

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

APPEAL NO. 461/ATMCD/2017

APPEAL NO. 500/ATMCD/2017

**Kiran Khanna
W/o Sh. Rajesh Khanna
R/o H.No. 2450, 2nd & 3rd Floor
Hudson Lane, Kingsway camp
Delhi - 110009**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	08.06.2017 & 10.07.2017
Date of Judgment	:	28.07.2026

JUDGMENT

1. These are the two appeals challenging the rejection of regularization application order dated 24.04.2017 in appeal no. 461/17 in respect of second and third floor and demolition order dated 11.06.2017 in appeal no. 500/17 passed in respect of the unauthorized construction carried out in the property/building no. 2450 Hudson Lines, Kingsway Camp, Delhi -110009 in the shape of excess coverage and deviations from Sanctioned Building Plan at Ground Floor, First Floor, Second Floor and unauthorized construction at half portion of Third Floor. The appellant is concerned only for Second and Third Floor (hereinafter referred as subject-property).

2. The brief facts necessary for disposal of these appeals are that the appellant purchased the second floor with roof rights of property no. 2450, Hudson Line, Delhi through registered Agreement to Sell, GPA etc. dated 26.03.2012 from Smt. Pushpa Jain. The appellant applied for regularization of the construction at the second and third floor on 10.03.2017 and the respondent vide order dated 24.04.2017 rejected this regularization application on the ground that there did not exist policy for floor-wise regularization. The respondent also issued show cause notice under section 344/343 DMC Act dated 08.03.2017 in respect of unauthorized construction in the shape of excess coverage and deviations from sanctioned building plan dated 11.07.1994 at ground, first and second floor and unauthorized construction at half portion of third floor.
3. The appellant as well as the owner/occupier of the ground and first floor submitted their replies. The respondent thereafter passed the demolition order dated 11.06.2017 wherein protection was given to the existing construction at ground floor to the extent of 111.89 sq. meters and 112.66 sq. meters each at first and second floor under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 on the basis of the property tax returns for the year 2006-07. The appellant and the owner/occupier of ground land first floor were directed to demolish the construction which is not protected.
4. The ground floor owner challenged this demolition order in separate appeal no. 476/17 and the first floor owner in appeal no. 510/17 and both the appeals were allowed vide common judgment dated 22.12.2025 where the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 was given to the entire construction at ground and the first floor. The owner of the ground floor is intervener in this appeal.
5. The appellant has challenged the rejection of regularization order on the ground that the respondent did not consider the law settled by Hon'ble High Court in several judgments directing the respondent to consider floor-wise regularization and the demolition order has been challenged on the ground that the construction at the second and third floor is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

6. It was argued by the Id. Counsel for the appellant that the rejection of regularization order is bad in law since the same is contrary to the law laid down by Hon'ble High Court. It was further argued that the show cause notice under section 344/343 of DMC Act as well as the impugned demolition order records that the construction is old and occupied and the respondent without considering the documents of the appellant which show that no fresh construction was raised by the appellant after 08.02.2007, passed the impugned demolition order which should be set-aside.
7. Id. counsel for the MCD and Intervener on the other hand argued that as per title documents of the appellant, the property was built up only up to second floor as on 26.03.2012 and the appellant not only raised unauthorized construction at the third floor after purchasing the property but also extended the balcony at second floor and as such same are not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and are liable to be demolished.
8. I have perused the record. The appellant in regard to the demolition order has claimed protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 claiming that the construction at the second and the third floor is prior to 08.02.2007. The title documents of the appellant are sufficient to hold otherwise. The appellant purchased the second floor with roof rights through registered agreement to sell and GPA dated 26.03.2012. In these documents, the number of floors of the property at page 2 are mentioned as basement plus three which means basement, ground, first and second floor. Further, at page 3 of these documents, it is mentioned that the vendor has sold second floor portion with roof rights of this property. These documents do not mention about any construction at the terrace of the second floor i.e. third floor. It means that any construction existing at the third floor has been raised after 26.03.2012 when the appellant purchased the second floor with roof rights. As per affidavit of existing construction filed by the appellant along with these appeals, the covered area at the third floor is 67 sq. meters. and therefore, this construction raised after 08.02.2007, unless otherwise regularized is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being raised without any sanction.

9. Coming to the second floor of the property, the status reports which have not been objected by the appellant and the photographs filed on record by the intervener as well as MCD show that the appellant has reconstructed the balcony at second floor and has extended the width of the balcony. The status report dated 04.01.2024 along with a photograph dated 01.11.2023 clearly show that the second floor balcony has been extended by the appellant after 26.03.2012. The construction from the naked eye can be adjudged as fresh and cannot be said to be protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
10. This Tribunal while deciding the appeals filed by the ground floor and first floor owner/occupier observed that the photographs show new construction at second and third floor and no change in the building structure at ground and first floor since 1996. It is also relevant to note that as per impugned order, the construction existing at the second floor is 122.07 sq. meters whereas the construction protected as per property tax returns of 2006-07 is 112.66 sq. meters. The appellant as such increased the covered area by almost 10 meters at second floor by extending the balcony of second floor and the same was done after purchasing the property on 26.03.2012. The appellant thus violated the status quo required to be maintained qua construction at the subject-property as existing on 08.02.2007 and therefore, is not entitled to protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The same however is subject to the regularization of existing structure. In these facts the demolition appeal has no merits and the unauthorized construction at third floor and further extension of balcony at second floor, after 26.03.2012, which is in excess to the protected covered area of 112.66 sq. meters is liable to be demolished. The demolition appeal no. 500/17 is dismissed.
11. Coming to the second appeal challenging the rejection order. The respondent rejected the regularization application in respect of subject-property on sole ground that there is no policy of floor-wise regularization. The respondent in this regard totally ignored the law laid down by Hon'ble Delhi High Court in several judgments. The Hon'ble High Court in the case of "*MCD Vs. Smt. Usha Devi Sharma 2006 III AD (Delhi) 515*" held that when a property is segregated in different portions and mutated accordingly, then there is no

need for all the co-owners and the owner of a flat or floor in a property can apply for sanction building plan or regularization of his flat or floor. This judgment was followed in subsequent judgments passed in “*LPA No. 134/17 dated 26.04.2017 titled as Harish Bajaj and Anrs. Vs. North DMC*” and “*Kanwal Sibbal Vs. NDMC 220 (2025)DLT 148*”.

12. In view of the law laid down by Hon'ble High Court the rejection of regularization application order dated 24.04.2017 is not sustainable. Even otherwise, the respondent now has a policy for floor-wise regularization and it has been informed today during further arguments that the appellant has already applied for regularization of the subject-property under floor-wise regularization policy. The respondent is required to decide the same on merits keeping in view the law settled in these judgments and as per floor-wise policy.
13. In these facts, the impugned rejection order dated 24.04.2017 is set-aside and the respondent is directed to consider the regularization application as per floor-wise regularization policy.
14. In view of the same, both the appeals are disposed of. The impugned demolition order dated 11.06.2017 though upheld, is kept in abeyance till the respondent decide the regularization application of the appellant as per law. The respondent shall be at liberty to take action if the regularization application is rejected. If the construction at subject-property is regularized, the demolition order shall become in-fructuous.
15. Record of these two appeals, as well as of appeal no. 476/17 which was tagged with these appeals be consigned to record room. The original MCD record tagged in all the three appeals be sent back.

**Announced in the open Court
today i.e. on 28.07.2026**

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