

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

**APPEAL NO. 449/ATMCD/2024**  
**APPEAL NO. 564/ATMCD/2024**  
**APPEAL NO. 501/ATMCD/2025**

**M/s Active Dealers Pvt. Ltd.**  
**(Now known as Shiva Gems Pvt. Ltd.)**  
**Through its Director / Authorised Representative**  
**Mr. Prateek Sarraf**  
**Having its office at**  
**2 & 3, 1184, Kucha Mahajani**  
**Chandni Chowk, Delhi-110005**

..... **Appellant**

**Versus**

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

..... **Respondent**

<b>Date of Filing of Appeal</b>	<b>:</b>	<b>25.06.2024, 29.07.2024</b> <b>&amp; 24.07.2025</b>
<b>Date of Judgment</b>	<b>:</b>	<b>08.05.2026</b>

**JUDGMENT**

1. These are the three appeals challenging the revocation of sanctioned building plan order dated 29.05.2024 in appeal no. 449/24, the rejection of regularization application order dated 20.02.2025 in appeal no. 501/25 and the demolition order dated 24.07.2024 in appeal no. 564/24 passed in respect of property bearing no. 1-D/45, Mall Road, Delhi.
2. The brief facts necessary for disposal of these three appeals are that property bearing bungalow number 1, 45 Mall Road was having a plot area of 1725 square yards and was constructed as per sanctioned plan approved on 03.02.1997. It was sub divided in five portions marked as A,B,C,D & E. The appellant purchased a sub divided portion measuring 365 sq. yds/305.17 sq. mtrs. from M/s Rentiers & Finance Pvt. Ltd. by virtue of sale deed dated

12.05.2010 bearing number as 1-D/45, Mall Road, Delhi. (here in after referred as subject property) The property was comprising of basement, ground, first with second floor terrace. The appellant obtained a sanctioned building plan for subject property vide sanction dated 16.11.2022 and raised construction as per sanction building plan of stilt, ground, first, second and third floor.

3. The neighbor Mr. Ravi Kant Sharma (intervener here in) a resident of 1-C/45, Mall Road filed an appeal before this Tribunal seeking revocation of this sanctioned building plan vide appeal no. 702/23 and also preferred a Writ Petition No. 5520/24 before the Hon'ble High Court. The respondent MCD issued a show cause notice dated 14.03.2024 under Section 338 of the DMC Act to the appellant which was replied on 29.04.2024 and thereafter, the respondent revoked the sanctioned building plan vide impugned order dated 29.05.2024.
4. The respondent also issued a show cause notice dated 29.05.2024 under Section 344 (1) read with 343 of DMC Act and passed the demolition order dated 24.07.2024 for units A to E of property bungalow no.1, 45 Mall Road and the demolition order in respect of subject property was passed for the reason that the sanctioned building plan has already been revoked on 29.05.2024. The appellant thereafter applied for regularization of the construction which was rejected vide letter dated 31.07.2024. The appellant assailed the same in appeal no., 624/24 wherein the matter was remanded back to the respondent vide order dated 05.12.2024 to decide the regularization application afresh. In pursuant to that remand back order, the respondent again rejected the regularization application on 20.02.2025 which has been assailed in appeal no. 501/25.
5. The appellant has challenged these three orders on the ground that property no. 1-D/45 (subject property) has always been a separate and distinct property having separate entry and exit and clause 4.4.3 of MPD-2021 provides for construction of more than one building on a plot provided that the ground coverage, FAR etc. so available for the entire plot is adhered to and is used on pro-rata basis. The FAR of the appellant is in proportion to the area owned by the appellant in this bigger plot and there is no need to get the property incorporated in the layout plan nor there is any requirement to obtain

NOC from the owners of the other sub-divided portions of this bigger plot. The appellant is claiming only the proportionate FAR and ground coverage as permissible for the entire plot bearing bungalow no. 1, 45, Mall Road, Delhi. The orders of the respondent are perverse to the applicable law laid down by Hon'ble High Court in the judgment of "*MCD Vs. Usha Devi Sharma 127 (2006) DLT 275*", "*Viren Singh Vs. NDMC Writ Petition (Civil) No. 7821 of 17*", "*NDMC Vs. Kanwal Sibbal and Ors LPA 543 of 15*", "*Kanwal Sibbal Vs. NDMC Writ Petition (Civil) No. 3637 /13*", "*Harish Bajaj and Anr. Vs. NDMC LPA 134/17*", "*Harish Kumar and anr Vs. NDMC Writ Petition (Civil) No. 5287 of 2020*".

6. It was argued for the appellant that the Hon'ble High Court in the latest announcement of "*Sanjeev Malhotra & Anrs. Vs. MCD in Writ Petition (Civil) No. 9921/2022*" and in "*MCD Vs. Sanjeev Malhotra & Anrs. LPA 591 of 2023*" has upheld that the co-owner of a well defined plot as per sale deed can have sanction building plan of the sub-divided plot and therefore, the impugned order should be set aside and the sanction building plan of the appellant should be restored and the construction should be regularized.
7. Ld. counsel for the respondent MCD on the other hand argued that sub-division of a plot is not permitted. The entire plot which has been sub-divided should have common entrance and exit and cannot have separate entry for each sub-divided plot. The load of the property constructed by the appellant is resting on the common wall between 1-C and 1-D which is not permissible. Single entity of the plot is required to be maintained. The appellant kept on raising the unauthorized construction despite show cause notice issued under section 338 of DMC Act and completed the construction illegally and now cannot be permitted to legalize the unauthorized construction by way of getting it regularized. Sub-division of plot without being incorporated in the layout plan cannot be recognized and therefore, the sanction was revoked on account of misrepresentation of facts which cannot be regularized and therefore, the appeal have no merits and should be dismissed.
8. Ld. counsel for the intervener on the other hand argued that the subject property is a part of bigger plot bearing bungalow no. 1, 45, Mall Road, Delhi. This part property was built by Revira Apartment Pvt. Ltd. where each bungalow was having common walls, common boundaries etc. The one

bungalow which was made in 05 units was having everything common therein. Sub-division of plot is not permitted. The subject-property has been constructed on a sub-divided plot on misrepresentation of facts. The illegal construction by the appellant has obstructed the entire building of the intervener. The appellant has covered setback area by misrepresenting the plot area to be 290.278 sq. meter whereas the actual area is 327.90 sq. meter and the construction has been carried out in unlawful and negligent manner which should be demolished.

9. I have perused the record. There is no dispute to the fact that appellant obtained sanction building plan by mentioning the area of plot as 290.27 square meters instead of actual area of 305.17 sq meters. FAR was taken for this area of 290.27 sq meters. The fact that subject property is part of a bigger plot measuring 1725 sq yards was concealed. It was also concealed that earlier there was a sanctioned plan for 1719 sq yards. The appellant misrepresented the facts by not mentioning the aspect of sub division and by not claiming proportionate FAR of bigger plot. The fact that the subject property has separate number and separate entrance and exit does not absolve the appellant from its duty to disclose the aspect of sub division while applying for regularization. The sanction building plan is liable to be revoked under section 338 of the DMC Act if obtained on misrepresentation of facts. In these facts there is no ambiguity in the revocation order dated 29.05.2024 and the same is upheld.
10. Coming the demolition order dated 27.07.2024, The sanction building plan was revoked on 29.05.2024. The grounds of demolition against the subject property is revocation of sanctioned building plan. It reads as under:

“ In unit D (area measuring 365 sq yards) owned by Sh. Prateek Sarraf. As per record, sanctioned building plan obtained under SARAL Scheme UBBL 2016 has already been revoked on 29.05.2024. Hence entire construction becomes unauthorized. AS no protection is available to the construction raised in the year 2023 & 2024 from stilt, ground, first & second floor. Hence owner of the unit D is directed to demolish the entire stilt, ground , first & second floor within six days of receipt of this order, otherwise the same will be demolished at the risk & cost of the Owner/ Occupier”.

11. This clearly show that reason to demolish is revocation of sanctioned building plan. Once the revocation order has been upheld, the construction of subject property is unauthorized and is liable to be demolished. In these facts the demolition order is also upheld.
12. Coming to the last appeal against rejection of regularization application. The law in this regard has now been settled by the Hon'ble Supreme Court in the case of "**Sharda Nath Vs. Delhi Administration 2019 SCC online SC 2301**" where the Hon'ble Supreme Court held as under:

*"It would be thus permissible for the two parties to approach the South Delhi Municipal Corporation for sanction of plans in respect of their respective portions of the plot with FAR divided on the whole plot in proportion to the area vested with the two parties in the plot and to carry out construction accordingly. Each of the parties would be separately responsible for their portion of construction and violation, if any. Needless to say that for sanction of the plan 'No Objection Certificate' would not be recruited by any of the parties from the other party. On construction of the plot, the conveyance deed would be executed on payment of requisite charged separately for the two portions. This is so directed as without construction separate lease deeds would not be permissible as per norms. Needless to say that for practical purposes the two parties would thus have separate liabilities and responsibilities in respect of the area vested therein."*

13. The same was referred by Hon'ble Division Bench of Hon'ble Delhi High Court in LPA 591 of 2023 dated 08.01.2026 titled as **MCD Vs. Sanjeev Malhotra and Another**. wherein the Hon'ble High Court in para 9 of this judgment held as under :

*"9. Predicated on the aforesaid order passed by the supreme Court, the joint decision of the Commissioner, MCD and the VC, DDA concludes as under:*

*"6. Discussion and Decision*

*The matter has been discussed in detail in view of the law laid down by the Hon'ble Supreme Court.*

- (i) As long as the respective share of the co-owners is well defined in the plot as per the sale deed or title document or court judgment, there should not be any necessity for joint applications in such cases.*

*(a) The separate buildings for the co-owners may be sanctioned in such cases subject, to stipulations that FAR and Ground coverage of all the Dwelling Units in all the buildings put together shall not exceed the applicable FAR and Ground Coverage of the single undivided plot.*

*(b) Dwelling Units permissible for the entire plot and co-shares would enjoy the FAR and Ground Coverage in their Dwelling Units on proportionate basis of the total FAR and Ground Coverage, permissible for that plot. This would be in line with laid down law by Hon'ble Supreme Court and the provisions of Master Plan-2021.*

*(ii) However, if respective shares of the co-owners are not defined in the plot, that is to say, it is not clear which portion of the plot belongs to who co-owner, then all co-owners would have to apply jointly which will indicate after their mutual settlement of their respective share/portion in the plot."*

14. In view of this law, the appellant must definitely have and get the proportionate FAR for its share for the area vested in it and even does not require any No Objection Certificate from the private respondent. Admittedly the appellant is the owner of the portion of the subject property, out of plot measuring 1725 sq. yards which also includes the area measuring 365 sq. yards owned by the appellant. The appellant is entitled to proportionate FAR. There is no bar in having separate entrance and exit for sub divided portion as argued for respondent/MCD. The law laid down in this regard does not put any such rider regarding common entrance and exit for entire plot.

15. The order dated 20.02.2025 rejecting the regularization application records that the property in question is a single unit for which one plan was sanctioned for entire plot and the appellant did not obtain NOC from other co-owners and the ownership documents are of 305.17 sq. meters whereas the regularization was applied for 290.09 sq. meters and therefore, the regularization was rejected.

16. It has now been settled by Hon'ble Supreme Court and Hon'ble High Court that NOC is not required from the other co-owners in case of sub-division of a property and as such the rejection of regularization on the ground of no NOC obtained from the other co-owners is not sustainable. Further, the appellant is entitled to proportionate FAR of the sub divided plot owned by the appellant. The rejection on this ground that there was one sanctioned plan for the entire

plot (bungalow no.1, 45 Mall Road) is also not sustainable. After sub-division of the property through separate registered sale deeds, the appellant is entitled to have sanction plan for the sub-divided plot owned by the appellant and the fact that earlier there was sanctioned building plan for entire plot will not come in the way of appellant for seeking regularization of its sub-divided plot. The appellant however will get proportionate FAR of entire sub divided owned by it.

17. In these facts, the regularization appeal is allowed and matter is remanded back. The respondent is directed to reopen the regularization application file and decide the same afresh after considering that the appellant is entitled to proportionate FAR for the area of plot owned by the appellant as per the sale deed of the appellant. Till this regularization application directed to be reopened is decided, the impugned demolition order dated 24.07.2024 shall be kept in abeyance and no coercive action be taken against the subject property in pursuance to this demolition order till then.

18. In view of this discussion, all the three appeals stand disposed of.

19. 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 08.05.2026**

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