

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

**APPEAL NO. 625/ATMCD/2023**

- 1. Sh. Puneet Advani  
S/o Late Sh. Ramesh Advani  
R/o FC-117, 2<sup>nd</sup> Floor  
Tagore Garden, New Delhi-110027**
- 2. Smt. Raj Kumari Advani  
W/o Late Sh. Ramesh Advani  
R/o FC-117, 2<sup>nd</sup> Floor  
Tagore Garden, New Delhi-110027**

..... **Appellants**

**Versus**

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

.....**Respondent**

<b>Date of Filing of Appeal</b>	<b>:</b>	<b>25.09.2023</b>
<b>Date of Judgment</b>	<b>:</b>	<b>04.06.2026</b>

**JUDGMENT**

1. This is an appeal challenging the demolition order dated 29.08.2023, passed in respect of unauthorized construction carried out in Property No. FC-117, Tagore Garden, New Delhi in the shape of deviation against the sanctioned building plan at Ground Floor, First Floor, Second Floor and unauthorized construction in the shape of Third Floor. The appellants are concerned only about the second and third floor of the property. (here in after referred as subject-property).
2. The brief facts necessary for disposal of this appeal are that the appellants are the joint owners of the subject-property by virtue of sale deed dated 15.06.2005. The respondent earlier booked the unauthorized construction in property number FC-117, Tagore Garden, New Delhi on 16.03.2018 in the

shape of unauthorized construction from ground to third floor and demolition order dated 09.04.2018 was passed. Against this order an appeal no. 386/18 was preferred by one Nirmal Anand who is the owner of the first floor. In that appeal, MCD filed status report on 02.05.2022 stating that the sanctioned building plan dated 4.06.1993 of property number FC-117, Tagore Garden, New Delhi for construction of ground to second floor has been traced and the competent authority has permitted to close the booking dated 16.03.2018 with permission to initiate action for deviation against sanctioned building plan from ground to second and unauthorized construction of third floor. In view of that status report, this Tribunal disposed of that appeal on 02.05.2022 with liberty to the respondent to proceed as per law. In pursuance thereof, the respondent issued fresh show cause notice dated 30.06.2023 booking unauthorized construction in the shape of deviation against sanctioned building plan dated 04.06.1993 at ground, first and second floor and unauthorized construction in the shape of third floor. This show cause notice was duly replied by the appellants and personal hearing was also provided and thereafter the impugned demolition order was passed.

3. The appellants who are the owners of second and the third floor(subject property) have challenged this demolition order on the ground that neither the show cause notice nor the demolition order mentions the date of alleged unauthorized construction and the area of unauthorized construction as mandated by the Hon'ble High Court in the case of "*Masonic Club Vs. MCD, MANU/DE/1656/2001*". The demolition order also violates the directions of the Hon'ble Supreme Court dated 13.11.2024 passed in "*Writ Petition (Civil) No. 295/2022 titled as In Re: Directions in the matter of demolitions of structure*" as no reasons were given in the demolition order by the Quasi Judicial Authority as to why it did not agree with the reply of the appellants, the demolition order does not specify whether the alleged unauthorized construction is compoundable or not and the impugned order did not provide an opportunity to the appellant to get the same compounded. The respondent failed to consider the documents of the appellants like electricity bills, water bills, construction bills which show that the construction is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. No on-going construction was found at the time of

booking on 16.03.2018 and the booking initiated at the behest of intervener. The third floor was in existence at the time of alleged booking and therefore, the second and third floor are protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the appeal should be allowed.

4. Ld. counsel for MCD on the other hand argued that the judgment of Masonic Club, supra is not applicable as at the time of that judgment, the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 was not in force. If the appellants are claiming protection under this act, the burden is on the appellants to show that the construction is prior to cut of date of 08.02.2007. The appellants purchased the second floor with roof rights on 15.06.2005 and the burden is on them to show that the third floor was constructed before 08.02.2007 which they have failed to prove. It was argued that the judgment of Hon'ble Supreme Court dated 13.11.2024 is also not applicable since the present booking is much prior to this judgment. The appeal has no merit and should be dismissed.
5. I have perused the record. There is no dispute to the fact that the show cause notice was duly replied by the appellants and the personal hearing was given to them. The principles of natural justice were duly followed.
6. The appellants as per their sale deed dated 15.06.2005 purchased the entire second floor with terrace roof rights. This show that as on 15.06.2005, there was no construction on the terrace of the second floor which is the third floor. The appellants can claim protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 for the third floor, only if it is shown that the third floor was constructed between 15.06.2005 and 08.02.2007. The appellants except of certain invoices/bills, have not filed any other document to show that the third floor was constructed between these two dates. The copies of the bills filed by the appellants are only in respect of electrical and hardware items which are used for electricity fittings and water fittings. These bills do not reflect any expenditure on building materials and therefore, cannot substantiate the case of the appellant that the third floor was constructed in 2005-2006 or prior to 08.02.2007.
7. The appellants have also relied upon a sale deed dated 10.04.2017 of the ground floor of this property which mentions that there are four floors in

property number FC-117, Tagore Garden, New Delhi and year of construction is 1996. This cannot be considered to be a correct statement of facts since in the sale deed of appellants which is prior in date, dated 15.06.2005, there were only 3 floors in the property i.e. ground, first and second. Therefore, the description in the sale deed dated 10.04.2017 of the ground floor that four floors were constructed in 1996 is factually incorrect.

8. The appellants have placed reliance on the judgment of *Masonic Club* (Supra) to argue that the show cause notice is bad in law as it does not specify as to which area / portion is unauthorized and what is the approximate date of construction. This judgment is not applicable to the present case as it is the appellants who are claiming protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the burden is on them to show that the construction was raised prior to 08.02.2007. Otherwise also, the entire construction at third floor has been mentioned as unauthorized and there is no ambiguity in the show cause as far as the demolition order in respect of unauthorized construction at the third floor is concerned.
9. The appellants have also argued that the directions of Hon'ble Supreme Court in the judgment of *In Re:Directions* (supra) were not followed. This argument has no force since these directions were passed on 13.11.2024 and are not retrospective in nature. In the present case, the show cause notice is of 30.06.2023 and the demolition order is of 29.08.2023. The Hon'ble Supreme Court passed these directions on 13.11.2024 and could not have been followed when the property was booked in June 2023, as the same were not in existence at that time.
10. It was also argued for the appellants that the construction is old and occupied as admitted by the respondent itself in the status report dated 02.05.2022 in appeal no. 386/18 and therefore, even as per the case of respondent, the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, being old and occupied. I do not find any merit in this argument since the property being mentioned as old and occupied means that no new construction is going but it does not mean that it is prior to 08.02.2007 or that it is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

11. Coming to the documents like electricity and water bills filed by the appellants, none of these bills show the existence of third floor prior to 08.02.2007. The electricity bill is only in respect of the second floor. The house tax record also shows that no property tax was deposited for the third floor prior to 08.02.2007. The appellants have failed to establish the existence of third floor prior to 08.02.2007. The appellants however have shown that the second floor was constructed prior to 08.02.2007 and the deviations against the sanctioned building plan dated 04.06.1993 existed at second floor even prior to 08.02.2007 which is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
12. In view of these discussions, the demolition order is upheld but is kept in abeyance for the second floor 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 against the deviation at second floor once the protection under this Act ceases to exist. The third floor however is not protected under this Act and is liable to be demolished.
13. The appeal stand disposed of.
14. 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 04.06.2026**

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