

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

APPEAL NO. 717/ATMCD/2016

APPEAL NO. 943/ATMCD/2016

**Smt. Gian Wati
W/o Sh. Kishan Chand
R/o H. No. 159-A
Gharonda Neem Ka Bangar
Patparganj, Delhi**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	21.07.2016 & 07.10.2016
Date of Judgment	:	15.07.2026

JUDGMENT

1. These are the two appeals challenging the demolition order dated 13.06.2016 for unauthorized construction in the shape of ground floor without Sanctioned Building Plan with projection on municipal land in appeal no. 717/16 and another demolition order dated 29.09.2016 in appeal no. 943/16 for unauthorized construction in the shape of ground Floor & raising of walls and columns at first floor along with projections on municipal land passed in respect of the property No. 159, Village Patparganj, Delhi- 91 (hereinafter referred as subject property).
2. The brief facts necessary for disposal of these two appeals are that the appellant became owner of this property by virtue of a registered gift deed dated 16.07.2015 executed by her husband in her favour. The respondent booked the unauthorized construction in the shape of ground floor without sanctioned building plan with projections on municipal land vide show cause notice dated 31.05.2016 and passed the first demolition order dated 13.06.2016. Subsequent to that the MCD booked unauthorized construction in the shape of raising of walls and columns at the first floor with projections on

municipal land vide show cause notice dated 12.09.2016 and passed the second demolition order dated 29.09.2016.

3. The appellant has challenged these two orders on the ground that the correct property no. is 159-A, village Gharonda, Patparganj, Delhi whereas the booked property number is 159 and as such neither the show cause notices nor the demolition orders which were sent by post at wrong address were served upon the appellant. It was further stated that the construction is more than 46 years old and the appellant took permission to repair in February/March 2016 and thereafter only repaired the property but on the false complaint lodged by the brother of her husband namely late Mr. Rattan Lal, the respondent booked the property. It was argued for the appellant that only permissible repair under clause 6.4.1 of Delhi Building Bye Laws-1983 were carried out by the appellant and no unauthorized construction has been raised and therefore, the two demolition orders are liable to be set-aside.
4. Ld. counsels for the respondent on the other hand argued that the gift deed relied by the appellant clearly show that there was only ground floor in the property with covered area of 66.88 sq. meters whereas as on date, the property consist of ground with two rooms on the first floor and projections on municipal land and is fresh construction without any sanction and is unauthorized and is liable to be demolished.
5. I have perused the record. The appellant has raised primary objection regarding the correct address of the property. It has been claimed that the address of the appellant property is 159-A whereas the booked property number is 159 only. Admittedly, the respondent through two show cause notices and the demolition orders booked the property no. 159 and not 159-A. But the documents of the appellant show that the correct property no. is 159 only and the numbers A, B & C after 159 have been given by the appellants and are their private numbers.
6. The husband of the appellant Sh. Kishan Chand filed a civil suit against his late brother Rattan Lal bearing civil suit no. 7750/16 before JSCC–ASCJ–GJ East District, Karkardooma Court Delhi which was decided on 17.05.2018. In that suit, Shri Kishan Chand mentioned the address of the property as property number 159 and not 159-A. In the hospital record of the husband of the appellant, the address is mentioned as Kishan Chand, resident of H.No.

159, Patparganj. The site plan filed by the appellant in the civil suit also mentions the site plan of property no. 159. These documents of the appellant are sufficient to hold that the correct municipal no. 159 only and the no. 159-A is private number. Even in the property tax documents filed by the appellant, the portion in possession of the husband of the appellant is referred as 159 (part), Village Patparganj and not 159-A. In these facts, there is no merit in the argument that the correct address of the property was not mentioned in the show cause notices and the demolition orders.

7. The appellant has also raised objections regarding service of the show cause notices. The office record show that the show cause notices were sent through speed post in the name of the husband of the appellant and there is presumption of service under section 27 of the General Clauses Act, unless otherwise rebutted. The appellant has failed to rebut this presumption. The show cause notices were sent at the correct address through speed post and are presumed to be duly served.
8. Coming to the argument that the construction at the ground and first floor is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The gift deed executed in favour of the appellant dated 16.07.2015 show that as on that day, there was no first floor in the property. The gift deed records that there is only ground floor in the subject property having covered area of 66.88 sq. meters. Gift Deed is a registered document and the contents thereof are to be considered correct.
9. The appellant while applying for repairs on 17.02.2016 annexed one site plan of the existing structure showing ground and the first floor having two rooms and a tin shed on the first floor. This site plan was prepared on 06.02.2016 and if it is considered to be correct, it only shows that the two rooms were existing as on 06.02.2016 at the first floor. If the same is compared with the contents of the gift deed dated 16.07.2015 which mentions that there is only ground floor, it appears that these two rooms at first floor were constructed after 16.07.2015 and before 06.02.2016 and therefore two rooms at the first floor constructed after 01.06.2014 which is the cutoff date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, are not protected under this Act.

10. Coming to the construction at ground floor. Admittedly, there is no sanction building plan. However, the photographs filed by the appellant show that the ground floor was existing in dilapidated condition and appears to be old construction prior to 01.06.2014. The appellant has also filed electricity bill with due date as 19.01.2001 which supports the fact that ground floor was in existence prior to 01.06.2014. The appellant sought permission for repairs and the respondent vide letter dated 29.03.2016 informed the appellant that no permission is required for repairs as per clause 6.4.1 of Building Bye Laws 1983. This clause permits certain alterations like re-roofing, replacing fallen bricks, pillars, beams etc., reconstruction of portion of building damaged by natural calamities and erection or re-erection of internal partitions. The ground floor was in existence as per the documents relied by the appellant which includes the photographs, house tax records etc. The ground floor was only repaired which under clause 6.4.1 of BBL-1983 include reconstruction of fallen portions and therefore, the ground floor being existing prior to 08.02.2007 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. However the projections on municipal land are not protected. The photographs filed by appellant show that there was no projection on municipal land in old dilapidated ground floor.
11. In these facts, the demolition order in respect of the ground and first floor are upheld but are kept in abeyance only respect of ground floor of the subject property till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. There is no protection to the construction at first floor as well projections on municipal land. The respondent is at liberty to take action against the ground floor once this Act ceases to be in force.
12. In view of the above, the appeals stand disposed of.
13. The records 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 15.07.2026**

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