

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

APPEAL NO. 366/ATMCD/2020

**Kamal Kishore Saboo
S/o Late Shri Ram Niwas Saboo
R/o 2A, Under Hill Road
Civil Lines
Delhi-110054**

..... Appellant

Versus

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

.....Respondent

Date of Filing of Appeal : 03.12.2020
Date of Judgment : 21.05.2026

JUDGMENT

1. This is an appeal challenging the sealing order dated 18.01.2011 passed in respect of unauthorized construction carried out in the Property No. E-14, N.D.S.E.-II, New Delhi in the shape of deviation/excess coverage against Sanctioned Building Plan No. 2344/B/HQ/1965 at basement, ground floor, first floor, second floor, third floor, fourth floor, fifth floor and Sixth Floor (old construction) total height of building as 75 feet 6 inches.
2. The brief facts necessary for disposal of this appeal are that the appellant is the power of attorney holder for the fourth floor of this property. (hereinafter referred as subject property). This appeal is only for the fourth floor. It is claimed that the entire property was constructed way back much prior to 08.02.2007 and is in the same shape, size and extent since 1996. The respondent sealed the subject property on or about 22.10.2020 and immediately thereafter, the appellant contacted the counsel and filed this appeal.

3. It was argued for the appellant that he had no knowledge of the sealing order dated 18.01.11 and came to know about the sealing order only after the subject property was sealed on 22.10.2020 and therefore, there is no delay and if there is any, the same should be condoned. On merits, it was argued that the property is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being constructed much prior to 08.02.2007. Otherwise, the show cause notice was never served upon the appellant or upon the erstwhile owner M/s AGM Management Services Limited. (hereinafter referred as AGM). Further, a compounding fee of Rs. 6,30,966/- has already been deposited for regularization of fourth and fifth floor with MCD and the construction has already been regularized. The appellant has all the house tax records to show that the construction at the subject property is much prior to 08.02.2007 and therefore, the appeal should be allowed and the impugned sealing order should be set aside.
4. Ld. counsel for MCD on the other hand has argued that the fifth and sixth floor of the property were sealed on 18.01.2011 and the fourth floor was sealed on 20.10.2020 and the erstwhile owner had knowledge of the sealing order at least since the date of sealing which was 18.01.2011 and the appeal is highly belated and the delay should not be condoned. On merits it was argued that the unauthorized construction was never regularized nor any amount as alleged by the appellant towards regularization of fourth and fifth floor was deposited with the MCD. It was further stated that MPD-2021 does not permit any construction beyond third floor and beyond the height of 15 meter and the property has six floors with the height of more than 75 ft. and the same can never be regularized nor it is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the appeal should be dismissed.
5. I have perused the record. The appellant has filed this appeal on the basis of a General Power of Attorney (GPA) dated 24.08.2019 executed in his favour by one Ashok Mittal being Director of AGM. This GPA was registered at Gautam Budh Nagar, UP. Why and how GPA of a property situated in South Extension, New Delhi was executed at Gautam Budh Nagar, UP remains unanswered.

6. Further, the appellant claims that he is power of attorney holder of the subject property whereas in the written synopsis filed for the appellant it is mentioned in para 2 (b) that the show cause notice was not addressed to AGM who were the erstwhile owners of the fourth and fifth floor. This shows that the appellant is not an attorney of AGM but is the present owner of the property. The AGM in the written synopsis has been mentioned as erstwhile owner of the fourth and fifth floor which means that the appellant is the owner of the fourth floor and is not only an attorney. How appellant can become owner only on the basis of a GPA that to registered at Gautam Budh Nagar for a property in New Delhi. Further apart from this GPA, there is no other document to show that appellant is the owner of the subject property.
7. It has been claimed by the appellant that the show cause notice never addressed to AGM. A perusal of the show cause notice dated 28.12.2010 show that it was addressed to Sh. Sudhir Sharma, M/s Fashionista, Manager Oriental Bank of Commerce, M/s Cantabil Garments, M/s Dami Lano and owner/occupier/builder. This show cause notice was jointly replied by Mr. Sudhir Sharma, Mr. Satyajit Bedi and by the AGM (page 26/C of office record) through its co-owner Mr. Ashok, who also executed GPA in favour of the appellant. Thus, there is no force in the argument of the appellant that the show cause notice was never addressed or served upon the owners of the fourth and fifth floor i.e. AGM as the same was duly replied by it.
8. Coming to the aspect of limitation. Even as per the case of the appellant, AGM was the erstwhile owner of the fourth and fifth floor. Show cause notice was duly replied by the AGM. The appellant came in picture only on 24.08.2019 through a GPA executed for the fourth floor (subject property) by AGM. The fifth floor and the sixth floor of the property were sealed on 18.01.2011 when AGM was the owner of fourth and fifth floor. Even if it is presumed that the sealing order was not served upon the then owner of fourth and fifth floor namely AGM, admittedly sealing action was taken at the fifth floor by sealing the fifth floor at 3 points on 18.01.2011 and the limitation starts from the date of sealing of the fifth floor which was 18.01.2011. Every prudent person who is the owner of fourth and fifth floor of a property will make inquiry about the sealing action as soon as one of the two floors is sealed. Once the fifth floor was sealed, the erstwhile owner AGM had

knowledge of the sealing action since 18.01.2011 and the appellant who stepped into the shoes of AGM on 24.08.2019 in respect of the fourth floor, cannot claim that the date of knowledge shall be 20.10.2020 when the fourth floor was sealed. He cannot be put into a better position than to his vendor AGM. The appeal therefore is hopelessly barred by limitation being filed on 03.12.2020 against sealing order dated 18.01.2011.

9. Further, the appellant has not approached this Court with clean hands. In paragraph 6 of the appeal at running page 5, the appellant has mentioned that the application for regularization for construction was applied on 21.06.1996 and the MCD calculated the compounding charges at Rs. 6,30,966/- vide letter dated 21.01.2000 and this amount has already been deposited. The respondent during the proceedings was asked to file status report in respect of this regularization file and the original regularization file was produced on 10.10.2022, as per which the regularization charges demand of Rs. 6,30,966/- was never deposited. The appellant therefore deliberately made a false statement in the appeal that this amount has been deposited. Further, when it was specified by the respondent that this amount was never deposited, the stance was changed in written synopsis filed by the appellant where it was mentioned that only an amount of Rs. 1 lakh was deposited towards regularization charges. Further, it is relevant to note that these regularization charges were not raised in respect of fourth, fifth and sixth floor of this property as not more than ground plus three floors are permitted under MPD-2021. This demand was only for deviations up to third floor of the property. This act of appellant approaching the court with uncleaned hands is sufficient to dismiss this appeal.
10. In view of this discussion, the appeal is barred by limitation. The appellant is neither the owner nor occupier of the subject property and cannot be said to be an aggrieved person. The GPA has been executed only to give a cause of action to the appellant to file this appeal by avoiding execution of a proper sale deed and by avoiding payment of stamp duty on the sale deed of a property existing in South Extension, New Delhi measuring about 250 sq. yards. The appellant has not approached the court with clean hand. The height of the property is almost 23 meters which is beyond the height of 15

meters permitted under MPD-2021. The appeal therefore has no merits and the same is dismissed.

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 21.05.2026**

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