

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

APPEAL NO. 735/ATMCD/2016

APPEAL NO. 23/ATMCD/2018

**Mazhar Iqbal
Son of Mahmoodul Hasan
Resident of 4227 to 4230
Gali Barna, Sadar Bazar
Delhi -110006**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	28.07.2016 & 10.01.2018
Date of Judgment	:	22.09.2026

JUDGMENT

1. These are the two appeals challenging the demolition order dated 11.09.2015 in appeal no. 735/16 and the sealing order dated 03.01.2018 signed on 19.08.2016 in appeal no. 23/18 passed for the unauthorized construction carried out in the Property No. 4227, Gali Barna, Sadar Bazar in the shape of Ground Floor, First Floor, Second Floor and raising of wall at Third Floor (here in after referred as subject property).
2. The brief facts necessary for disposal of these appeals are that the appellant purchased the property no. 4227 through unregistered agreement to sell, affidavit etc. dated 20.09.2013. As per these documents, the property comprises of ground to third floor with terrace. The appellant applied for repairs on 14.06.2015 and was permitted to repair as per Building Bye Laws.

The respondent vide show cause notice issued under section 344/343 DMC Act dated 28.08.15, booked the unauthorized construction in the shape of pillar, walls and columns at the ground floor. The show cause notice was replied by the brother of the appellant on 09.09.2015 and thereafter, the impugned demolition order was passed on the ground that the reply received late was considered but was not satisfactory. The respondent thereafter issued another notice under section 345-A DMC Act dated 24.05.2016. The same was duly replied by the appellant and after providing more than sufficient opportunities of personal hearing the sealing order was passed. Partial demolition and sealing actions were also taken by MCD.

3. The appellant has challenged these orders on the ground that no proper opportunity of hearing was provided to the appellant and further, 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.
4. Ld. counsel for the appellant argued that after purchasing the property, the appellant applied for repairs and the said permission was granted under building bye laws 6.4.1. The appellant carried out renovation and repairs as permitted under law yet it was wrongly booked for unauthorized construction. It was further argued that the show cause notice under section 344/343 DMC Act was only in respect of construction at ground floor, yet the demolition order was passed for the entire property up to third floor. The respondent did not consider the survey report dated 31.03.2017, of the property tax department of MCD which shows that the third floor was existing since 01.04.1996. The construction existing in the property was duly verified by the Local commissioner appointed by this Court and there is no additional construction in the property and therefore, the impugned orders are liable to be set aside. It was argued that the Show cause notice under section 344/343 DMC Act was never served upon the appellant and was replied by one Naeem and the opportunity of personal hearing was also not provided.
5. Ld. counsel for respondent on the other hand argued that the show cause notices were duly served and replied by the brother of the appellant on his instructions and by the appellant himself. The property was booked on 28.08.2015 when only ground floor was under construction and the appellant

despite booking, did not stop the unauthorized construction and raised the building up to fourth floor and therefore, the demolition order was rightly passed for the entire property. The photographs of on-going construction were taken by the officials of MCD which are available in the office record and clearly show that fresh construction has been raised by the appellant after demolishing the existing structure and therefore, the appeals are without merits and should be dismissed.

6. I have perused the record. The appellant himself has stated in the appeal number 735/2016 in paragraph 6 that the show cause notice under section 344/343 was received by his brother and his brother namely Naeem gave reply to the show cause notice on the instructions of the appellant. In these facts, the submissions of the appellant that he did not get proper opportunity to respond to the show cause notice is without merits. As per office record, the show cause notice was served through speed post sent on 01.09.2015. If the show cause notice was sent through speed post on 01.09.2015, it must have been received within 48 hours. Therefore, the plea of the appellant that it was received on 09.09.2015 is meritless. The appellant did not reply in time, yet the reply was considered by the Quasi Judicial Authority. The appellant gave reply to the show cause notice which was considered and there were no substantial contentions raised in the reply and the opportunity of personal hearing was rightly not provided. The appellant cannot claim that the opportunity of personal hearing is mandatory. Reliance in this regard can be placed on the judgment passed by the Hon'ble High Court in WP (C) No. 9109/2023 dated 19.07.2023 titled as Anchit Mathur Vs. Union of India and Another.
7. Further, the other notice under section 345-A DMC Act was duly replied by the appellant himself and sufficient opportunities of personal hearing were provided to him before passing the sealing order.
8. Coming to the merits of the appeals. The appellant claims that the property was constructed up to third floor when he purchased and much before 08.02.2007 and he carried out only repairs and renovations and therefore, the same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

9. I have perused the titled documents of the appellant wherein it is mentioned that the property is constructed up to third floor as on the date of purchase which is 18.09.2013. However, there are documents to show that the appellant demolished the old structure and constructed a new building. The MCD record contains photographs of the property when it was under construction. These photographs clearly show that fresh construction has been raised from scratch up to fourth floor after demolishing the old structure.
10. The appellant in support of his plea that the structure is old has relied upon an inspection report dated 31.03.1997. The property as per this document was inspected on 30.03.1997. As per this inspection report, the rateable value was fixed at Rs. 1,42,393/- w.e.f. 01.04.1996. The appellant has not filed any proof of payment of property tax in pursuance to this inspection after 31.03.1997. As per this document, the existing rateable value of ground and first floor was Rs. 3020/- and an additional rateable value of Rs. 1,39,373/- was added w.e.f. 01.04.1996. Not even a single proof of payment of property tax has been filed to substantiate this inspection report which appears to be a manipulated document.
11. Even if this document is believed to be genuine, the report of the Local Commissioner and the site plan filed by the appellant show that a new construction has been raised after demolishing the existing structure. As per this inspection report dated 31.03.1997 by assistant assessor & collector, there are two rooms measuring 14'x10', two rooms measuring 12' x 10', one room measuring 16' x 10' and one room measuring 10' x 11' feet apart from two kitchens measuring 8 x 4 feet each and two latrines and bathrooms measuring 8 x 4 feet each on the second and third floor.
12. Instead of this construction, now the first, second and third floor each has six rooms measuring 9 feet 5 inch x 14 feet, 11 feet 9 inch x 10 feet 10 inch, 9 feet 2 inch x 12 feet 1 inch, 14 feet 10 inch x 9 feet 9 inch, 11 feet x 12 feet 10 inch and 10 feet 7 inch x 17 feet 3 inch. There are two kitchens measuring 6 feet 10 inch x 5 feet 8 inch and 6 feet 9 inch x 10 feet 11 inch. There are three toilets in place of two measuring, 3 feet 9 inch x 8 feet, 4 feet 11 inch x 8 feet 2 inch and 4 feet 11 inch x 4 feet 5 inch. Apart from this, there is a lobby measuring 13 feet 9 inch x 6 feet 5 inch. This clearly show that after demolishing the existing structure, a new building has been raised as the

construction shown in that inspection report is completely different from the construction existing as on date. Further, the appellant has constructed even fourth floor, which was not even existing even at the time of alleged inspection dated 31.03.1997. The subject property therefore cannot be protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 as claimed by the appellant.

13. Further the appellant deliberately concealed the property tax returns of the ground and first floor. There are three shops as on date on the ground floor. The act of withholding the property tax of ground and first floor is sufficient to draw adverse inference against the appellant as the same would have shown that there were no shops at ground floor in the old demolished structure. Otherwise also the appellant did not file any property tax related document except of the alleged inspection report.
14. It was also contended for the appellant that the show cause notice was only respect of ground floor and therefore, the demolition order passed for the entire property is contrary to law. I do not find any merit in this submission as the appellant cannot be permitted to take benefit of his own wrong. He continued with the unauthorized construction despite booking and any work carried out after issuing the show cause notice is actionable and liable to be demolished. The status report filed by the respondent after fresh inspection on 17.08.2017 show that appellant has even raised a fourth floor even after passing the demolition order. The appellant violated the law and continued his unlawful act of unauthorized construction despite booking and despite demolition order and cannot seek equity by arguing that the demolition order is against the principles of law or beyond the booked construction mentioned in the show cause notice. Same is correct even for the sealing order.
15. The appellant has failed to show 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 whereas the office record clearly show that the new building was constructed after demolishing the old structure much after 08.02.2007 and obviously after 18.09.2013 when the appellant purchased the property. It was constructed without any sanction and after 08.02.2007 and is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

16.The appeals therefore are without merits and are dismissed and the impugned orders are upheld.

17.Records of the respondent, if any, be returned along with copy of this order and appeals files be consigned to record room.

**Announced in the open Court
today i.e. on 22.09.2026**

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