

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

APPEAL NO. 343/ATMCD/2013
APPEAL NO. 385/ATMCD/2013

Smt. Mamta Tyagi
W/o Shri Ashok Tyagi
R/o 167
Village & PO Burari
Delhi – 110084

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	08.07.2013 & 23.07.2013
Date of Judgment	:	03.09.2026

JUDGMENT

1. These are the two appeals challenging the order of revocation dated 10.06.2013 of sanction building plan in appeal no. 343/13 and the demolition order in appeal no. 385/13 passed in respect of unauthorized construction carried out in property/flat No. 57 (Duplex), Mall Apartments, Mall Road, Delhi in the shape of shifting/addition of walls at Second Floor and rooms, toilet, bathroom, staircase at Third Floor and a room, toilet at Fourth Floor (hereinafter referred as subject property).
2. The brief facts necessary for disposal of these appeals are that the appellant is the owner of subject property by virtue of registered sale deed dated 03.10.2012. The appellant after purchasing the property obtained a sanction building plan dated 01.02.2013 for raising additional construction at the third floor and at the terrace of the third floor. The appellant thereafter started rais-

ing construction as per the sanction building plan and this construction was challenged by the intervener by filing writ petition before the Hon'ble High Court where it was informed by MCD that there exist a sanction building plan dated 01.02.2013. Complaints were also made with MCD and Delhi Police regarding unauthorized construction being raised by the appellant.

3. The respondent in pursuance to these complaints issued a show cause notice under section 344/343 of DMC Act booking unauthorized construction in the shape of shifting/ addition of walls at Second Floor and rooms, toilet, bathroom, staircase at Third Floor and a room, toilet at Fourth Floor. The respondent thereafter passed the impugned demolition order dated 16.07.2013. Prior to this booking, there was an earlier booking vide show cause notice dated 25.04.2013 and demolition order was passed on 10.05.2013. Simultaneously, the respondent also issued a show cause notice dated 07.05.2013 under section 338 of the DMC Act seeking revocation of the sanction building plan dated 01.02.2013. In pursuance to this show cause notice, the revocation order dated 10.06.2013 was passed revoking the sanction building plan dated 01.02.2013.
4. The appellant has challenged these two orders on the ground that the construction has been raised as per sanction building plan dated 01.02.2013. The appellant has not violated any term and condition of the sanction plan dated 01.02.2013, the MCD did not bother to inspect the property to ascertain the deviations, if any in the subject property vis-a-vis the sanction building plan. The DDA Policy Guidelines provide certain deviations and modifications in the existing standard building plan of the subject property. Only location of room was changed which can be regularized. It was argued for the appellant that the alleged deviations have already been removed after filing this appeal which has been verified by MCD and the construction existing as on date is totally in compliance to the sanction building plan dated 01.02.2013. There are other properties in the Mall apartments having similar construction on the bridge between the two buildings and no action has been taken by MCD against those properties and only the subject property has been booked on frivolous complaint of the intervener who himself has unauthorized construction in his property. It was argued that the structural audit report obtained by the intervener cannot be considered which is not by competent person. The

demolition order and the revocation order have been passed by MCD without having the standard plan issued by DDA and there was no proper testing of the material, sample to give opinion regarding structural stability. The impugned orders therefore are liable to be set aside.

5. Ld. counsel for MCD and intervener on the other hand argued that the appellant obtained the sanction building plan by misrepresenting the facts and the same was rightly revoked. The original structure of the subject property had been substantially altered and full-fledged room with three walls and concrete roof has been constructed above the existing bridge as well as at the mummy of the top floor endangering the safety and stability of the building. Substantial load has been put upon the structure of the building which has impacted eight flats directly beneath the subject property. The intervener was compelled to file writ petition before the Hon'ble High Court. The report of a qualified structural engineer substantiate the plea of the intervener that this unauthorized construction has put the entire building at risk and these appeals are without merits and are liable to be dismissed.
6. I have perused the record. The appellant obtained a sanction building plan on 01.02.2013 seeking permission to construct a drawing room over the bridge at the third floor and a room and toilet on the terrace of the third floor. The respondent thereafter issued a show cause notice dated 07.05.2013 under section 338 of DMC Act seeking explanation as to why the same should not be revoked being obtained on misrepresentation and fraudulent statement. As per this notice, the appellant filed an undertaking stating that no structure outside of the subject property shall be constructed, yet the same was constructed. Further, wrong standard plan was submitted along with the application seeking sanction building plan. The appellant replied to this show cause notice and thereafter, the sanction building plan was revoked for the reason that this plan submitted by the appellant at the time of sanctioning of building plan did not match with the typical plan of Mall Apartment. Further, the undertaking given at the time of sanction regarding No Objection Certificate of the owner of first floor was not provided and thus the appellant made misrepresentation while obtaining the sanction building plan.
7. Once the sanction was revoked, the entire construction carried out in pursuance to the same becomes unauthorized. Further the same being raised

after 08.02.2007 which is the cutoff date, is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

8. Coming to the aspect of unauthorized construction causing damage and danger to the entire building. The appellant has constructed a full-fledged room over the bridge at third floor. The photographs filed by the intervener clearly show that the concrete room constructed by the appellant over the bridge at third floor has caused cracks in the pillar supporting the structure. Cracks have also occurred in the beams of the bridge common to these four flats no. 57, 58, 7 and 8. The standard DDA plan and the existing site map filed by the intervener clearly show that there are drawing rooms at the second floor on this bridge and open terrace at the third floor over the bridge area. The appellant has constructed a room in place of open terrace at the third floor which is non-compoundable and has further caused damage to the entire structure. Further, the appellant constructed a room on the terrace of the third floor above the flat area which has also caused additional load on the building and the same is not permitted even under the DDA Guidelines.
9. Though much has been argued in respect of the report dated 16.05.2014 given by the Assistant Professor, Department of Civil Engineering, IIT, New Delhi, it is sufficient to note that the challenge of the appellant to this report was dismissed by this Tribunal vide detailed order dated 30.09.2016 which has now attained finality. The objections of the appellant to this report were rejected on merits and now the appellant cannot be permitted to challenge the contents of this report. This report clearly provides that structural damage has been caused to the building because of this unauthorized construction which must be immediately removed.
10. A Local Commissioner was also appointed in these appeals who gave his report dated 09.04.2014 and found that the appellant has constructed a room at the third floor over the bridge.
11. The construction raised in pursuance to the sanction building plan dated 01.02.2013 is unauthorized after revocation of this plan and I do not find any merits in these appeals as the construction is not only unauthorized but the same is also not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The revocation is proper as the sanction plan was obtained on misrepresentation of the facts.

12. In these facts the appeals are without merits and are dismissed.
13. The appellant, however, is at liberty to get the alteration at second and third floor of the flat portion regularized if the same are compoundable, except of the bridge area.
14. Records of the respondent, if any, be returned along with copy of this order and appeal files be consigned to record room.

**Announced in the open Court
today i.e. on 03.09.2026**

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