

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

**APPEAL NO. 802/ATMCD/2014**

**Shri Suhas Chand Gupta  
S/o Late Sh. Tara Chand Gupta  
R/o D-71, Preet Vihar  
Delhi- 110092**

..... Appellant

**Versus**

**New Delhi Municipal Council,  
Through its Chairperson,  
Palika Kendra,Parliament Street  
New Delhi - 110001**

.....Respondent

**Date of Filing of Appeal : 16.10.2014**  
**Date of Judgment : 19.05.2026**

**JUDGMENT**

1. This is an appeal challenging the demolition order dated 26.09.2014 passed in respect of unauthorized construction in shop no. 10 & 11, Bengali Market, New Delhi (here in after referred as subject property) directing to:

- a) demolish unauthorized construction in the shape of loft measuring 12.6 sq. meter (135.5 sq. ft.) marked as 'K' in the enclosed drawing,
- b) unauthorized construction by covering open area about 13.4 sq mt. (144.2 sq. ft.) with M/s Girders and sand stone marked as 'E' in the enclosed drawing,
- c) unauthorized construction by covering open area about 8.4 sq. mt. (90.40 sq. ft.) with M/s Girders and sand stone marked as 'F' in the enclosed drawing,
- d) unauthorized construction by covering open area about 26.8 sq. mt. (288.3 sq. ft.) with M/s Girders and sand stone marked as 'G' in the enclosed drawing,
- e) unauthorized construction by covering open area about 12.8 sq. mt. (133.7 sq. ft.) with M/s Girders and sand stone marked as 'H' in the enclosed drawing

f) and amalgamation of open area of quarter at back side marked E, F, G, H in enclosed drawing into the shop.

2. The brief facts necessary for disposal of this appeal are that the property plot no. 4 was leased out to M/s Laxman Das Ram Chand through perpetual lease deed dated 17.03.1941 measuring about 360 sq. yards. This entire plot fell to the share of Smt. Vidyawati on 28.04.1941, who was the grandmother of the appellant. Subsequent to a family settlement arrived between legal heirs of Smt. Vidyawati in Suit No. 565/1975, the plot no. 4 fell to the share of appellant, his two brothers and their mother. Later this plot came to the share of appellant through a partition deed dated 09.06.2000 which includes the shops no. 10 & 11, Bengali Market. (subject-property).
3. As per appellant, the L&DO vide notice dated 08.02.1968 referred to some unauthorized construction in plot no. 4 and misuser in this plot and claimed to have re-entered vide letter dated 08.02.1968. This re-entry however was never acted upon. L&DO also inspected the property vide inspection dated 31.03.1973, 14.07.1976 and 16.08.1978 reiterating unauthorized construction and misuser. Vide notification dated 24.03.2006 issued by L&DO, the lease administration rights of plot no. 4 were acquired by the respondent/NDMC. The NDMC vide notices dated 03.12.2009 and 18.05.2010 claimed misuser and unauthorized construction in plot no. 4 which were duly replied by the appellant. The appellant preferred Writ Petition(c) no. 4137/2010 before the Hon'ble High Court which was disposed of on 07.02.2012 directing the respondent to provide opportunity of hearing to the appellant. The respondent also issued a notice dated 27.01.2011 asking the tenant of the appellant to pay rent to NDMC which was challenged in Writ Petition(c) No. 1304/2011 and the Hon'ble High Court stayed this notice dated 27.01.2011. The appellant in this writ also sought Writ of Mandamus for mutation and conversion of plot no. 4 from lease hold to free hold and the matter is still pending before the Hon'ble High Court with lead matter bearing Writ Petition(c) No. 5708/2010. The Hon'ble High Court has stayed the notice of the respondent and the issues of re-entry/alleged misuser and damages are subjudice before Hon'ble High Court.
4. As per appellant, after the property was vacated by his tenant and the appellant received possession on 31.05.2013, a fire broke out in Bengali

Market on 25.04.2014 where 07 shops at the Bengali Market including the subject-property were severely damaged. The appellant through Bengali Market Trade Association made representation to NDMC to carry out necessary repairs. Despite this representation, the respondent issued work stoppage order dated 15.05.2014 stating that an open area in the back courtyard measuring 12 x 10 ft. has been covered with iron girders and stone slabs. Same was replied by the appellant and without considering the reply, a show cause notice dated 20.05.2014 under Section 250 of NDMC Act was issued. The appellant replied this notice on 21.05.2014 seeking permission to remove stone slabs so that open area is restored to original position. The respondent issued an order dated 03.06.2014 directing Executive Engineer to inspect to ascertain whether the alleged unauthorized construction has been removed or not. This inspection was conducted on 11.06.2014 and immediately thereafter, the show cause notice dated 16.06.2014 in respect of above-mentioned unauthorized construction was issued which was duly replied and thereafter, the impugned demolition order dated 26.09.2014 has been passed.

5. This order has been challenged by the appellant on the ground that the impugned order is silent about the date of alleged unauthorized construction. When as per work stop order dated 15.05.2014, there was unauthorized construction only of covering the open back courtyard for an area measuring about 12 x 10 ft, then how within a short span of less than a month, such alleged unauthorized construction can be raised. It was argued that this construction is old as referred in the three inspection dated 31.03.1973, 14.07.1976 & 14.08.1978 conducted by L&DO, yet the respondent without considering this aspect, passed the demolition order. The order is silent about the protection available under section 195 of Punjab Municipal Act. Once the unauthorized construction of covering the courtyard was removed by the appellant, the respondent deliberately passed the impugned order dated 26.09.2014 without considering that similar protection has been granted to the other shops in the Bengali Market under the Punjab Municipal Act. It was argued that the construction is protected and the impugned order should be set-aside for which reliance has been placed on the following judgments:

1) H.K. Chaudhary Vs. NDMC & Another 155 (2008) DLT 267

- 2) NDMC Vs. H.K. Chaudhary, LPA 6/2009 dated 12.01.2009
- 3) State of UP & Others Vs. Maharaja Dharmander Prasad Singh AIR 1989 SC 997

6. Ld. counsel for the respondent on the other hand has argued that the appellant has raised unauthorized construction at the back side of the property with ulterior motive of amalgamating of the old construction with the new one and thereby trying to bring it under the protection of Punjab Municipal Act 1911. The appellant is in unauthorized possession of the property since the date of issuance of re-entry order by L&DO. The appellant himself admitted in reply to the show cause notice that he has covered the open area and undertook to remove the same and therefore, is not entitled to any relief nor he can claim protection under Punjab Municipal Act. The appellant has carried out construction during the pendency of the Writ Petition pending before the Hon'ble High Court and cannot enjoy the benefit of any Act. The demolition order dated 26.09.2014 is in conformity and compliance with the law of land and the appeal should be dismissed.
7. I have perused the record. The respondent has booked the unauthorized construction in subject property vide show cause notice dated 16.06.2014. Prior to it, stoppage order dated 15.05.2014 was issued stating that the appellant has carried out unauthorized construction by covering open area in the back courtyard measuring 12 x10 ft. with the help of iron girders and stone slabs. This stoppage order was replied by the appellant on 17.05.2014 seeking permission to remove the stone slabs and bring the property to the original state. Thereafter the respondent issued an order dated 03.06.2014 directing its Executive Engineer to inspect the property within 04 days and pass demolition order, if unauthorized construction still remains. The property was inspected on 11.06.2014 and it was noted that the appellant has removed this unauthorized construction of his own.
8. Immediately after 05 days of this inspection dated 11.06.2014, the show cause notice dated 16.06.2014 was issued alleging following violations:
  - a) unauthorized construction in the shape of loft measuring 12.6 sq. meter (135.5 sq. ft.) marked as 'K' in the enclosed drawing,
  - b) unauthorized construction by covering open area about 13.4 sq mt. (144.2 sq. ft.) with M/s Girders and sand stone marked as 'E' in the enclosed drawing,

- c) unauthorized construction by covering open area about 8.4 sq. mt. (90.40 sq. ft.) with M/s Girders and sand stone marked as 'F' in the enclosed drawing,
- d) unauthorized construction by covering open area about 26.8 sq. mt. (288.3 sq. ft.) with M/s Girders and sand stone marked as 'G' in the enclosed drawing,
- e) unauthorized construction by covering open area about 12.8 sq. mt. (133.7 sq. ft.) with M/s Girders and sand stone marked as 'H' in the enclosed drawing
- f) and amalgamation of open area of quarter at back side marked E, F, G, H in enclosed drawing into the shop.

9. It is surprising that no such unauthorized construction was noticed by the respondent either at the time of issuing stoppage order dated 15.05.2014 and at the time of inspection conducted on 11.06.2014. Unauthorized construction to this extent cannot be carried out within 5 days after 11.06.2014 and even within a month after stoppage order dated 15.05.2014. The impugned demolition order as well as the show cause notice are silent in respect of approximate date of raising these unauthorized construction.
10. It will be also relevant to note that after the stoppage order dated 15.05.2014, the respondent also issued a show cause notice dated 20.05.2014 in respect of the unauthorized construction of covering back courtyard of area measuring 12 x 10 ft. but did not mention about these unauthorized constructions even in that show cause notice dated 20.05.2014. It is practically impossible to raise such unauthorized construction between 20.05.2014 to 16.06.2014.
11. Further record shows that all these unauthorized constructions mentioned in the show cause notice dated 16.06.2014 and in the impugned demolition order dated 26.09.2014 were already booked by L&DO in 1968 and were found in the the subsequent inspections dated 31.03.1973, 14.07.1976 & 14.08.1978. A comparison between breaches mentioned by L&DO in its letter dated 08.02.1968 issued to the appellant and the show cause notice dated 16.06.2014, show that all these unauthorized constructions existed way back in 1968, in 1973, in 1976 and in 1978. The appellant is entitled to protection qua these constructions under Punjab Municipal Act.
12. Record shows that the respondent has already granted similar protection to the other properties in Bengali Market. The unauthorized construction existing at premises no. 23, 24 and 25 (popularly known as Nathu Sweets)

Bengali Market, New Delhi was given protection under the Punjab Municipal Act on the basis of an earlier notice of 1979 issued by L&DO showing existence of second floor since 1979 and much before 1998. The appellant has also shown that the construction booked vide show cause notice dated 16.06.2014 exist much prior to 1998 and is protected under Punjab Municipal Act

13. The issue regarding re-entry by L&DO is sub-judice before the Hon'ble High Court and has no concerned or bearing with the impugned demolition order and there is stay operating against the re-entry.
14. In these facts the appeal is allowed and the impugned demolition order dated 26.09.2014 is kept in abeyance till the protection under Punjab Municipal Act is available. The appeal stand disposed of.
15. 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 19.05.2026**

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