervener was compelled to file Writ Petition before the Hon'ble High Court and only thereafter, the MCD took action. The appellant did not carry out any repairs as alleged but has raised unauthorized construction in June-July 2024 and therefore, protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available and the appeal should be dismissed.
5. I have perused the record. The respondent booked the property admittedly on a High Court case which was a Writ Petition No. 11758/2024 filed by the intervener Ms. Sangeeta Gaur. This show cause notice itself record that booked on a High Court Case and the construction on all the floors is old and occupied which means that no fresh construction was going in the property when it was booked on 17.09.2024. There is no document on record to show that fresh construction was on-going at the time of booking nor the exact date or period when this unauthorized construction was carried out is mentioned.
6. Further, the appellant has placed on record documents to show that the electricity connection was energized in the property way back in 1998. The bank account was opened at the address of the subject property on 18.08.2009. The gas connection was taken on 16.07.1999. The photographs

of the property filed by the appellant also show that the construction is not new and rather old much prior to 01.06.2014.

7. Further, there are photographs of 2012 & 2013 showing the property in same extent qua construction as it exist today. The second floor was there in 2012-2013 as well as projections on municipal land. The construction is therefore prior to 01.06.2014 which is the cut of date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
8. Further, there is no basement in the property as mentioned in the show cause notice. The respondent in the status report dated 25.11.2025 has stated that existing height of the basement above road level is 2 meters. How can a floor be called as basement if it is 2 meters above the road level. It clearly shows that there is no basement as alleged by MCD. The photographs do not show any basement in the subject property.
9. Admittedly there is no sanctioned building plan and entire construction is unauthorized but the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. In view of the same, demolition order is upheld, but kept in abeyance till National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. The respondent shall be at liberty to take action once this protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 ceases to exist.
10. In this discussion the appeal is disposed of.
11. 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 04.05.2026**

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