

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

APPEAL NO. 209/ATMCD/2024

**1. Smt. Sunita Sondhi
W/o Harminder Singh Sondhi
R/o 11/8, Third Floor (Front Portion)
West Patel Nagar
New Delhi – 110008**

**2. Smt. Babita
W/o Shri Rakesh
R/o 11/8, Third Floor (Rear Portion)
West Patel Nagar
New Delhi – 110008**

..... Appellants

Versus

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

..... Respondent

Date of Filing of Appeal	:	19.03.2024
Date of Judgment	:	07.09.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 05.02.2024 passed in respect of unauthorized construction carried out in the Property No. 11/8, West Patel Nagar, New Delhi (hereinafter referred as subject property) in the shape of entire fourth floor and unauthorized construction in the shape of two rooms and raising walls at fifth floor.
2. The brief facts necessary for disposal of this appeal are that the appellants as per their respective sale deeds are the owners of front portion and rear portion of the third floor of this property. Appellant no. 1 purchased the front portion

vide sale deed dated 17.09.1999 and appellant no. 2 purchased the rear portion along with temporary structure at the terrace vide sale deed dated 04.10.2023. There is a sanction building plan of this property from basement to second floor obtained in the year 1996. The respondent vide show cause notice dated 12.09.2023 booked unauthorized construction at ground, first and second floor in the shape of deviations/excess coverage against sanction building plan dated 07.05.1996 and unauthorized construction of the entire third floor, fourth floor and two rooms & walls at fifth floor. The show cause notice was duly replied by all the occupants including the appellants. The respondent vide impugned order gave protection to ground, first, second and third floor under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being in existence prior to 07.02.2007 and directed to demolish the construction at fourth and the fifth floor.

3. The appellants who are owners of the third floor as per their sale deeds, which has been considered as fourth floor in the impugned order, have challenged this order on the ground that their floor is the third floor and not the fourth floor as alleged by MCD and further the same is old and occupied existing prior to 07.02.2007 and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was argued for the appellants that the basement has been mentioned as ground floor in the impugned order thereby making the third floor as fourth floor which is factually incorrect. The sale deed of the intervener in respect of the floor below the floor of the appellants records that the intervener has purchased the second floor and as such the MCD cannot mention the third floor of the appellants as fourth floor only because the basement has been described as lower ground floor in other sale deed of the intervener. The sanction building plan was in respect of basement to second floor and the basement cannot be mentioned as ground floor if not constructed as per building bye laws.
4. Ld. counsel for the appellant in support of his arguments has placed reliance on the judgment passed by Hon'ble High Court in W.P.(C) No. 9076 of 2007 titled as Dharampal Sharma Vs. MCD dated 11.12.2007 and another passed in W.P.(C) No. 9112/2007 titled as Nitin Sehgal Vs. MCD & Ors. dated 07.12.2007 (2007:DHC:1599).

5. Ld. counsel for MCD and the intervener on the other hand argued that the lowest floor in the building is not a basement as claimed by the appellants and the nomenclature given in the title documents shall not change the exact description of that floor. The demolition order was passed after hearing and considering the contentions of the parties and is a reasoned order. The National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 does not give protection to any floor above third floor as per the judgment of Hon'ble Supreme Court passed in Delhi Pradesh Citizen Council Vs. Union of India 131(2006)DLT189(SC). The sanction dated 07.05.1996 was in respect of basement to second floor and since no basement was constructed, the lowest floor is the ground floor and the construction up to third floor only is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and therefore the appeal is without merits and is liable to be dismissed.
6. I have perused the record. Admittedly, the erstwhile owner Ms.Isha Bhatia and Ms. Abha Bhatia obtained sanctioned building plan for construction of basement to second floor. The building was there after constructed. The status report filed by the MCD shows that the lowest floor is 0.5 meter below the road level and its roof slab is 2.5 meters above the road level. The sale deed executed in favour of the intervener in respect of the floor below the floor of the appellants mentions that the intervener has purchased the entire second floor without terrace right. Though it is correct that the nomenclature given to the floor in the sale deed cannot be a reason to hold that the said floor is a second floor or third floor but it is also relevant to note that the intervener is an advocate and with open eyes purchased the second floor. He now claims that it is the third floor, only because the basement has been referred as lower ground floor in his other sale deed.
7. The Hon'ble High Court in the case of Dharampal Sharma (supra) held that:

“the lower most portion of a building having been constructed against the portion reflected as basement in the sanctioned plan, would require to be treated as basement. The same can be constructed only as per this stipulations of building bye laws and utilized only for the same purpose..... This has to be irrespective of the nomenclature which any private party may assign to such portion of the property. Different portions of a building are required to be constructed,

maintained and designated as per building bye laws. Consequently, no official of the MCD has the jurisdiction to treat lower most portion, sanctioned as basement, designated as lower ground floor or by any name other by the builder as anything other than a basement. In such a case, such portion is not as per sanctioned plan or does not satisfy the building bye laws, then the person claiming rights has to rectify the same so that the prescription is satisfied”.

8. As per this law laid down by Hon'ble High Court in this case, once the basement was sanctioned in the building and the same being constructed 0.5 meters below the ground level, shall be referred as basement only and the person occupying the same has to rectify the same so that the prescription is satisfied. The MCD cannot claim that since the basement has not been constructed as per building bye laws, it shall be treated as ground floor thereby making the third floor as fourth floor.
9. Similarly in the other judgment passed in the case of Nitin Sehgal (Supra) the Hon'ble High Court held in para 8 of the judgment that:

“In the instant case, it is admitted position that Municipal Corporation of Delhi had permitted a basement apart from other floors. The builder and the petitioner have opted to assign the nomenclature of a ‘lower ground floor’ to this portion. Such nomenclature as has been assigned by the builder and the petitioner would be of no consequence inasmuch as it is the nomenclature assigned as per DMC Act, 1957, Building Bye Laws and the sanctioned building plan on which the matter has to be examined.”

10. The Hon'ble High Court in that case held that since part of the portion is two and half feet below the ground level, same cannot be ground floor. In the present case the part of lowest floor is about one foot eight inches below the ground level and cannot be aid as ground floor.
11. The sale deed of appellant no. 1 in respect of the front portion of the third floor is dated 17.09.1999. The sale deed executed in favour of her predecessor Mr. Harinder Singh Kalra shows that he purchased the terrace of the second floor on 18.02.1998 and thereafter, constructed the entire third floor and sold the front portion to appellant no. 1. Once it has been shown by the appellants that the third floor referred as fourth floor in the impugned order is existing prior to 08.02.2007, the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The judgment

of Hon'ble Supreme Court passed in the case of Delhi Pradesh Citizen Council (Supra) is not applicable to the facts of the present appeal.

12. The construction at fourth floor referred as fifth floor in the impugned order has already been demolished by MCD. The construction at third floor (referred as fourth floor in the impugned order) as such is protected like ground to second floor as mentioned in the impugned order.
13. In these facts the impugned demolition order is upheld but kept in abeyance till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force, in respect of the third floor. There is no protection to already demolished fourth floor. The respondent shall be at liberty to take action against the unauthorized construction in the property once this Act ceases to be in force.
14. 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 07.09.2026**

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