

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

APPEAL NO. 205/ATMCD/2024
APPEAL NO. 216/ATMCD/2024

Anil Kumar,
S/o Late Sh. Ram Mehar,
R/o H. No. C-9/497, C- Block,
Sultan Puri, North West Delhi-110086

..... **Appellant**

Versus

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

..... **Respondent**

Date of Filing of Appeal : **18.03.2024 & 22.03.2024**
Date of Judgment : **18.05.2026**

JUDGMENT

1. This are the two appeals challenging the demolition order dated 14.03.2024 in appeal no. 216/24 and the sealing order dated 07.03.2024 in appeal no. 205/24 passed in respect of unauthorized construction in the shape of deviation / excess coverage against standard building plan and amalgamation of property no. C-9/497 and C-9/498 at ground floor, first floor and mumty at terrace with projection on municipal land. (hereinafter referred as subject property). The brief facts necessary for disposal of these two appeals are that the appellant is the owner of these two properties and received a show cause notice dated 19.02.2024 under section 344 (1) and 343 DMC Act. Same was duly replied by the appellant and after considering his reply and documents, the impugned demolition order dated 14.03.24 was passed wherein the protection to the ground floor was granted under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act,

2011 being constructed prior to 08.02.2007 and the demolition order was passed for the first floor, mumty and projections on municipal land. Similarly, the appellant received a show cause notice under 345A of the DMC Act dated 21.02.2024 claiming misuse of the property for drugs trafficking at ground and first floor which was duly replied and thereafter the impugned sealing order dated 07.03.24 was passed stating drug trafficking as a ground of misuse and the property was sealed on 09.03.2024.

2. These two orders have been challenged on the ground that the construction of the subject property is old and occupied being built up by the mother of the appellant late Smt. Roshni Devi around 1998. The appellant has not carried out any fresh construction. The properties were amalgamated in the year 2005 and since then except of some renovations in 2016, no fresh construction has been raised in the subject property and the entire property is protected under NCTL. It was also argued that no recovery of drugs were made from the subject-property. The son of the appellant was arrested in some FIR no. 120/22 and only for that reason, the property was booked for misuse on a letter received from Deputy Commissioner of Police, Anti Narcotics Task Force, Crime Branch (here in after referred as DCP ANTF) without verifying as to whether any recovery of drugs was made from the subject-property. It was argued that there is no material with the respondent to show that there was any alleged misuse of the subject-property and therefore, the sealing order should be set-aside.
3. Ld. counsel for the respondent on the other hand argued that the photographs filed with the appeal clearly show that the construction at the first floor is new and is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The ground floor being constructed prior to 08.02.2007 has been given protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the first floor, mumty and projection on Municipal land are liable to be demolished. No argument however was made as to how the action of sealing is justified on the grounds of misuse.
4. I have perused the record. As far as the sealing order is concerned, the same is liable to be set-aside as the respondent did not verify itself as to whether the subject-property is being misused for drugs trafficking. The respondent

only relied upon a letter of DCP, ANTF where it was mentioned that an FIR has been registered against the son of the appellant who is a resident of subject-property. A perusal of the said FIR shows that the recovery of the drugs allegedly were made from the son of the appellant near Mangolpuri Flyover and not from the subject-property. Even if the contents of the FIR are considered to be correct, the alleged recovery of the drugs was from the son of the appellant and not from the subject-property. The sealing order is confined only in respect of misuse for drug trafficking activity and is not related to booking of unauthorized construction. This sealing action therefore is liable to be set-aside as the respondent itself admitted in the status report that no physical verification was done by the MCD to verify alleged misuse and the MCD issued show cause notice and sealing order only on the basis of letter from DCP, ANTF. The sealing order therefore is set-aside since there was no misuse of subject property.

5. Coming to the other appeal against demolition order, the respondent itself has given protection to the ground floor despite there being amalgamation of two plots. The documents filed by the appellant along with the reply before Quasi Judicial Authority show that construction was raised on both the plots by amalgamating since the building was constructed. There was no fresh construction going on at the time of inspection and the FIR. The booking of the property was on the basis of complaint from DCP, ANTF and this booking records that the subject-property is old and occupied. The electricity bills filed by the appellant show that the electricity was energized in the property on 16.12.2002 and separate connection for the first floor was taken on 18.05.2018. This clearly show that the subject property is existing much prior to 08.02.2007 and the first floor at least since 2018. The respondent did not take any action when the first floor was being raised if it was after 08.02.2007 and the booking itself records that the construction is old and occupied. There is no photograph in the booking file showing fresh construction at the time of booking. The photographs filed along with the appeal do not show as to when the first floor was raised. Only because the facade at the ground and first floor are not similar, the same does not mean that the first floor was constructed after 08.02.2007. The construction and amalgamation is old and occupied and the basis of the booking is a complaint from DCP/ANTF only.

6. In these facts, even the first floor and the mumty is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and not only the ground floor as protected by the MCD itself. Respondent cannot be permitted to book properties only on complaint received from DCP, ANTF without any material. However there is no Sanction Building Plan with appellant and construction is unauthorized. In facts, the demolition order though upheld is 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 as and when this Act ceases to be in force.
7. In view of the above, both the appeals stand disposed of.
8. 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 18.05.2026**

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