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

APPEAL NO. 404/ATMCD/2023

Sh. Ram Kishan Saini
Son of Sh. Raghubir Saini
Resident of House No. 2633
Roshanpura Chowk, Nai Sarak
Delhi - 110006

……….. Appellant

Versus

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

……… Respondent

Date of Filing of Appeal	**:**	**04.07.2023**
Date of Judgment	**:**	**02.09.2026**

JUDGMENT

1. This is an appeal challenging the demolition order dated 02.06.2023 passed in respect of unauthorized construction carried out at First Floor and Second Floor in property No. 2633, Nai Sarak, Delhi–110006 (hereinafter referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the appellant is in occupation and possession of the subject property since long and paying property tax since 2004. The respondent vide show cause notice dated 24.07.2015 booked the unauthorized construction at first and second floor followed by a demolition order dated 02.09.2015. The appellant challenged this demolition order in appeal no. 708/15 which was allowed on 31.08.2022 with directions to the respondent to pass speaking order after considering the reply

and after providing personal hearing to the appellant. The respondent in compliance to this order, heard the appellant and passed the impugned demolition order on 02.06.2023.

3. The appellant has challenged this order on the ground that no fresh construction has been raised in the property and only repairs as permissible under clause 6.4.1 of Building Bye Laws were carried out. The tenant at ground floor shop started repairing his shop in 2015 and on some false complaint, the respondent booked the property at first and second floor, which is old and occupied and existing much prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was also argued for the appellant that the impugned order is also barred by limitation as respondent has to take action within a period of three years from the date of completion of alleged unauthorized construction and any action after three years is barred by limitation for which reliance has been placed on the judgment of Hon'ble Gauhati High Court passed in *Jadav Chandra Dass Vs. Gauhati Municipal Corporation 1995 Law Suit (GAU)175.* It was also argued that if a part of the impugned order is not sustainable, the entire order is liable to be quashed for which a reliance has been placed on the judgment of Hon'ble Delhi High Court passed in *Prem D. Gupta Vs. MCD 1974 RLR 163.*

4. Ld. counsel for respondent on the other hand argued that the judgment of Hon'ble Gauhati High Court is not applicable as DMC Act is a special Act applicable to Delhi. Further, it was argued that the appellant after demolishing the first floor, reconstructed the first and second floor which were rightly booked by the respondent. The Hon'ble High Court in the judgment passed in Rent Civil Revision No. 99 of 2009 dated 28.11.2011,which was in respect of subject property and was filed by the owner of the property against the tenant, mentioned in para 2 that there are only two rooms, one tin-shed, bathroom & latrine on the first floor and a tin-shed on the second floor and the appellant demolished this old structure and raised fresh first and second floor after 08.02.2007 which are not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the appeal should be dismissed.

5. I have perused the record. The appellant has claimed 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. In this regard, the property tax returns filed by the appellant are relevant. As per the property tax returns from 2004-05 till 2011-12, the covered area at the first floor was 100 sq. yards equivalent to 83.61 sq. meters and at the second floor was 52.6 sq. yards equivalent to 44 sq. meters. However, for the next year i.e. 2012-13, the covered area at the first floor remained same but for the second floor, it increased to 100 sq. yards. The subsequent property tax returns are for the same covered area i.e. 100 sq. yards each at the first and the second floor. So the contention of the appellant that the construction is old and much prior to 08.02.2007 is factually incorrect. The appellant increased the covered area at second floor by raising fresh construction and the cubic content of area was increased.
6. Coming to the construction at first floor. The appellant has placed on record two site plans, one is at page 86 submitted to the authorities with property tax returns of 2011-12 and the second site plan is at page 149 of the appeal paper book showing existing construction at the time of filing this appeal. A comparison of these two site plans show that even the first floor of the property has been reconstructed after demolishing the old structure. The kitchen on the front side measuring 12 feet 3 inch x 6 feet has been converted into a room measuring 13 feet 2 inch x 9 feet 8 inch. The two bathrooms adjacent to kitchen have been converted into one. The lobby in front of office has been merged into the office and now there is no lobby in the property. Similarly the size of the two rooms adjacent/behind the kitchen has been changed.
7. Coming to the second floor, the passage and lobby have been converted into a drawing room and a store has been converted into a bathroom and the bathroom has been converted into a room. This clearly show that not only the second floor has been freshly constructed by increasing the cubic content, even the construction at first floor has been raised after demolishing the old structure. In these facts, no part of the impugned demolition order, booking the first and the second floor is bad in law and the judgment passed in "Prem D. Gupta Vs. MCD" (Supra) is not applicable.

8. Coming to the aspect of limitation, though the judgment of Hon'ble Gauhati High Court passed in respect of Gauhati Municipal Act 1971 is not applicable to DMC Act, however even if the same is applied to the facts of the present appeal, the action of MCD is not barred by limitation. In the case before Hon'ble Gauhati High Court, the properties were constructed in 1945, 1948 and in 1977 and further the property tax was duly paid since then. The Gauhati Municipal Authority issued show cause notice on 02.04.1994 claiming unauthorized construction and the Hon'ble High Court held that the limitation to take action against the unauthorized construction shall be will be three years from the date of completion of construction and the show cause notice was held to be barred by limitation.
9. However in the present appeal, the show cause notice is dated 24.07.2015 whereas the unauthorized construction was raised sometime after 01.04.2012 and before 31.03.2013 as per the property tax returns filed by the appellant. There is difference of covered area in the property tax returns starting from 2012-13, which was filed on 25.03.2013. The respondent issued show cause notice within a period of three years and even if, it is presumed that the judgment of Hon'ble Gauhati High Court is applicable, the action of respondent is not barred by limitation.
10. In these facts there are no merits in the appeal and same is dismissed and the demolition order is upheld.
11. 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 02.09.2026

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