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

APPEAL NO. 999/ATMCD/17

Sh. Ashok Aggarwal (Deceased)
S/o Sukhbir Saran Aggarwal
Through LR'S
a). Smt. Shalini Aggarwas (Wife)
b). Sh. Ankush Agarwal (Son)
c). Sh. Abhishek Agarwal (Son)
R/o 7A/1, Rajpura Road, Civil Lines,
Delhi-110054. …….. Appellants

Vs

North Delhi Municipal Corporation
Through its Commissioner,
17th Floor, Dr. S.P.M. Civic Centre,
Minto Road, New Delhi. ……Respondent

Date of Filing of Appeal	**:**	**17.11.2017**
Date of Order	**:**	**10.07.2026**

ORDER

1. This is an appeal against the demolition order dated 18.05.2017 passed in respect of unauthorized construction in shape of entire fifth floor at property no. 1153, Kucha Mahajani, Chandni Chowk, Delhi-110006.
2. The appellant has challenged this order on the ground that the construction is old and existing prior to 08.02.2007 and further that the show cause notice dated 28.04.2017 was never served upon the appellant prior to 30.06.2017 when it was found pasted at the property on 30.06.2017.

3. It was argued by the ld counsel for the appellant that the respondent did not consider the inspection report of the MCD dated 25.06.2002 as well as the assessment order dated 20.06.2006 which show that the fifth floor was in existence much prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Further, the show cause notice was received by one Mr. Girdhari Lal who has no concerned with this subject property or the appellant and therefore the impugned order should be set-aside.
4. Ld counsel for the respondent/MCD on the other hand argued that the house tax inspection report and assessment order relied by the appellant are not existing in the property tax return file of this property and are forged documents. The fifth floor was construction later on at the time of booking in April, 2017 and the show cause notice was served upon the person who was present there at site and was duly received and therefore the appeal should be dismissed.
5. Ld counsel for the intervener on the other hand argued that in the writ petition filed by the brother of the intervener before Hon'ble High Court bearing W.P.(C) No. 3385 of 2017 the MCD filed status report which clearly show that the fifth floor was not existing at the time of earlier booking dated 04.10.2016 and therefore was raised after 08.02.2007 and is not protected under any law and should be demolished and the appeal should be dismissed.
6. I have perused the record. The appellant has raised two grounds in this appeal against the impugned orders. The first ground is that the construction is old and prior to 08.02.2007 and the other being non-service of show cause notice dated 28.04.2017.
7. First, I will decide the issue of the date of construction of the fifth floor and whether the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 or not. The appellant in this regard has relied upon one inspection report dated 25.06.2002 and the assessment order dated 20.06.2006. These documents are not available in the property tax record of this property as maintained by the property tax

department. The respondent vide status report dated 12.12.2024 specifically stated that no such documents are available in the property tax department. This clearly shows that these documents are not genuine. Further, the appellant has not filed any receipt of payment of property tax of the fifth floor to show that tax was deposited after the assessment order dated 20.06.2006. Non-payment of property tax in pursuant to alleged assessment order dated 20.06.2006 is sufficient to hold that the document is not genuine.

8. Further, there is material on record to show that the fifth floor was constructed much after 08.02.2007. The intervener has placed on record an order under Section 343 DMC Act dated 06.03.2017. The respondent/MCD through show cause notice dated 04.10.2016 booked the unauthorized construction in the shape of coverage of open Jaal at second floor, unauthorized construction of entire third and fourth floor in the form of shops in property no 1153, Kucha Mahanani, Chandni, Chowk, Delhi-110006. The appellant replied this show cause notice on 10.10.2016 and stated that he is doing only permissible repair work. The appellant in the reply never claimed that there exists a fifth floor as well in the property. Moreover, the appellant there also filed certain property tax documents to show that the third and fourth floor are in existence prior to 08.02.2007. The then AE(B), City Zone, Mr. Arvind Kumar Malik, did not verify the house tax receipts filed by the appellant in respect of the third and fourth floor and gave protection to the property constructed upto fourth floor vide the order dated 06.03.2017 passed under Section 343 of the DMC Act. The then AE(B) acted in connivance with the appellant and without verifying whether those house tax receipts are genuine or not, provided protection to the appellant under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

9. Be that as it may, the case of the appellant in pursuance to the booking of unauthorized construction at third and fourth floor in October, 2016 was that the third and the fourth floor are in existence prior to 08.02.2007. It was never the case of the appellant that the fifth floor was also in existence at that time.

Even the booking dated 04.10.2016 was only for coverage of Jaal at second floor and entire third and fourth floor.

10. Further, the sale deed filed by the intervener, which were executed by the deceased appellant late Mr. Ashok Aggarwal show that as on 30.09.2014 when he sold 08 shops at the second floor to Mr. Mahesh Sharma & Ors., there was no third floor in the property. This sale deed records that the late appellant was the owner of entire second floor with terrace roof rights of the property no. 1153 along with common right to use main entrance, passage, staircase leading from ground to second floor and he sold 08 shops on the second floor. This sale deed dated 30.09.2014 clearly show that the property was constructed only upto second floor as on 30.09.2014. Had there been 3rd, 4th and 5th floors in the property, the description would have been different. It is relevant to note that the then AE(B) Mr. Arvind Kumar Malik did not ask the appellant to produce the title documents to ascertain the extent of construction or deliberately ignored these documents while passing the protection order dated 06.03.2017.

11. Further, through sale deed dated 05.09.2014 the deceased appellant purchased entire second floor with roof rights of this property from Mahesh Sharma & Ors. which further support the fact that there was no construction on the terrace of second floor as on 05.09.2014. All these sale deeds clearly show that as in September, 2014, the property was constructed only upto second floor and the construction of third and fourth and thereafter fifth floor were raised much after 08.02.2007 which is cutoff date of protection for unauthorized construction under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

12. The then AE(B) Mr. Arvind Kumar Malik not only ignored these sale deeds but also failed to verify the property tax receipts relied by the appellant and malafidely passed the protection order dated 06.03.2017 in respect of third and the fourth floor. A vigilance inquiry is required to be conducted against Mr. Arvind Kumar Malik for the passing order dated 06.03.2017 in respect of the booking dated 04.10.2016 bearing file no. 262/80/UC/EE(B)/CZ/2016,

13. Coming to this appeal, the property tax inspection report and assessment order filed in respect of fifth floor are fabricated documents and cannot be relied upon. The appellant himself never claimed at the time of previous booking dated 04.10.2016, in his reply dated 10.10.2016 that there exist fifth floor as well in the property.

14. The respondent/MCD also filed status report before Hon'ble High Court in W.P.(C) No. 3385 of 2017 title as Arvind Kumar Aggarwal Vs. State of NCT of Others through the then EE(B) Mr. Manoj Kumar, wherein it was stated that property was inspected on 04.10.2016 and was found existing of ground to fourth floor and has been booked. It was further stated that vide order dated 06.03.2017 the protection has been granted upto fourth floor and during fresh inspection on 24.04.2017 it revealed that the owner/builder has carried out unauthorized construction of additional fifth floor which has been booked vide show cause notice dated 28.04.2017. This status report clearly show that the fifth floor was constructed after getting protection upto fourth floor through wrong protection order dated 06.03.2017. In these facts, there is no merit in the arguments of the appellant that the fifth floor is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant forged documents and relied upon the same and the appeal is liable to be rejected on this ground alone.

15. The second ground raised by the appellant was non-service of show cause notice and that the appellant has no concerned with Mr. Girdhari Lal who received the show cause notice. I have perused the office record which show that the show cause notice dated 28.04.2017 was received by Mr. Girdhari Lal on 01.05.2017 under his signature. The order dated 06.03.2017 passed by Mr. Arvind Kumar Malik, AE(B) giving protection upto fourth floor show that the appellant gave a written reply dated 10.10.2016 to show cause notice dated 04.10.2016 and Sh. Girdhari Lal was authorized by the appellant to submit the reply and pursue the matter with the respondent. The said Girdhari Lal appeared on behalf of the appellant before Quasi Judicial Authority on 14.10.2016, 19.10.2016 when he submitted a written reply, on

15.11.2016 when he submitted house tax record, on 21.12.2016 when he further submitted documents and the proceedings were closed. This is sufficient to hold that Mr. Girdhari Lal who received the show cause notice dated 28.04.2017 was duly authorized person of the appellant and service of show cause notice on a duly authorized person is proper service upon the appellant.

16. Therefore there are no merits even in the argument that the show cause notice was not served.

17. In these facts, the appeal is without merits, same is dismissed.

18. Further, the Commissioner, MCD is directed to conduct a vigilance inquiry against Mr. Arvind Kumar Malik the then AE(B), City Zone who passed the protection order dated 06.03.2017 giving protection to the third and the fourth floor of this property on the basis of some property tax documents filed by the appellant through Girdhari Lal and also for ignoring the sale deeds which clearly show that property no. 1153, Kucha Mahajani, Chandni Chowk, Delhi-110006 was constructed only upto second floor even in September, 2014. Compliance report be filed by the Commissioner, MCD within 08 weeks.

19. 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 10.07.2026

(AMIT KUMAR)
District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi