

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

APPEAL NO. 290/ATMCD/2018 - Anil Kumar Vs. MCD
APPEAL NO. 291/ATMCD/2018 - Surender Banga Vs. MCD
APPEAL NO. 292/ATMCD/2018 - Tirath Ram Khanna Vs. MCD
APPEAL NO. 351/ATMCD/2018 - Sandeep Malik Vs. MCD
APPEAL NO. 352/ATMCD/2018 - Om Prakash Mishra Vs. MCD

JUDGMENT

1. These are the five appeals challenging the five demolition orders all dated 25.04.2018 passed in respect of following properties:

i) Unauthorized construction carried out in the shape of deviation/excess coverage against standard plan of DDA & extended along with projection in respect of property at third floor of Flat No. 158-D, Pocket-GH-2, Ankur Apartments, Paschim Vihar, New Delhi in appeal no. **290/18**,

ii) Unauthorized construction carried out in the shape of deviation/excess coverage against standard plan of DDA & extended along with projection in respect of property at first floor of Flat No. 158-B, Pocket-GH-2, Ankur Apartments, Paschim Vihar, New Delhi in appeal no. **291/18**,

iii) Unauthorized construction carried out in the shape of deviation/excess coverage against standard plan of DDA & extended along with projection in respect of property at second floor of Flat No. 158-C, Pocket-GH-2, Ankur Apartments, Paschim Vihar, New Delhi in appeal no. **292/18**,

iv) Unauthorized construction carried out in the shape of deviation/excess coverage against standard plan of DDA & extended along with projection in respect of property at ground floor of Flat No. 157-A, Pocket-GH-2, Ankur Apartments, Paschim Vihar, New Delhi in appeal no. **351/18**, and

v) Unauthorized construction carried out in the shape of deviation against standard DDA Plan changing the size of

bathroom & kitchen covering the open courtyard by tin shed and a concrete structure approximately 2.6 x 1.4 & height 1.4m below the tin shed in Flat No. 159-B, Pocket-GH-2, Ankur Apartments, Paschim Vihar, New Delhi in appeal no. **352/18**.

2. The appellants have challenged the demolition order(s) on the ground that the construction in their respective flats is old and occupied and is much prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The respondent without inspecting the properties, booked the alleged unauthorized construction on the complaint of one Mr. Pulkit Arora who indulged in unsocial activities and several residents of the society have made complaint against him and Pulkit Arora filed false and frivolous complaints against the properties of the appellants which were booked. The house tax record of the properties of the appellants show that the extended portion was constructed prior to 08.02.2007 and the respondent wrongly noted in the impugned orders that the appellants did not file any documents to substantiate their contention. The impugned demolition orders failed to consider the documents filed by the appellants which also includes the reports submitted by MCD before Public Grievance Commission which clearly mentions that no fresh construction has been raised in the properties at least since 15-20 years and therefore, the impugned orders should be set-aside.
3. Ld. counsels for the respondent on the other hand argued that physical inspection was conducted of the subject-properties and unauthorized construction in the shape of deviation/excess coverage against standard plan of DDA were noted in the properties and the show cause notices were duly issued. The reply and documents of the appellants were considered and personal hearings were also provided to them. Report was also sought from the property tax dept. and as per property tax record, there is no document to show that the construction is prior to 08.02.2007. The amount of differences

of excess coverage from 2005-06 to 2016-17 was deposited in one transaction on 10.01.2017 which clearly show that the extra coverage was raised after 08.02.2007. The existing covered areas in the properties is about 71.7 sq. meters whereas the property tax record show only an area of 60 meters and as such, the fresh unauthorized construction was raised after 08.02.2007. There are no merits in these appeals and the appeals should be dismissed.

4. I have perused the record. Let us examine the documents relied by the appellants separately in each appeal.
5. **Appeal No. 290/18.** The appellant in this case is the owner of third floor flat bearing no. 158-D. The appellant has placed on record the property tax return (PTR) for the year 2006-07 up to the period 31.03.2007. As per this PTR, the covered area in the property is 42 sq. meter and the additional area is 18 sq. meters. 42 sq. meters is the actual covered area of the flat allotted by DDA. The appellant however paid arrears of property tax for the years 2005-06 to 2016-17 on 10.01.2017 showing the covered area of the property as 71 sq. meters i.e. 42 sq. meters plus 29 sq. meters as additional covered area. These arrears were paid on 10.01.2017 whereas the property was booked vide show cause notice dated 28.09.2017. The arrears therefore were paid more than 8 months before the date of booking and it cannot be said that the appellant procured one document to bring the property under the protection of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant could not have preempted in January, 2017 that the property is going to be booked in September 2017. The office note at page 3/N shows that the covered area of the property is approx. 70 sq. meters with 0.8 meter projections on Municipal Land. The appellant therefore has shown that the property no. 158-D in appeal no. 290/18 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

6. **Appeal no. 291/18.** The property involved in this appeal is the first floor flat bearing no. 158-B. The appellant in this appeal has placed on record copy of grievance status dated 25.12.2016 before Public Grievance Commission. In these proceedings, the MCD filed action taken report where it was specifically mentioned that the property has been inspected and no new construction was carried out in recent past and the property is old and occupied. Further, the appellant paid arrears of property tax for the years 2005-06 to 2016-17 on 10.01.2017 showing the covered area of the property as 71 sq. meters i.e. 42 sq. meters plus 29 sq. meters of additional covered area. These arrears were paid on 10.01.2017 whereas the property was booked vide show cause notice dated 28.09.2017. The arrears therefore were paid more than 8 months before the date of booking and it cannot be said that the appellant procured one document to bring the property under the protection of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant could not have preempted in January, 2017 that the property is going to be booked in September 2017. The office note at page 3/N shows that the covered area of the property is approx. 70 sq. meters with 0.8 meter projections on municipal land. The appellant therefore has shown that the property no. 158-B in appeal no. 291/18 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
7. **Appeal no. 292/18.** The property involved in this appeal is the second floor flat bearing no. 158-C. The appellant has placed on record the property tax return form for the year 2006-07 up to the period 31.03.2007. As per this PTR, the covered area in the property is 42 sq. meters and the additional area is 11.6 sq. meters. 42 sq. meters is the actual covered area of the flat allotted by DDA. The appellant however paid arrears of property tax for the years 2005-06 to 2016-17 on 10.01.2017 showing the covered area of the property as 71 sq. meters i.e. 42 sq. meters plus 29 sq. meters of additional covered

area. These arrears were paid on 10.01.2017 whereas the property was booked vide show cause notice dated 28.09.2017. The arrears therefore were paid more than 8 months before the date of booking and it cannot be said that the appellant procured one document to bring the property under the protection of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant could not have pre-empted in January, 2017 that the property is going to be booked in September 2017. The office note at page 5/N shows that the covered area of the property is approx. 70 sq. meters with 0.8 meter projections on Municipal Land. The appellant therefore has shown that the property no. 158-C in appeal no. 292/18 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

8. **Appeal no. 351/18.** The property involved in this appeal is the ground floor flat bearing no. 157-A. The appellant in this case has relied upon the judicial record of an eviction petition filed against the tenant by the father of the appellant for eviction of the flat in question. That eviction petition was filed on the averments that this flat was let out to the tenant with effect from 01.07.2003. That eviction petition was allowed and the eviction order was passed on 23.10.2009. In that eviction petition, the site plan of the subject-property was exhibited as PW 1/1. That site plan show that this additional coverage was existing at least since the property was let out to the tenant on 01.07.2003 and was existing before 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. This site plan was also filed by the appellant before the Quasi Judicial Authority along with the said rent agreement. The Quasi Judicial Authority did not give any findings on this document. This eviction order, rent agreement and the site plan clearly show that the excess coverage is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

9. **Appeal no. 352/18.** The property involved in this appeal is the first floor flat bearing no. 159-B. The appellant in this regard has relied upon a report submitted by the respondent before Public Grievance Commission dated 25.06.2017. As per this report, the subject-property was inspected by MCD and is old and residentially occupied since long and from local inquiry, it was found that it is in same condition since last 15-20 years. This report of MCD clearly shows that no fresh construction has been raised in the property at least since 2002. The MCD itself reported that the construction is old and no construction has been raised for the last 15 years. In these facts, the construction in this flat is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
10. It is also relevant to note that in all these five appeals, the properties were booked on regular complaint to PGC Cell and the booking itself recorded that it is very old and residentially occupied. The show cause notice and the impugned orders are completely silent in respect of alleged date of unauthorized construction. The appellants however do not have any sanctioned building plan for this excess covered area. In these facts, the demolition orders are upheld but are kept in abeyance till the 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 the protection under this act ceases to exist. All the appeals stand disposed of.
11. Record of the respondent, if any, be returned along with copy of this order and appeals files be consigned to record room.

**Announced in the open Court
today i.e. on 09.06.2026**

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