

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

APPEAL NO. 94/ATMCD/23

**Arun Kumar Shukla
S/o Sh. K.S. Shukla,
Occupier/owner
Flat No 112, First Floor.
New Delhi House, 27, Barakhamba Road,
New Delhi-110001.**

..... Appellant

Vs

**New Delhi Municipal Council,
(E-BR Department)
Through the Executive Engineer (EBR) or,
Any other authorized person,
Pragati Bhawan, 2nd Floor,
Jai Singh Road, New Delhi-110001**

.....Respondent

Date of Filing of Appeal : 23.02.2023
Date of Order : 03.09.2026

ORDER

1. This is an appeal challenging the demolition order dated 16.02.2023 passed in respect of unauthorized construction of M.S. stairs from first floor to terrace (side set-back area) including opening of door at outer wall of the main building at first floor level of premise No.112, First Floor, New Delhi House 27, Barakhamba Road, New Delhi-110001.
2. The appellant has challenged this order on the ground that the flat No.112 is situated in annexe block of the building complex having only the ground and the first floor. There is no access to the terrace of the first floor from the annexe block and this M.S. stair was constructed in 2004 after prior approval of the New Delhi House Building Association to ensure that there is no

seepage in the annexe building from the terrace. This M.S. stair is a temporary structure and not building and does not require any building permit. Further, the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being raised prior to 08.02.2007. It was raised with approval of association and is essential to solve the problem of water logging at the roof of the annexe portion. It was further argued for the appellant that the respondent despite complaint did not act against the unauthorized construction raised by almost all the flat owners in the main building towards the façade of the property. There is no set-back at the first floor and there is no infringement to any easementary right of any person. The stairs from ground to first floor in the annexe building are of no use to approach the roof of the annexe building and this M.S. stairs are essential and the impugned demolition order should be set aside.

3. Ld. counsel for the respondent on the other hand argued that as per UBBL-2016 prior permission is required from the respondent to construct a building. This M.S. stairs is a building as defined under UBBL-2016 and any resolution passed by the building association is not binding on the respondent nor has overriding effect on UBBL-2016. The appellant has opened a door in the outer wall towards the public property which is not permissible under clause 2.14 of UBBL-2016. The stairs were constructed after 08.02.2007 which is the cutoff date of protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and otherwise is projection on public land and therefore the appeal is liable to be dismissed.
4. I have perused the record. The first contention of the appellant is that this structure is not a building and is only a temporary structure. Building has been defined under clause 1.4.15 of UBBL-2016 as per which any structure for whatsoever purpose and for whatsoever material whether used for human habitation or not amounts to a building built under or over ground. The M.S. stairs constructed by the appellant by opening a door in the outer wall to reach the terrace of the first floor amounts to building as defined under this clause. The contention of the appellant that it is not a building is meritless.

5. Further, no window, ventilator or door can be opened towards others property/public property under clause 2.14 of UBBL-2016. The appellant has opened a door in the outer wall to access the stairs to further reach the terrace of the first floor and same cannot be done without building permit from the respondent.
6. Coming to the resolution passed by the association on 18.01.2004. Vide this resolution the association resolved that iron stairs may be constructed to access the roof of the annexe building through flat No.112. This resolution cannot override the provisions of UBBL-2016 and even after this resolution the permission is required from the respondent in the form of building permit to raise this structure. No such permission was taken and the appellant cannot claim that he was authorized to raise the structure only because of resolution passed by the association. If this reasoning is considered to be correct, every building association shall pass a resolution to raise construction of any structure within the boundary wall and will claim the same to be legal because of resolution without any sanction from the concerned authority.
7. The appellant also claimed protection for this structure under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 by claiming that after the resolution dated 18.01.2004, the said stairs were immediately constructed. The appellant has not placed on record even a single document to show that this stairs were constructed immediately after 18.01.2004 or prior to 08.02.2007. Once, the appellant claim protection under this Act, the burden is on the appellant to show that the booked unauthorized construction was prior to cutoff date of protection available under this Act. The appellant has failed to show the same. Otherwise also, this structure is projection on public land and not a structure within flat no. 112. It cannot be protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
8. Coming to the aspect of there being no approach to the terrace from within the annexe building, the appellant purchased the property with open eyes seeing that there is no approach to terrace. He cannot be permitted to raise

unauthorized construction only because there is no stair to reach the terrace of annexe building.

9. In view of the above facts, the appeal stands dismissed.

10. 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 03.09.2026**

**(AMIT KUMAR)
District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi**