

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

APPEAL NO. 468/ATMCD/2019

**Chander Shekar
S/o Sh. Shankar Lal Bansal
R/o 10D, Satyawati Colony
Janta Flats No. 1
Delhi**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	14.08.2019
Date of Judgment	:	20.08.2026

APPEAL NO. 469/ATMCD/2019

**Bhagat Singh
S/o Sh. Shankar Lal Bansal
R/o 10 D, Satyawati Colony
Janta Flats No. 1
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..... Appellant

Versus

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JUDGMENT

1. These are the two appeals challenging the two demolition orders both dated 14.08.2018 passed in respect of unauthorized construction carried out in two first floor flat no.10-D, DDA Janta Flat, Phase-3, Ashok Vihar, Delhi in appeal no. 468/19 and flat no.10-C, in appeal no. 469/19 respectively (hereinafter referred as subject properties) in the shape of deviation from standard building plan at first floor and additional second floor.
2. The brief facts necessary for disposal of these appeals are that both the appellants are real brothers living at these two first floor flats. Their mother late Smt. Veena Rani was the owner of these two flats by virtue of different sale deeds. After her death, the legal heirs relinquished their shares in favour of these two appellants making them absolute owners of their respective flats. One Smt. Sushma Verma, resident of ground floor flat no. 10-B filed civil suit against the appellants impleading MCD as defendant claiming unauthorized construction in these two flats. The respondent MCD issued two show cause notices dated 03.08.2018 to the appellants. Both the appellants replied the show cause notices through separate replies dated 23.08.2018 and the respondent passed the two impugned demolition orders dated 14.08.2018.
3. Both the appellants have challenged the demolition orders primarily on the ground that the construction is old and prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The respondent without inspection and without verifying the facts, booked the properties because of the civil suit filed by Smt. Sushma Verma who herself was raising unauthorized construction in her flat and therefore the impugned orders should be set aside.
4. Ld. counsel for MCD as well as intervener on the other hand argued that the photographs of the property clearly show that huge unauthorized construction has been carried out by the appellants in the subject properties. The appellants have encroached upon the courtyard of their respective flats. The house tax record clearly show that additional construction has been raised after 08.02.2007 which is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and therefore the

appeals should be dismissed. It was also argued that the appeals are barred by limitation and the delay is unexplained and cannot be condoned.

5. I have perused the record. As far as the aspect of limitation is concerned, the demolition order in respect of property no. 10-D was received by one Ms. Mamta Bansal on 16.08.2018. The show cause notice and the demolition order were however in the name of Chander Shekhar. The respondent has failed to explain as to why it was served on Mamta Bansal and how she is related to the property. In the other appeal, in respect of property no. 10-C, the demolition order was served through pasting on 20.08.2018 but there is no proof of pasting like photograph nor witnesses to this pasting and this service through pasting cannot be said to be proper service. In these facts, the delay is condoned with an endeavor to decide the appeals on merits.
6. Coming to the merits of the appeals. The two FIR registered by the respondent show that the properties were booked on court case with noting that same are old and occupied. No fresh on-going construction was found at site and it appears that there was no physical inspection done by MCD at the time of booking.
7. The house tax record filed in respect of flat no. 10-C show that as on 01.04.1988, the appellant or his mother added one room at first floor and two rooms at the second floor. The same was done in 1988 which was much prior to 08.02.2007. Though it is correct that as per status report filed by MCD, the construction existing at second floor is of two rooms, a store, bath, kitchen and varandah but there is no material on record to ascertain the exact date of this additional construction. The booking was done on a complaint recording deviation at first floor against Standard Building Plan and additional second floor. The deviations from Standard Building Plan were not mentioned in the show cause notice nor the MCD record contains any Standard Building Plan of DDA.
8. Similarly, in respect of flat no. 10-D, the appellant has placed on record house tax record showing that one room was added at first floor and additional room was constructed at the second floor on 23.09.1986. The appellant has been paying property tax in respect of this additional construction since then. In respect of this flat there is an additional construction of one room, one bathroom

and kitchen at second floor but again the record is silent as to when the same was raised.

9. In both these appeals, the show cause notices and the impugned orders are silent in respect of the said deviations at first floor, the proximate period of the unauthorized construction at second floor is not mentioned, whereas the appellants have shown that the second floor was added much prior to 08.02.2007. The unauthorized construction was not booked at the time of construction. Even the photographs filed by the intervener do not show on-going construction.
10. In these facts, the demolition orders are upheld but kept in abeyance till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. The respondent shall be at liberty to take action against the unauthorized construction once this Act ceases to be in force.
11. 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 20.08.2026**

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