

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

APPEAL NO. 536/ATMCD/2023

**Dr. R. C. Sharma
S/o Sh. B. B. Sharma
R/o D-43, First Floor
Gulmohar Park, New Delhi**

..... Appellant

Versus

- 1. Municipal Corporation of Delhi
Through its Commissioner
Civic Centre, Minto Road
New Delhi**
- 2. Mr. Nitin Kapoor
S/o Sh. R.C. Kapoor
R/o D-43, Ground Floor
Gulmohar Park, New Delhi**

..... Respondents

Date of Filing of Appeal	:	17.08.2023
Date of Judgment	:	17.08.2026

JUDGMENT

1. This is an appeal filed by the owner/occupant of the first floor challenging the sanction order dated 12.12.2022 granted for additional construction of Second Floor and part Third Floor in the Property No. D-43, Gulmohar Park, New Delhi (hereinafter referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the appellant is the owner of the first floor of this property vide registered sale deed dated 03.12.2003 with proportionate ownership rights in the land underneath. Respondent no. 2 is the owner of ground floor and the terrace of the first floor and above. Respondent no. 2 applied and obtained the impugned sanction dated 12.12.2022 under the floor-wise sanction policy for additional construction of the second and part third floor.

3. The appellant has challenged this sanction in this appeal on the ground that the property was having only ground and first floor when it was purchased by the appellant on 03.12.2003 with proportionate land underneath. If the respondent no. 2 is permitted to build second and part third floor in the property, the proportionate share of the appellant in the land underneath shall decrease. Further, is the issue of structural safety. The respondent no. 2 obtained a frivolous structural safety certificate and the appellant was never informed when this inspection was carried out. The property is 50 years old and the construction of additional second and part third floor will put additional load on the building and the same is likely to cause damage to the building. The floor-wise sanction policy dated 28.06.2022 does not permit respondent no. 2 to build a new floor which never existed in the building. This policy cannot be misused to build additional floors. Respondent no. 2 has falsely claimed that he is the owner of the third floor when no third floor exist in the building and any construction of the second and third floor cannot proceed without consent of the appellant and therefore, this appeal should be allowed and the impugned sanction dated 12.12.2022 should be revoked.
4. Ld. counsel for MCD on the other hand argued that the structural safety certificate issued by Jamia Milia University which is out of the list of the panel authorities, cannot be challenged before this Tribunal. This structural safety certificate is sufficient to hold that the sanction dated 12.12.2022 has been issued by MCD as per floor-wise sanction policy and there are no merits in this appeal.
5. Ld. counsel for respondent no. 2 on the other hand argued that respondent no. 2 being owner applied for sanction plan for construction of second floor and part third floor which was granted on 12.12.2022 in terms of floor-wise sanction policy and respondent no. 2 constructed the second and part third floor accordingly. The structural safety certificate was issued by empanelled institute which was relied by MCD for issuing this sanction. The appellant has no right, title or interest in this property except the first floor and has no locus to file this appeal and therefore, the same should be dismissed. Ld. Counsel for R-2 placed reliance on the judgment of Hon'ble High Court titled as Asha Johri Vs. Neerja Rajput and Others 210 (2014) DLT 209.

6. I have perused the record. As per sale deed dated 03.12.2003 executed in favour of the appellant, the appellant is the owner of only the first floor with proportionate right in the land underneath. The appellant is not the owner of the terrace of the first floor and upwards. Respondent no. 2 who is the owner of ground floor and has terrace rights of the first floor sought sanction to build second and part third floor as per floor-wise policy.
7. He obtained the sanction dated 12.12.2022 after completing all the formalities including structural safety certificate. At that time, there was no dispute in respect of the structural safety certificate obtained by R-2. The appellant after knowing about this sanction, challenged the same and got one structural safety certificate stating that the construction of additional floors shall cause damage to the existing structure. MCD asked respondent no. 2 to furnish structural safety certificate from empanelled authorities and in pursuance thereto, a certificate was issued by Jamia Milia Islamia in respect of this property.
8. Jamia Milia Islamia is an empanelled institute and the appellant has no right to claim that he was not informed in advance about the inspection carried out by Jamia Milia Islamia. The appellant also obtained a structural safety report for this property but never informed respondent no. 2, when the inspection was carried out by the Ekai Homes. When respondent no. 2 was neither informed nor was present when officials of Ekai Homes carried out inspection, the appellant cannot claim that he should have been informed in advance about the inspection by officials of Jamia Milia Islamia. The respondent no. 2 has a valid structural safety certificate and it cannot be doubted only because the appellant has some apprehensions about the safety of the building.
9. Under the floor-wise sanction policy, an owner can seek sanction for constructing additional floors as permitted under MPD-2021. Neither consent nor NOC of the other floor owners is required. There is no merits in the argument of the appellant that a floor must exist before obtaining sanction to construct the same. The sanction is accorded to raise construction of additional floor and pre-existence of that floor cannot be a mandatory requirement. The sanction to construct a second and part third floor under floor-wise sanction policy dated 28.06.2022 has been rightly obtained by respondent no. 2 and no consent of appellant is required.

10. Coming to the argument of the appellant regarding proportionate share in the land underneath. The appellant still has that share in the land underneath which otherwise will be relevant only when the land underneath alone shall be sold. Construction of additional floors as permitted under MPD-2021 shall not affect the share of the appellant in the land underneath and sanction cannot be revoked on this ground.
11. In view of this discussion, there is no ground to revoke the sanction and the appeal is dismissed.
12. Record of the respondent, if any, be returned along with copy of this order and appeal file be consigned to record room.

**Announced in the open Court
today i.e. on 17.08.2026**

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