

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

APPEAL NO. 441/ATMCD/2024

APPEAL NO. 473/ATMCD/2024

APPEAL NO. 600/ATMCD/2024

**Ram Kishan Satija
S/o Late Sh. Manga Ram
R/o E-2/133, Shastri Nagar
Delhi - 110052**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	19.06.2024, 05.07.2024 & 01.08.2024
Date of Judgment	:	23.07.2026

JUDGMENT

1. These are the three appeals challenging the demolition order dated 19.04.2024 in appeal no. 441/24, sealing order dated 08.06.2024 signed on 10.05.2024 in appeal no. 473/24 passed in respect of unauthorized construction carried out in the shape of deviations/excess coverage against the Sanctioned Building Plan from stilt to second floor and unauthorized construction of the entire basement and revocation of building plan order dated 16.07.2024 signed on 15.07.2024 in appeal no. 600/24 in respect of Property No. E-2/188, Shastri Nagar, Delhi - 110052 (hereinafter referred as subject property).
2. The brief facts necessary for disposal of these appeals are that the appellant purchased the subject property bearing no. E-2/188, Shastri Nagar Delhi

measuring 133 sq. yards from its previous owners vide two registered Sale Deeds dated 24.08.2006. The appellant thereafter obtained sanctioned building plan on 24.06.2023 for this property and started raising construction from stilt to second floor. The respondent booked the unauthorized construction vide show cause notice dated 01.04.2024 in the shape of entire basement and deviations/excess coverage from stilt to second floor against the sanctioned building plan. It was followed by the impugned demolition order dated 19.04.2024. Similarly, a show cause notice dated 12.04.2024 was issued under section 345A of the DMC Act followed by the sealing order dated 08.06.2014. The respondent also issued a show cause notice under section 338 of the DMC Act dated 10.06.2024 seeking revocation of the sanctioned building plan dated 24.06.2023 on the grounds that the property abuts a notified commercial road and the power to sanction does not vest with licensed architect, single entity of the plot is not maintained, the complete plan fees has not been deposited and lastly, the ROW of the plot is 06 meters which has been shown as 09 meters in the sanctioned building plan and after considering the reply of the appellant, the revocation order dated 16.07.2024 was passed.

3. The appellant has challenged these three orders on the grounds that the demolition order is silent in respect of alleged deviations. There is no basement in the property as alleged. The construction has been raised as per sanctioned building plan which was not considered. The sealing order has been challenged on the ground that the show cause notice was never served and the revocation order has been challenged on the ground that the property does not abut a commercial road, there is no sub-division of the plot as alleged, the appellant is ready to pay the requisite plan fee which was never communicated to the appellant and lastly that the ROW in front of the subject-property is not 06 meters as alleged in the impugned revocation order.
4. Ld. counsel for MCD on the other hand argued that the appellant obtained sanctioned building plan on misrepresentation of the facts. There are deviations in the property since one basement was unauthorizedly constructed and further, all the show cause notices were duly served through pasting and therefore, there are no merits in these appeals.

5. I have perused the record. The respondent during pendency of these appeals, was directed to verify as to whether there exist any basement in the subject-property which has been booked vide show cause notice dated 01.04.2024 under section 344/343 of the DMC Act. Vide status report dated 16.03.2025, it was stated that there is no basement in the subject-property. It means that the property was booked without inspection and only on some complaints and the notice itself is invalid as far as the booking of basement is concerned. If the demolition order contains two directions and one of that is improper / ultra-virus, the other one is also liable to be set-aside. In this regard reliance can be placed on the judgment of Hon'ble High Court passed in case of Prem D. Gupta Vs. MCD, 1974 RLR 163. The Hon'ble High Court in this judgment held that if there are two directions in an order and one of the said directions is not within the power, the entire demolition order is invalid.
6. In the present case, the direction in respect of basement was invalid as there was never a basement in the subject-property and for this reason alone, the impugned demolition and sealing order containing an invalid direction in respect of the basement are liable to be set-aside and are set-aside. The respondent booked the property without inspection and did not bother to verify even at the stage of sealing action. Let the property be de-sealed within two weeks. **Both these appeals are allowed and disposed of.**
7. Coming to the appeal challenging the revocation order. The respondent revoked the sanctioned building plan on four grounds. It was stated that the property abuts a notified commercial road. A status report was called from MCD and it was reported on 12.03.2025 that this subject-property is on notified commercial road. The layout plan annexed with this status report clearly shows that the subject-property does not abut the notified commercial road having ROW of 06 meters. The subject-property is on 13 meters ROW road named as Nand Kishore Gupta Marg which is not a notified commercial road.
8. The second ground was that single entity of the plot is not maintained. The appellant has filed the Sale Deed of 1969 which was of a date prior to the cutoff date of 07.02.2007 and the same shows that the area of the subject-property was 133 sq. yards at that time and the area as on date is also the same. The appellant has purchased this property through two sale deeds but

that does not imply that the single entity of the plot has not been maintained. The sub division prior to cut off date is valid and cannot be questioned.

9. The third ground was that the correct plan fees has not been deposited. The show cause notice under section 338 of DMC Act is silent in respect of the correct plan fees. The appellant was and is always ready to pay the correct amount. The revocation order states that instead of Rs.2,05,281/-, the appellant has deposited Rs. 1,58,781/-. Let the appellant deposit the balance amount within two weeks.
10. The last ground for revocation was that the subject-property is on a notified road of 06 meters ROW which was mentioned as 09 meters ROW in the submitted plan. As already discussed, the layout plan filed by MCD with status report dated 12.03.2025 shows that the subject-property is not located on notified 06 meters ROW as claimed by MCD and therefore, even this ground of revocation is not sustainable.
11. In these facts, this appeal is also allowed subject to payment of the difference of the sanctioned plan amount by the appellant. If the same is paid within two weeks, the sanctioned building plan dated 24.06.2023 in respect of the subject-property shall stand restored and the impugned revocation order shall stand revoked. **This appeal is also allowed and disposed of.**
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 23.07.2026**

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