

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

APPEAL NO. 856/ATMCD/2017

**Ms. Usha Agarwal
W/o Shri Rakesh Agarwal
R/o UP-3, Pitampura
Delhi**

..... Appellant

Versus

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

.....Respondent

**Date of Filing of Appeal : 13.09.2017
Date of Judgment : 20.05.2026**

JUDGMENT

1. This is an appeal challenging the sealing order dated 05.01.2016 passed in respect of unauthorized construction carried out in the Property No. C-737, New Friends Colony, New Delhi in the shape of deviation/excess coverage/infringement of set back against Sanctioned Building Plan No. 421/B/HQ/1994 dated 30.12.1994 at basement, ground floor, first floor, second floor and temporary structure at third floor and amalgamation of garage block with main building and erecting partition walls in basement. The appellant is concerned only about the basement of this property. (hereinafter referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the appellant entered into an Agreement to Sell dated 01.08.2011 with Ms. Amita Chaudhary, the previous owner for the subject property. There was some dispute between them and an arbitration award was passed in favour of the appellant on 01.12.2014 making the appellant the owner of the subject

property. As per appeal, the property comprising of basement to second floor was constructed by Ms. Amita Chaudhary in 1994-95 after obtaining a sanctioned plan dated 30.12.1994. The appellant was carrying out some repairs in the basement due to leakage and damage but the owners of the other floors lodged a complaint dated 05.05.2015 and in pursuance thereto, the entire property was booked including the basement.

3. This order of sealing has been challenged by the appellant on the ground that the show cause notice was never served upon the appellant. The construction of the basement is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant was carrying out only repairs in the property as permissible under law and therefore, the impugned order should be set aside. It was argued for the appellant that the respondent did not serve the show cause notice to the appellant and the opportunity of personal hearing was not granted and further, the respondent failed to consider that the construction is old and occupied and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
4. Ld. counsel for the respondent on the other hand argued that the show cause notice was duly sent by the speed post and since the appellant failed to give any reply, the sealing order was passed. The appellant has not filed any document to show that the construction at the subject property is prior to 08.02.2007 and therefore, the appeal should be dismissed.
5. I have perused the record. The property was booked on the complaint of the other floor owners who claimed unauthorized construction in the subject property. The show cause notice under section 345-A DMC Act dated 13.07.2015 is claimed to be sent through speed post to the appellant. The respondent only produced a photocopy of its dispatch register to show that the show cause notice was sent but there is no service report/track consignment report.
6. If the property was booked on the complaint of other floor owners, the possibility of show cause notice being received by them cannot be ruled out. The office record of MCD show that this show cause notice was replied by the owners of ground, first and second floor. There can be a situation where the show cause notice issued to the appellant, which was in the name of her

husband, was received by the owner(s) of ground, first and second floor and was not received by the appellant and her husband. Since the service of show cause notice is disputed and is also doubtful, the opportunity of being heard was not provided to the appellant and the Principles of Natural Justice were violated.

7. In these facts, the appeal is allowed and the impugned sealing order dated 05.01.2016 in respect of the basement of property No. C-737, New Friends colony, New Delhi is set aside. The matter is remanded back with directions to the respondent to consider the reply and documents to be submitted by the appellant and pass fresh speaking order after providing opportunity of personal hearing to the appellant. The appellant shall appear with her reply and documents before the Quasi Judicial Authority on 08.06.2026 at 03.00 PM and speaking order be passed within six weeks from the date of closing of personal hearing. The subject property be de-sealed within two weeks from today. The appellant however shall not raise any fresh construction in the property nor shall part with the possession nor shall create any third party interest in the property till fresh speaking order is passed by the respondent.
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 20.05.2026**

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