

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

APPEAL NO. 731/ATMCD/2022
APPEAL NO. 732/ATMCD/2022
APPEAL NO. 77/ATMCD/2023
APPEAL NO. 78/ATMCD/2023

Joginder Kumar
S/o Late Sh. Gian Prakash
R/o 252, Tarla Mohalla, Village Ghitorni
New Delhi - 110030

..... **Appellant**

Versus

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

..... **Respondent**

Date of Filing of Appeal	:	29.11.2022 & 15.02.2023
Date of Judgment	:	21.08.2026

JUDGMENT

1. These are the four appeals challenging the demolition order dated 05.04.2022 in appeal no. 732/22 and the sealing order dated 21.11.2022 in appeal no. 731/22 booking the unauthorized construction carried out in the shape of Ground Floor & First Floor and further demolition order dated 08.06.2022 in appeal no. 77/23 & the sealing order dated 15.07.2022 in appeal no. 78/23 booking the unauthorized construction carried out in the shape of part second floor which have been passed in respect of the property adjoining to Plot No. 32, Khasra No. 853, Club Road, Village Ghitorni, New Delhi (hereinafter referred as subject property).
2. The brief facts necessary for disposal of these appeals are that the appellant is the owner of this subject property stated to be bearing plot no. 5 out of khasra no. 850/2, 853, 856/1, 859 and 860 at village Ghitorni. As per this appeal

the appellant purchased this property from late Sh. Badley who was the recorded co-owner of land in these khasras. Late sh. Badley vide unregistered GPA, agreement to sell etc. dated 08.06.2002 sold land measuring 594 sq. yards to the appellant. The respondent booked the unauthorized construction in the shape of ground floor and first floor vide show cause notice dated 28.03.2022 followed by the demolition order dated 05.04.2022. Thereafter, the show cause notice under section 345-A of the DMC Act dated 02.05.2022 was issued and the sealing order dated 21.11.2022 was passed. Subsequently, the respondent vide show cause notice dated 30.05.2022, booked the unauthorized construction in the shape of part second floor in continuation of the previous booking dated 28.03.2022 followed the demolition order dated 08.06.2022. Thereafter, fresh show cause notice under section 345A of the DMC Act dated 24.06.2022 was issued followed by the sealing order dated 15.07.2022.

3. The appellant has challenged these four orders on the ground that the show cause notices were not issued in the name of the appellant, nor they mentioned the correct particulars of the property nor were served upon the appellant. It was also argued for the appellant that the construction up to part second floor is old and prior to 01.06.2014 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant was repairing the property when one neighbor of the appellant Mr. Neeraj filed false complaint and the respondent booked the property without verification of facts and therefore the impugned orders should be set aside.
4. Ld. counsels for respondent on the other hand argued that there is no dispute to the identity of the property. The property is situated in unauthorized colony where private numbers have been given by the owner/occupiers. The show cause notices were duly served by way of pasting, of which photographs are available in office record. The unauthorized construction was initially booked at ground and first floor but the appellant did not desist and raised even the part second floor which can be seen from the photographs taken by the respondent and since the unauthorized construction has been raised after 01.06.2014, the same is not protected under National Capital Territory of

Delhi Laws (Special Provision) Second Amendment Act, 2011 and the appeals are liable to be dismissed.

5. I have perused the record. As far as the service of the show cause notices is concerned, the first show cause notice under section 344/343 of the DMC Act dated 28.03.2022 was served through pasting since it was refused by the appellant. The photographs of the said pasting are available in the office record which show that not only the show cause notice was duly pasted, but also show the on-going construction.
6. Similarly, the second show cause notice under 344/343 of DMC Act dated 30.05.2022 was served through pasting because of refusal and the photographs of pasting are available in the office record. Service through pasting in case of non-availability / refusal is proper service as provided under section 444 of the DMC Act for which reliance can also be placed on the following judgments of Hon'ble High Court .

- 1)Paramjeet Kaur V/s MCD 1994 (56) DLT 720
- 2) Narender Prasad Dube V/s. Union of India 1999 (81) DLT 378.
- 3) Hari Dutt Vashistha V/s. MCD 1978 (2) ILR (Delhi) 28.
- 4) Usha Devi Sharma V/s. MCD 2020 (271) DLT 76.

7. Coming to the argument of the appellant that correct address of the subject property was not mentioned in the show cause notice. Admittedly the property is situated in unauthorized colony which does not have municipal number. There is no dispute that the subject property is adjoining to plot no. 32 falling in khasra no. 853, village Ghitorni.
8. In this regard, the affidavit of the appellant filed in FIR No. 347/22 registered against him for raising unauthorized construction is relevant. In this FIR registered at PS – Fatehpur Beri, record of which has been filed by the appellant himself, the appellant filed an affidavit dated 01.09.2022 wherein he stated an oath that the subject property falls in khasra no. 853/1 bearing plot no. 4 measuring 595 sq. yards. As per this affidavit of appellant, the address of the plot as on 01.09.2022 was plot no. 4 part of khasra number 853/1 and in the present appeal, it is stated that it is plot no. 5 which is part of khasra no.850/2, 853, 856/1, 859 and 860 at village Ghitorni. This clearly show that the property numbers keep on changing as per the choice of the

owner/occupier in unauthorized colony. The appellant himself has given different particulars of the subject property. There is no dispute to the identity of the subject property and the submissions of the appellant is without any merits.

9. Coming to the merits of the appeal. The first booking dated 28.03.2022 was in respect of unauthorized construction at ground and first floor. The appellant did not stop there and then and not only completed the construction at ground and first floor but also raised construction in part portion of second floor booked on 30.05.2022. The photographs of on-going construction are available in office record which show that unauthorized construction has been raised in 2022 from ground to part second floor.
10. The appellant has not filed any document to show that this construction is old and prior to 01.06.2014. Even the electricity bill relied by the appellant show the date of energization as 28.02.2016 which clearly show that some part of the property was existing in 2016 which was after 01.06.2014 and thereafter, further unauthorized construction has been raised in 2022.
11. In these facts there are no merits in the two appeals no. 732/22 and 77/23 challenging the demolition orders dated 05.04.2022 and 08.06.2022. Both these appeals are dismissed.
12. Coming to other two appeals challenging the two sealing orders, the record shows that none of the show cause notices under section 345A of the DMC Act dated 02.05.2022 and 24.06.2022 were served upon the appellant. Since these two show cause notices were never served, the opportunity of reply and hearing was not provided to the appellant. Therefore, the two appeals against the sealing orders no. 731/22 and 78/23 are allowed and the impugned sealing orders dated 15.07.2022 and 21.11.2022 are set aside and matter is remanded back with directions to the respondent to pass fresh speaking order after giving opportunity of reply and hearing to the appellant.
13. The appellant shall appear before the Quasi Judicial Authority with his reply and documents on 07.09.2026 at 3 PM and the Quasi Judicial Authority shall pass speaking order within six weeks of conclusion of the hearing. However considering the fact that the demolition orders have been upheld, the property shall not be de-sealed during fresh hearing and the respondent shall be at liberty to de-seal, if the speaking order is passed in favour of the appellant.

14. All the four appeals stand disposed of. Records 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 21.08.2026**

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