

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

APPEAL NO. 328/ATMCD/2022

**Ms. Rinky Singh
D/o Sh. Gopal Krishan Budhiraja
R/o D-8/8178, Vasant Kunj
New Delhi - 110070**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	09.06.2022
Date of Judgment	:	08.09.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 05.09.2008 passed in respect of unauthorized construction carried out in DDA flat at First Floor bearing flat No. 8178, Pocket D-8, Vasant Kunj, New Delhi (hereinafter referred as subject property) in the shape of unauthorizedly converting balcony into room by providing RCC slab at First Floor.
2. The brief facts necessary for disposal of this appeal are that the appellant is the owner in possession of the subject property by virtue of sale deed dated 21.11.2005. Prior to that a registered General Power of Attorney was executed in her favour for this property on 08.12.1997 and the appellant is in possession since that date. The respondent vide show cause notice dated 27.05.2008 booked this unauthorized construction on the direction of the then Dy. Commissioner as recorded in the FIR itself. The show cause notice was duly replied by the appellant through her husband. She also appeared before

the Quasi Judicial Authority during personal hearings and thereafter, impugned demolition order was passed on the ground that the appellant despite seeking time to get the construction regularized, did not get the same regularized nor demolished the same.

3. The appellant has challenged this order primarily on the ground that the construction is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and further, the show cause notice was not issued in the name of the appellant but was issued in the name of her husband and proper hearing was not provided to the appellant. It was argued for the appellant that the respondent failed to consider the documents relied by the appellant which clearly show that the said construction was raised prior to 08.02.2007 and passed non-speaking order without even discussing the documents. It was further argued that similar construction of converting the balcony into the room exist in almost all the flats in this block but only the property of the appellant was booked arbitrarily. In these facts it was prayed that the impugned order should be set aside.
4. Ld. counsel for the respondent on the other hand argued that the appellant admitted in her reply to the show cause notice that she has raised unauthorized construction and sought time to get it regularized yet did not apply for regularization and therefore, there are no merits in this appeal. There are projections on the municipal land which cannot be protected and further, the property tax returns do not support the story of the appellant that this construction was raised prior to 08.02.2007 to get protection 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 raised the contention that the show cause notice was not issued in her name and opportunity of personal hearing was not provided. The same is contrary to office record. Though the show cause notice was issued in the husband of the appellant, the same was duly replied by the appellant under her signatures and she also filed documents duly attested by her and also participated in the personal hearing as recorded in the demolition order and therefore, she cannot claim that the opportunity of being heard was not provided. Once the appellant duly replied

the show cause notice and participated in the personal hearing before the Quasi Judicial Authority, she cannot claim that the show cause notice was not issued in her name or that opportunity of hearing was not provided. She has no dispute with her husband.

6. Coming to the merits of the appeal. The appellant has claimed that this booked construction was raised prior to 08.02.2007 for which she has relied upon the property tax returns and the expenses incurred while raising this construction. The sale deed of the appellant show that the covered area of this flat is 70 sq meters but she has been filing property tax returns since 2004-05 for covered area of 90 sq meters. This clearly reflect that the additional covered area of 20 sq. meters was added much prior to 08.02.2007.
7. Further, the documents relating to expenses incurred in raising this construction are of December 2003 & January 2004 which further supports the case of the appellant that this construction was raised prior to 08.02.2007. It is also relevant to note that as per FIR dated 27.05.2008, the property was booked on the directions of the Dy. Commissioner given on 23.05.2008 and it records that the construction is old and occupied. At the time of booking, no on-going construction was found and if the construction had been raised after 08.02.2007 and prior to 27.05.2008, which is the date of booking, the respondent would not have mentioned that the construction is old and occupied. One year old construction cannot be said to be old.
8. Further, there is no booking of projection on municipal land and respondent cannot be permitted to argue on this aspect. The show cause notice is limited only to converting balcony into room.
9. Further, the contention of the respondent that appellant herself sought time to get the property regularized but failed to do so is concerned, it is sufficient to note that not applying for regularization as proposed by the appellant, does not take away the protection available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
10. In these facts, the appellant has been able to show that the balcony was converted into room prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The demolition order dated 05.09.2008 is upheld but kept in abeyance

till this Act is in force. The respondent shall be at liberty to take action once the Act ceases to be in force.

11. The appeal stand disposed of.

12. 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 08.09.2026**

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