

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

APPEAL NO. 605/ATMCD/2014

- 1. Smt. Sunita Rani Arora
W/o Shri Harish Chander Arora**
- 2. Shri Mukesh Arora**
- 3. Shri Pankaj Arora**

**Both sons of Shri Harish Chander Arora
All R/o 47 – UA, Municipal No. 6023
Jawahar Nagar, Delhi - 110007**

..... Appellants

Versus

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

..... Respondent

Date of Filing of Appeal	:	13.08.2014
Date of Judgment	:	14.07.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 06.08.2014 passed in respect of unauthorized construction carried out in the property No. UA-47, Jawahar Nagar, Delhi-110007 in the shape of deviation and excess coverage against Sanctioned Building Plan dated 25.03.1966 at ground floor, first floor & second floor and projections on municipal land. The appellants are concerned about first floor only. (first floor hereinafter is referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the appellants purchased the built up first floor of this property on 14.11.2011 from the erstwhile owner Sh. Manmohan Singh Sethi through registered sale deed.

The first floor was got mutated in the property tax record by the appellants in their names and the property tax was paid regularly. The appellants filed a civil suit against Manmohan Singh Sethi for raising unauthorized construction at the terrace of the first floor and during that suit, he sold the Barsati floor to one Smt. Suman Gupta.

3. The respondent booked the unauthorized construction vide show cause notice dated 09.10.2013 in the shape of deviation/excess coverage against Sanctioned Building Plan dated 13.11.1995 at ground, first and second floor. The appellant duly replied that show cause notice and a demolition order dated 22.10.2013 was passed. The appellants challenged that order in appeal no. 86/14 which was allowed on 13.02.2014 and the demolition order and the show cause notice were set-aside. The respondent thereafter issued fresh show cause notice dated 25.03.2014 booking unauthorized construction in the shape of deviation /excess coverage against Sanctioned Building Plan dated 25.03.1966 at ground, first and second floor. Same was duly replied by the appellants and thereafter the impugned demolition order was passed.
4. The appellants have challenged this order on the ground that the impugned demolition order is silent in respect of alleged deviation/excess coverage against Sanctioned Building Plan dated 25.03.1966. The first floor was purchased on 14.11.2011 and no fresh construction has been raised by the appellants and the construction is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The property tax of the first floor has been deposited showing covered area as 186 sq. meters which is the same as on date and therefore, the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The erstwhile owner Om Prakash Gupta sold the first floor to Manmohan Singh Sethi on 02.07.2010 and there was no reason for Sh. Om Prakash to file property tax return after 02.07.2010. The first floor was booked only when the appellants challenged the unauthorized construction at the terrace of the first floor and no unauthorized construction has been carried out by the appellants and the impugned order should be set-aside in respect of the first floor of the property.
5. Ld. counsel for MCD on the other hand argued that the property tax return filed by Om Prakash Gupta for the relevant years show that the covered area

of the first floor was only 112 sq. meters and the same has been increased by the appellant to 186 sq. meters and the same was done after purchasing the property by the appellant on 14.11.2011 and is not protected. As per the status report dated 22.09.2017, the sanctioned covered area at the first floor as per Sanctioned building Plan of 1966 is 111.538 sq. meters and the existing area is 186 sq. meters whereas the permissible area under MPD-2021 is 139.5 sq. meters and therefore unauthorized construction is not protected and is liable to be demolished.

6. I have perused the record. The appellants have claimed that the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is available to the first floor being constructed prior to 08.02.2007. The site plan of the first floor filed by the appellants in this appeal and the site plan of the first floor annexed with the registered sale deed dated 25.06.2010 executed by Om Prakash Gupta in favour of Manmohan Singh Sethi are relevant in this regard. The site plan annexed with the sale deed, available at page 32/C of the house tax record file of this property show that as on 25.06.2010, there were five rooms at the first floor with three bathrooms, one kitchen, one store and another store in the balcony, one veranda and open space below. The construction existing as on the date of appeal as per site plan filed by the appellants show that now there are six rooms in the property with three bathrooms and a kitchen and the space open below has been covered and merged into the rooms and the sizes of the rooms and the kitchen has been considerably increased. This construction therefore has been raised after 25.06.2010 when Om Prakash Gupta sold the first floor to Manmohan Sethi either by Manmohan Sethi or by the appellants. In any case the construction was raised after 08.02.2007 and is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
7. Coming to the house tax record. Om Prakash Gupta filed property tax return of this property till the year 2009-10 and thereafter for the year 2010-11 it was filed by Manmohan Singh and thereafter by the appellants. The PTR forms for the year 2008-09 and 2009-10 show that the covered area at the first floor was only 112 sq. meters. The assessee O.P. Gupta deposited the property tax for the property for the year 2008-09 and 2009-10. Subsequent to that

Om Prakash Gupta did not file the property tax return as these forms show that there is a noting at the bottom that PTR not filed for the years 2010-11, 2011-12, 2012-13 and 2013-14. The appellants thereafter filed PTR showing the covered area as 186 sq. meters. This clearly show that the covered area at the first floor was increased from 112 sq. meters to 186 sq. meters after the year 2009-10 when Sh. Om Prakash Gupta sold the first floor on 25.06.2010. The area open below was covered at first floor. The unauthorized construction therefore is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

8. Coming to the submissions of the Id. Counsel for the appellants that the impugned demolition order and the show cause notice are silent in respect of alleged deviation and excess coverage and are liable to be set-aside on this ground. I do not find any merits in these submissions. The property has a Sanctioned Building Plan of 1966 and the appellants at the time of purchasing the property should have checked whether the construction is unauthorized or is a sanctioned construction. Either they did not bother to check the same or despite knowing, raised unauthorized construction at the first floor. Sanctioned Building Plan of 1966 has been filed by MCD which show that only four rooms, a kitchen, two lavatories and a store was sanctioned at the first floor apart from veranda. The construction existing as on date is totally different and excess coverage and there are deviations from the Sanctioned Building Plan of 1966. The appellants cannot take benefits of their own wrong by claiming that the impugned order is silent in respect of the alleged deviations.
9. In these facts, I do not find any merits in this appeal and the same is dismissed and the order is upheld.
10. Both the records of the respondent, 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 14.07.2026**

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