

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

APPEAL NO. 56/ATMCD/2016

- 1. Sh. Ram Kishan (Since Deceased)**
Through his legal heirs
 - (i) Smt. Shakuntla**
D/o Late Sh. Ram Kishan
R/o House No. E-527
Gali No. 10, Dabua Colony
Faridabad, Haryana
 - (ii) Sh. Rajkumar**
S/o Late Sh. Ram Kishan
R/o House No. 719, Mahella Mohalla
Madanpur Khadar, New Delhi-110076
 - (iii) Sh. Dinesh Kumar**
S/o Late Sh. Ram Kishan
R/o House No. 719, Mahella Mohalla
Madanpur Khadar, New Delhi-110076
 - (iv) Sh. Rakesh Kumar**
S/o Late Sh. Ram Kishan
R/o House No. 719, Mahella Mohalla
Madanpur Khadar, New Delhi-110076
(Already on record as appellant No. 2)
 - (v) Sh. Tarun Kumar**
S/o Late Sh. Ram Kishan
R/o House No. 719, Mahella Mohalla
Madanpur Khadar, New Delhi-110076
 - (vi) Smt. Geeta**
D/o Sh. Ram Kishan
R/o House No. 11/120A
Gali No. 5, West Azad Nagar
New Delhi
 - (vii) Smt. Gunita**
D/o Late Sh. Ram Kishan
R/o House No. 719, Mahella Mohalla
Madanpur Khadar, New Delhi-110076
- 2. Shri Rakesh**
S/o Sh. Ram Kishan
R/o 719, Mahella Mohalla

**Village Madanpur Khadar
New Delhi - 110076**

..... Appellants

Versus

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

..... Respondent

**Date of Filing of Appeal : 15.01.2016
Date of Judgment : 20.07.2026**

JUDGMENT

1. This is an appeal challenging the demolition order dated 28.08.2015 passed in respect of unauthorized construction in the shape of ground floor and first floor, carried out in the property bearing House No. 719, Mahella Mohalla, Madanpur Khadar, New Delhi-110076 (hereinafter referred as subject property)
2. The brief facts necessary for disposal of this appeal are that the appellants are the owners of this property situated in old abadi area of village Madanpur Khadar. As per appellants certain repairs were carried out in this property in the year 2011 and the neighbor of the appellants Mr. Gambhir filed a civil suit no. 184/11 alleging unauthorized construction being raised by the appellants followed by another suit no. 277/11. The first suit was rejected on 13.04.2011 whereas in the second suit, the appellants gave statement that they shall not raise any construction in the adjoining gali and the second suit was also withdrawn on 03.12.2014. The respondent in the meantime booked the unauthorized construction in the shape of ground and first floor vide show cause notice dated 21.08.2015 followed by the demolition order dated 28.08.2015.
3. The appellants have challenged this order on the ground that show cause notice was never served upon the appellants and secondly that the construction, if any, was raised prior to 01.06.2014 which is the cutoff date for

protection of unauthorized construction under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and is protected and therefore, the appeal should be allowed.

4. Ld. counsel for respondent on the other hand argued that the appellants in para 2 of the appeal have admitted that they reconstructed the property and the same is sufficient to hold that fresh unauthorized construction was raised. It was further stated that show cause notice was served through pasting which is approved mode of service and therefore, the appeal should be dismissed.
5. I have perused the record. The show cause notice dated 21.08.2015 was served through pasting but there are no photographs of the pasting. Though there are initials of two witnesses to this pasting but the particulars of those witnesses are not mentioned. Though it is correct that pasting is an approved mode of service but there must be some prima-facie material to ascertain whether the pasting was proper or not. In the present case, neither there are photographs nor particulars of the witnesses in whose presence the notice was pasted and therefore, the demolition order is liable to be set-aside on this ground alone.
6. Coming to the merits of the appeal. Admittedly, a Civil Suit was filed in 2011 by the neighbor of the appellants alleging unauthorized construction being raised by the appellants. Though the appellants disputed any fresh unauthorized construction, however, even if it is presumed that the appellants raised unauthorized construction in 2011, the same was before 01.06.2014 which is the cutoff date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
7. In that Civil Suit, the Id. Civil Court appointed a Local Commissioner who filed his report dated 30.05.2011 in CS No. 277/11 and as per that report, the appellants were found raising construction in the shape of pillars by cutting the old existing wall. This show that old construction was existing in the property and the appellants repaired that construction by raising pillars.
8. Be that as it may, the fact remains that this unauthorized construction was raised in 2011 which is prior to 01.06.2014 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. There is no material to show that any construction was raised after 01.06.2014. In these facts, the demolition order dated 28.08.2015 is upheld

but kept in abeyance till this Act is in force. The respondent shall be at liberty to take action when this protection ceases to exist.

9. The appeal stand disposed of.

10. 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 20.07.2026**

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