

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

APPEAL NO. 599/ATMCD/2018 - Jatin Kishore Sharma And Anr. Vs. MCD

APPEAL NO. 653/ATMCD/2018 - Ellachi Devi Vs. MCD

APPEAL NO. 851/ATMCD/2018 - Ellachi Devi Vs. MCD

Date of Filing of Appeal	:	21.08.2018, 11.09.2018 & 22.11.2018
Date of Judgment	:	27.07.2026

JUDGMENT

1. These are the three appeals challenging the sealing order dated 10.08.2018 in appeals no. 599/18 and 653/18 and the demolition order dated 29.05.2018 in appeal no. 851/18 passed in respect of unauthorized construction in the shape of deviations against sanctioned building plan in the shape of excess coverage, covering the open spaces/set-backs and projections on municipal land from stilt to third floor in respect of property no. B-1903 (part), corner plot, Shastri Nagar, Delhi-110052 (here in after referred as subject property).
2. The brief facts necessary for disposal of these three appeals are that the appellant Smt. Elaichi Devi is the owner of an area admeasuring 28.15 sq. meters on the ground floor and is the owner of the entire second and the third floor with roof rights. The appellant no. 1 in appeal no. 599/18, Mr. Jatin Kishore Sharma is the owner of an area measuring around 40 sq. meters at the ground floor by virtue of two sale deeds and his sister the appellant no. 2 in this appeal is the owner of entire first floor without roof rights. These two appellants purchased their respective portions from one Sh. R.C. Sharma and from Smt. Elaichi Devi who is the appellants in other two appeals.
3. Smt. Elaichi Devi obtained a sanctioned building plan under Saral Scheme dated 08.01.2018 for raising construction in the subject property. The respondent noticed unauthorized construction and issued show cause notice under section 344/343 of the DMC Act dated 21.05.2018 and also issued a notice dated 08.06.2018 under section 338 of the DMC Act seeking response as to why the sanctioned building plan should not be revoked because of

wrong submissions regarding ownership documents. Thereafter, sanctioned building plan was revoked.

4. She challenged that revocation order in separate appeal no. 852/18 which was allowed on 29.11.2024 with directions to the respondent to pass fresh speaking order after giving personal hearing to the appellant. Subsequent to this remand order, the respondent gave personal hearing to the appellant Smt Elaichi Devi and passed fresh revocation order dated 09.05.2025 which has not been challenged and as such as on date, there is no sanctioned building plan for this property.
5. The three appellants have challenged the impugned orders primarily on the ground that the appellants have demolished the deviations and excess coverage in the property and the property now is in accordance to the sanctioned building plan obtained under Saral Scheme. It was argued for them that no notice was issued to the appellants in appeal no. 599/18 nor they were given any opportunity of reply and personal hearing and therefore, the impugned orders are liable to be set-aside against them. It was argued that the appellant Sh. Jatin Kishore is the owner of one shop at ground floor and he purchased this shop on 23.09.2010 and no notice was issued in his name and nor the name of his sister and therefore, the orders should be set-aside on this ground as far as the appellants of appeal no. 599/18 are concerned.
6. Ld. counsel for the respondents on the other hand argued that Mr. Jatin Kishore never intimated MCD that he has purchased a shop at ground floor nor got it mutated in his name. The sanctioned building plan under Saral Scheme for the entire subject property was obtained by Smt. Elaichi Devi on 08.01.2018 which was done with the consent of the appellants of appeal no. 599/18 and therefore, the MCD rightly issued notice in the name of Smt. Elaichi Devi which were duly replied by her and personal hearing was also given to her. The appellants have constructed five shops in the stilt which is unauthorized and further they have not demolished the entire unauthorized construction in the property which includes projections on municipal land and therefore the appeals are meritless and should be dismissed.
7. I have perused the record. Smt. Elaichi Devi obtained the sanctioned building plan dated 08.01.2018 for the entire subject property under the Saral Scheme. She never informed MCD that there are other owners of the property. As per

para 7(6) of appeal no. 599/18, the appellant no.1 gave no objection to Smt. Elaichi Devi for raising construction from ground to fourth floor. Once these appellants gave no objection to Smt. Elaichi Devi, who obtained sanctioned building plan under Saral Scheme, there was no reason for MCD to issue notices in the name of Mr. Jatin Kishore Sharma and his sister. They did not bother to inform MCD about their ownership nor took any objection as to how Smt. Elaichi Devi can obtain sanctioned building plan for the entire property when she is not the owner of the same. In these facts, the MCD rightly issued show cause notices in the name of Smt. Elaichi Devi. Notice to the owner/builder or to the person at whose instance the construction is raised is proper notice and sufficient compliance.

8. Coming to the merits of these three appeals. The sanctioned building plan dated 08.01.2018 has already been revoked on 09.05.2025 and that order has not been challenged. As on date, there is no sanctioned building plan of this property. The construction admittedly was raised after 08.01.2018 when the sanctioned building plan under Saral Scheme was obtained and therefore, there is no protection available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
9. Coming to the arguments of the appellants that they have demolished entire non-compoundable deviations, the status report filed by MCD dated 07.02.2023 states that part projections at stilt to third floor still exists in one side of the property. The height of the stilt is 2.6 to 2.9 meters against permissible height of 2.4 to 2.7 meters. There are five shops at stilt floor. These non-compoundable deviations still exist in the property. Further, the appellants have only demolished the projections on one side of the property but the reinforcement have not been cut. All these non-compoundable deviations still exist in the property and in these facts there is no infirmity in the impugned orders. Otherwise also, the act of demolishing the excess coverage and non-compoundable deviations after filing these appeals clearly show that there were and are non-compoundable deviations in the property which resulted in passing the impugned orders and all the orders are required to be upheld. The stilt floor cannot be used for any purpose other than parking where as the appellants have raised five shops in the stilt.

10. In these facts, the impugned orders do not suffer from any infirmity and are upheld. The three appeals are dismissed being meritless.
11. Record 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 27.07.2026**

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