

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

APPEAL NO. 427/ATMCD/2024

- 1. Nishant Khanna
S/o Sh. Dev Raj Khanna
R/o C-44, Bali Nagar
Ramesh Nagar
West Delhi
Delhi – 110015**
- 2. Asha Nagpal
W/o Sh. Subhash Nagpal
R/o D-30 Bali Nagar
Ramesh Nagar
West Delhi
Delhi – 110015**
- 3. Pavneet Kaur
W/o Sh. Arun Nagpal
R/o D-30 Bali Nagar
Ramesh Nagar
West Delhi
Delhi – 110015**

..... Appellants

Versus

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

..... Respondent

Date of Filing of Appeal	:	06.06.2024
Date of Judgment	:	17.07.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 19.02.2024 passed in respect of unauthorized construction carried out in the Property No. C-45, Bali Nagar, New Delhi - 110045 in the shape of deviation against Self-

Regularization Plan at Stilt, Ground Floor, First Floor, Second Floor and Third Floor (hereinafter referred as subject property).

2. The brief facts necessary for disposal of this appeal are that the appellants purchased the property no. C-45 measuring 200 sq. yards by virtue of two sale deeds dated 14.12.2021 through which appellant no. 1 became the owner of undivided half share (50%) and appellant no. 2 & 3 who are mother in law and daughter in law became the owner of remaining undivided half share. The appellants being co-owners got a building plan dated 15.03.2022 sanctioned from the MCD and started raising construction. One neighbor Mr. Shekar Narang lodged a complaint with MCD for unauthorized construction in the subject property and a show cause notice dated 03.07. 2023 under section 344/343 DMC Act was issued by the respondent booking deviations in the shape of excess coverage from stilt to third floor. The appellants in response to this show cause notice, applied for self-regularization of the deviations and the deviations were regularized vide letter dated 17.08.2023 on payment of compounding fees of Rs. 30826/-. The respondent thereafter issued a fresh show cause notice dated 07.02.2024 booking unauthorized construction in the shape of deviation against self-regularization plan dated 17.08.2023 at stilt to third floor. Appellant no. 1 replied this show cause notice and thereafter, the impugned demolition order dated 19.02.2024 was passed.
3. The appellants have challenged this order primarily on the ground that the show cause notice was served only upon appellant no. 1 through his father and was never served upon appellant no. 2 & 3. It was argued that the appellants vide partition deed dated 23.08.2023 partitioned the property through which appellant no. 1 became the owner of upper ground floor and first floor, appellant no. 2 became the owner of second floor and appellant no. 3 became the owner of the third floor with roof rights. It was argued for appellants that since all the appellants are owners of different floors, the show cause notice being not served upon appellants no.2 & 3, is sufficient reason to set-aside the demolition order. It was argued that opportunity of being heard was not provided to the appellants. The impugned order is silent in respect of alleged deviations and therefore, is not sustainable and is liable to be set-aside.

4. Ld. counsel for the appellant in support of his arguments relied upon the following judgments:

1. Mahender Singh and Ors. Vs. MCD, MANU / DE /0436/1987
2. J.T. (India)Exports and Ors. Vs. Union of India, MANU/ DE /1095 /2001
3. Masonic Club Vs. MCD, MANU/ DE /1656 / 2001
4. DCM Lt. Vs. MCD, MANU / DE / 0168 1998

5. Ld. counsels for MCD and Intervenor on the other hand argued that appellant no. 1 gave reply to the show cause notice on behalf of all the appellants and undertook to demolish the unauthorized construction by filing an affidavit before the Quasi Judicial Authority dated 11.01.2024 but failed to demolish the same. He admitted in that affidavit that the back side balcony is unauthorized and shall be demolished and as such the appellants were well aware about the deviations. It was argued that appellant no. 1 or the other appellants never informed MCD about the partition deed and further in a civil suit filed by complainant Mr. Shekar Narang against the appellants and MCD, the appellants filed joint written statement on 20.04.2024 stating that they are joint owners of the property and therefore, their plea of non-service of show cause notice on appellants 2 & 3 is without merits and therefore, the appeal should be dismissed.

6. I have perused the record. The show cause notice dt. 07.02.2024 was issued in the name of all the three appellants. The same was duly received by father of appellant no. 1 under his signature on 12.02.2024. He never informed the official who served the show cause notice that he is receiving the same only on behalf of appellant no. 1. Further, the show cause notice was replied by appellant no. 1 on 14.02.2024 where he gave reply on behalf of all the appellants. In para 7 of this reply, he stated that no illegal or unauthorized construction has been done by "US" deliberately or intentionally. He further stated that "WE" request not to take any demolition action. The use of words like us and we clearly show that the reply was given for all the appellants. It is also relevant to note that even the first show cause notice dated 03.07.2023 was served upon father of appellant number 1, yet all the appellants got the deviations regularized. That show cause notice served upon father of appellant no.1 was in the knowledge of all the appellants.

7. Further, the appellants never informed MCD that a partition deed between them has been executed on 23.08.2023 and their status from being joint owners of the entire property has changed to specific floor-wise ownership. They admittedly applied jointly for sanction building plan dt. 15.03.2022 as well as self-regularization plan obtained on 17.08.2023 and therefore, there was no occasion for MCD to know that a partition has been carried out for the subject property.
8. On the other hand even after the said partition dt. 23.08.2023, the appellants filed a joint written statement 20.04.2024 in CS SCJ 294/24 before Ld. SCR/RC, West District Tis Hazari. In that written statement which was much subsequent to the partition dt. 23.08.2023, the appellants stated that they are the joint owners of the subject property. They did not mention that there has been a partition between them and now they are owners of their respective floors. In these facts, the plea taken by the appellants that show cause notice was never served upon appellant no. 2 & 3 is meritless and cannot be a reason to set-aside the demolition order.
9. Coming to the arguments that the impugned order is silent in respect of the alleged deviation. Appellant no. 1 filed an affidavit before Quasi Judicial Authority stating therein that he is the true and absolute owner and in possession of the subject property and will demolish the backside balcony within three months. This affidavit dated 11.01.2024 show that even on that day, the appellant no. 1 mentioned himself to be the absolute owner in possession of the entire property and was well aware about the deviations. Otherwise also it is relevant to note that the appellants first obtained a sanction building plan dt. 15.03.2022 and raised construction in deviation to it. Thereafter, when a show cause notice dt. 03.07.2023 was issued, they got the deviations regularized on 17.08.2023 and thereafter, again deviated the regularized plan and raised further unauthorized construction. The status report filed by MCD dt. 30.05.2025 after physical inspection clearly show that there are non compoundable deviations from stilt to third floor of 9.65 sq. meter each and a temporary shed and a room at the terrace of the third floor having an non-compoundable area of 25 sq. meters. The appellants were well aware about these deviations which also include projection on municipal land in the rear portion of the property land room at the stilt.

10. These deviations have been raised deliberately and intentionally after obtaining sanction building plan followed by self-regularized plan. In these facts there are no merits in the appeal and the same is dismissed and the demolition order is upheld.
11. The appeal stand dismissed.
12. 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 17.07.2026**

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