

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

**APPEAL NO. 515/ATMCD/2023**

**APPEAL NO. 542/ATMCD/2023**

**Shri Pawan Jain**  
**R/o: Ground Floor/Second Floor,**  
**½ Portion Back Side Each,**  
**A3, South Extension Part-II,**  
**New Delhi**

..... **Appellant**

**Versus**

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

..... **Respondent**

**Date of Filing of Appeal : 11.08.2023, 18.08.2023**  
**Date of Judgment : 06.05.2026**

**JUDGMENT**

1. These are the two appeals challenging the sealing order dated 27.08.2021 in appeal no. 515/23 passed in respect of unauthorized construction and excess coverage at first, second, third and fourth floor against the sanctioned building plan vide booking dated 24.09.2013 and deviations/excess coverage against sanctioned building plan at ground floor vide booking dated 31.03.2021 in the Property No. A-3, South Extension Part-II, New Delhi and the rejection order dated 19.07.2023 in appeal no. 542/23 whereby the regularization application of the appellant seeking regularization of rear side of ground floor and rear side of second floor (here in after referred as subject property) in property number A-3 South Extension Part-II was rejected.

2. The brief facts necessary for disposal of these two appeals are that the appellant who is the owner of rear side at ground and second floor (subject property) became owner by virtue of Will of his father dated 03.09.2003. The father passed away on 07.10.2003 and the subject property was mutated in the municipal record in the name of the appellant. These appeals are concerned only about the rear side of ground and second floor (subject property). The respondent initially booked the unauthorized construction in the shape of deviations against the sanctioned building plan for unauthorized construction on 24.09.2013 and after this show cause notice, demolition order dated 07.10.2013 was passed where the protection from demolition action against excess coverage up to second floor was kept in abeyance till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force.
3. Thereafter, this protection was withdrawn by the respondent vide letter dated 05.04.2017 recording therein that since fresh construction has been raised at third and fourth floor of the property after 08.02.2007, the protection ceases to exist as the status-quo required to be maintained under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 was violated in respect of the subject-property. Thereafter, the property was again booked for deviation and excess coverage at ground floor on 31.03.2021 and fresh demolition order was passed. The respondent thereafter issued show cause notice on 05.07.21 under section 345-A of the DMC Act followed by the impugned sealing order dated 27.08.2021. The appellant also applied for regularization of such deviations in the subject-property, which regularization application was rejected on 19.07.2023 and has been challenged in appeal no. 542/23.
4. It was argued for the appellant that the construction at subject property is old construction and much prior to cut of date of protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 which is 08.02.2007. The owners of the other portion in this property raised unauthorized construction for which appellant is not responsible and yet, the property of the appellant was booked for which he also preferred writ petition before the Hon'ble High Court and also applied for regularization of the compoundable deviation but the respondent without reasons, rejected the

regularization application and also passed the sealing order which should be set-aside since there is no unauthorized construction in the portion owned by the appellant and further same is compoundable as mentioned by the respondent in its inspection report dated 09.09.2021 and therefore, the appeal should be allowed and the respondent should be directed to regularize the property of the appellant.

5. Ld. counsel for the respondent on the other hand argued that a reasoned speaking order dated 27.08.2021 has been passed by the respondent after considering the reply and documents of the appellant. The protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available as unauthorized construction was raised in the property after 08.02.2007. Further, it was stated that the policy of floor-wise regularization is for a particular floor and not portions of the floor and since the appellant is not the owner of entire ground and second floor and applied for regularization only for half of the floor at ground and second floor (subject property), the regularization cannot be accorded for half floors and therefore, the regularization application was rightly rejected.
6. I have perused the record. Admittedly, the property was booked for unauthorized construction on 24.09.2013 for excess coverage and unauthorized construction from first to fourth floor and in the demolition order dated 07.10.2013, the construction up to the second floor was protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being prior to cut of date of 08.02.2007. This protection however was withdrawn on 05.04.2017 for the reason that structure has been raised at third and fourth floor after 08.02.2007 and since the status-quo qua construction was not maintained, the protection is not available.
7. The appellant is concerned only about the subject property and admittedly did not raise any construction at third and fourth floor. The construction at third and fourth floor was raised by owners/occupiers of the other portion of this property no. A-3, South Extension Part-II for which appellant cannot be penalized. He cannot be held responsible for unauthorized construction raised in the property by the other owners. It is not the case of the respondent that the unauthorized construction at third and fourth floor was raised by the appellant or at the instance of appellant. Once the property up to second floor

was held to be protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 while passing the demolition order dated 07.10.2013, there was no reason for the respondent to withdraw this protection, even for the subject property. The portion of the appellant in rear side of ground and second floor is therefore protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and that protection was unlawfully withdrawn.

8. Further, even the second booking dated 31.03.2021 in respect of deviation / excess coverage at ground floor does not mention that any unauthorized construction being raised in the rear side of the ground floor. Admittedly, there are separate owners for front and rear side at ground and second floor of this property and without specifying that the excess coverage / deviation has been raised in which portion of the ground floor or in the portion owned by the appellant, the protection available to the appellant under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 cannot be withdrawn. The show cause notice dated 31.03.2021 is vague and does not specify the details of deviation and excess coverage nor it specify as to in which portion of the ground floor i.e. front or rear, this deviation / excess coverage against sanctioned building plan exist.
9. In these facts the impugned sealing order dated 27.08.2021 is liable to be kept in abeyance for the rear side portion of the ground and the second floor(subject property) till National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in place and action can be taken only when the protection under this Act ceases to exist. The appeal no. 515/23 is disposed of in these terms.
10. Coming to the other appeal no. 542/23 which assails the rejection letter dated 19.07.2023. As per this letter, the regularization application was rejected on following grounds:

“1. You have applied for regularization of part portion of each of ground and second floor, which is not permitted as per policy of floor-wise regularization.

2. There exist non-compoundable deviation at site in the shape of temporary structure. As per policy of the department, any case

cannot be considered till the existence of any non-compoundable structure / temporary structure within the property.”

11. In this regard, the inspection report dated 09.09.2021 is relevant. The engineers of the respondent carried out inspection in the property and found that there exist RCC staircase at rear portion of the ground floor instead of sanctioned spiral staircase. The same however is noted as compoundable. At the second floor as per sanctioned plan, there was only one dwelling unit but at site, there were two dwelling units, one in the front and one in the rear. It was not stated if the same is compoundable or not. This clearly show that the RCC staircase at the ground floor is compoundable deviation/construction. The rejection order does not specify the non-compoundable deviation/structure as well as the floor at which it exist in the subject property of the appellant. The regularization rejection therefore is bad on this aspect of not specifying the non-compoundable structure as far as the subject property is concerned.
12. However, the same is to be upheld for the reason that part portion of the floor is not permitted to be regularized even in the floor-wise regularization policy. The appellant admittedly is the owner of only rear side portion at ground and rear side portion at second floor and there are other owners of the front portion at these two floors. The respondent cannot regularize half portion of each ground and second floor in favour of the appellant as the proportionate FAR in respect of that particular floor is to be given to the entire floor and cannot be done in parts in favour of the owners of the front and rear side of the property. The regularization application therefore was rightly rejected on this ground that part portion of these two floors cannot be regularized. In this fact the appeal no. 542/23 is meritless and is dismissed.
13. In view of the above discussion, both the appeals stand disposed of.
14. 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 06.05.2026**

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