

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

APPEAL NO. 1089/ATMCD/2015

**Smt. Lalita Gupta
S/o Shri Prahlad Chand Gupta
R/o 9/2384, Gali No. 12
Kailash Nagar, Delhi-110031**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	24.11.2015
Date of Judgment	:	31.08.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 16.11.2015 passed against the unauthorized construction carried out in the property No. IX/2384, Gali No. 12, Kailash Nagar, Delhi in the shape of Ground Floor, First Floor, Second Floor, Third Floor & Fourth Floor with projections (hereinafter referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the appellant was the owner of the entire property measuring 100 sq. Yards and she sold 50 sq. yards out of this property to one Ms. Sunita Jain vide registered sale deed dated 04.06.2014. The respondent booked the unauthorized construction in the subject property in the shape of ground to fourth floor vide show cause notice dated 31.12.2014 and passed the demolition order dated 16.01.2015 which was challenged by the appellant in earlier appeal no. 30/15. That appeal was allowed by the Tribunal on 23.01.2015 and the matter was remanded back with directions to the respondent to pass speaking order. The

respondent in pursuance to that order, provided personal hearing to the appellant and passed the impugned order.

3. The appellant has challenged this order on the ground that there does not exist any fifth floor in the property as mentioned in the impugned demolition order and the order being wrong in part is liable to be set aside. It was further argued that the construction is old and existing much prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 for which reliance was placed on a rent agreement dated 01.04.2005 which was in respect of two room set with kitchen on the third floor of this property. It was argued for the appellant that the respondent booked the property because of a civil suit filed by Mr. Narender Gupta who is the brother of appellant's husband when in fact no construction was going in the property. The respondent did not consider the documents of the appellant showing that the construction is old and protected and passed the order mechanically which is liable to be set aside.
4. Ld. counsel for MCD on the other hand argued that this property was sub divided in 2014 when the appellant sold 50 sq. yards out of 100 sq. yards to one Ms. Sunita Jain and thereafter, the appellant raised fresh construction in unsold 50 sq. yards and the same was raised without any sanction. There exist projections on each floor on the municipal land. The construction being raised after 08.02.2007 in the subject property located in unauthorized regularized colony is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and is liable to be demolished.
5. I have perused the record. There is no dispute to the fact that the appellant sold 50 sq. yards out of 100 sq. yards to one Ms. Sunita Jain on 04.06.2014. The portion towards the eastern side of the property was sold to Ms. Sunita Jain and the remaining portion towards west remained with the appellant. The property prior to sale was a single property existing on 100 sq. yards of land which was sub divided in two portions of 50 sq. yards each and the eastern side portion was sold.
6. The property tax returns relied by the appellant show that the property at that time was constructed only at ground and first floor with covered area of 62.90 sq. meters (76 sq. yards) at ground floor and only 17 sq. meters at the first floor. This clearly show that out of total area of 100 sq. yards at ground floor,

there was a covered area of around 76 sq. yards as on 2007-08. The appellant sold 50 sq. yards in 2014 and reconstructed the unsold area which is subject property.

7. This clearly show that none of the floors existing prior to the cut of date of 08.02.2007 are in the same position as were existing on that day. Not only that there were only ground and first floor as on 31.03.2008 as per property tax record, the property was divided into two parts and the portion unsold by the appellant has been reconstructed.
8. The appellant has relied upon photocopy of a rent agreement dated 01.04.2005 to show that the third floor was existing prior to 08.02.2007. The original of this rent agreement was not produced before this Tribunal nor in the civil suit filed by Narender Kumar Gupta against the appellant and her husband. Even in that suit, this rent agreement was marked as mark-A. The appellant therefore has not been able to show that this rent agreement is a genuine document. Otherwise also, this rent agreement is contrary to the property tax return of the years 2006-07 and 2007-08 which do not show any second and third floor in the property.
9. The property as on date consist of stilt, ground to third floor with projections on municipal land and there is no document to establish that this construction is existing since prior to 08.02.2007. The brother of the appellant's husband filed civil suit on 26.11.2014 around the time when the appellant raised fresh unauthorized construction after selling 50 sq. yards on 04.06.2014. The construction was raised much after the cut of date of protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 which is 08.02.2007 for the subject property.
10. Further there is nothing wrong in the impugned order as far as number of floors are concerned and the argument to set aside the order on this ground is merit less.
11. In these facts there are no merits in the appeal and the same is dismissed and the demolition order is upheld.

12. 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 31.08.2026**

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