

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

APPEAL NO. 5/ATMCD/2023

**Mrs. Anjum Ara
W/o Mohammad Yaseen
R/o N-157, 4th Floor (Backside / Rear Side)
Abul Fazal Enclave,
Jamia Nagar, Okhla
New Delhi -110025**

..... Appellant

Versus

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

..... Respondent

**Date of Filing of Appeal : 02.01.2023
Date of Judgment : 13.05.2026**

JUDGMENT

1. This is an appeal challenging the demolition order dated 07.11.2022 passed in respect of unauthorized construction carried out at the terrace of Fourth Floor rear side i.e. fifth floor in the Property No. R/o N-157, Abul Fazal Enclave-I, Jamia Nagar, Okhla, New Delhi-110025 (hereinafter referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the appellant has purchased the fourth floor rear side flat of property no. N-157, Abul Fazal Enclave, Jamia Nagar, Okhla, New Delhi along with the terrace of fourth floor rear side, vide GPA Agreement to Sell etc. dated 22.09.2011. As per appellant, she has not carried out any fresh construction in the premises and

the fourth floor flat and its terrace comprising of two rooms, one hall and mumty was constructed by the builder in 2011 and this construction is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being prior to 01.06.2014.

3. It was argued for the appellant that show cause notice was issued in the name of the husband of the appellant and was never served upon the appellant and no opportunity of personal hearing was provided to the appellant. The respondent failed to consider the documents which show that the construction is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and therefore, the impugned order should be set aside.
4. Ld. counsel for the respondent on the other hand argued that the show cause notice was duly served and was replied by the husband of the appellant and was considered. The appellant failed to file any document to show that the construction at the terrace of the fourth floor i.e. fifth floor (subject property) is prior to 01.06.2014. The same therefore is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and is liable to be demolished.
5. I have perused the record. Though the show cause notice dated 21.10.2022 was issued in the name of the husband of the appellant Dr. Yaseen but the same was duly served as was sent through speed post like the demolition order. The demolition order was duly replied. It is not the case of the appellant that she has strained relations with her husband or the husband is living separately. The show cause notice as well as the demolition order was sent through speed post and the demolition order was duly replied which is sufficient to presume that the show cause notice was also duly served being sent at correct address of the appellant. Though it was issued in the name of the husband of the appellant but without there being any dispute between the appellant and her husband, it cannot be said that it is bad for not being issued in the name of the appellant. The show cause notice therefore was proper and duly served. The husband who replied the demolition order did not mention about any dispute with his wife.
6. Coming to the merits of the appeal. As per the GPA, Agreement to Sell etc. dated 22.09.2011 executed in favour of the appellant, she purchased fourth

floor flat (rear side) consisting of three unfinished bedrooms, one drawing cum dining room, one kitchen, one balcony, two toilets and bathroom with terrace rights. This clearly show that as on 22.09.2011, there was no construction on the terrace of the fourth floor rear side. Any construction raised on the terrace of fourth floor was after 22.09.2011. The appellant therefore has wrongly mentioned in para 7 (e) of the appeal that the fifth floor at terrace of fourth floor had two rooms, hall and mumty being constructed by the builder in 2011. As on 22.09.2011 there was no construction at fifth floor, even as per documents of the appellant.

7. Further, none of the documents filed by the appellant show that the construction at fifth floor was raised prior to 01.06.2014. The electricity bill is of the top floor which was the fourth floor as on the date of energization which is 09.11.2011. Though the appellant has claimed that this top floor is the fifth floor but I do not find any merits in this submission as the additional documents filed by the appellant on 11.08.2023 show that the electricity bill of the other floors of this property are of ground floor, first floor, second floor and third floor. This clearly show that the top floor is the fourth floor and not the fifth floor as alleged. The rent agreement dated 13.02.2017 filed by the appellant is also in respect of one room on the terrace of top floor and is after the cut of date of 01.06.2014. The same does not help the appellant being of February 2017. This clearly show that the construction at fifth floor has ben raised after 01.06.2014.
8. It is also relevant to note that in paragraph 7 (e) of the appeal, the construction at fifth floor alleged to be raised in 2011 is of two rooms, one hall and mumty whereas the construction at the fifth floor as per site plan filed with the appeal is of two bedrooms, one drawing room, two toilets and one kitchen. This construction is different and additional as compared to the construction mentioned in para 7 (e) of the appeal. Even if it is presumed that the construction of two rooms and hall and mumty was there in 2011, the same was reconstructed and fresh construction was raised as shown in the site plan filed with the appeal.
9. In these facts, the appellant who does not have any sanctioned building plan, has failed to establish that the construction at the terrace of the fourth floor (subject property) exist prior to 01.06.2014 and is protected under National

Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

10. In these facts, there are no merits in the appeal and the same is dismissed.

The demolition order dated 07.11.2022 is upheld.

11. 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 13.05.2026**

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