

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

APPEAL NO. 97/ATMCD/2019

**Vinod Kumar Thukral
S/o Sh. Gurcharan Singh Thukral
R/o M-70, Vikas Puri
Tilak Nagar
West Delhi, Delhi - 110018**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	08.02.2019
Date of Judgment	:	23.09.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 27.07.2018 passed in respect of the unauthorized construction carried out in the Property No. M-70, Vikas Puri, New Delhi in the shape of Ground Floor, First Floor & Second Floor (Partly), (here in after referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the father of the appellant late Sh. G.S. Thukral purchased this property being a double storey building vide Agreement to Sell dated 10.07.1989. The respondent booked the unauthorized construction from ground to second floor vide show cause notice dated 19.07.2018 followed by the demolition order dated 27.07.2018. No reply was received in response to this show cause notice. The property was booked on a complaint received from Special Task Force (STF).
3. The appellant has challenged this order on the ground that the show cause notice was never served upon the appellant nor the demolition order and the

opportunity of reply and personal hearing was not granted. Further it was argued that the agreement to sell in favour the deceased father of the appellant clearly show that the ground and the first floor were existing even in 1989. The second floor was constructed by the father of the appellant thereafter, but prior to 08.02.2007 and same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was also argued that the impugned order is silent in respect of the portion which is unauthorized and the portion which is authorized at the second floor of the property and being a non-speaking order is liable to be set aside.

4. Ld. counsel for respondent on the other hand argued that the show cause notice was served through pasting which is approved mode of service. The appellant in his affidavit filed with this appeal has himself stated that the property was constructed in 2009 and since there is no sanction building plan and the construction being raised after 08.02.2007 which is the cutoff date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, same is liable to be demolished and the appeal has no merits.
5. I have perused the record. The appellant has disputed the service of show cause notice. The MCD record shows that the show cause notice could not be served on the first attempt as none was available at site, it could not be served on the second attempt as the owner/builder refused to receive and thereafter, it was served through pasting after approval from the competent authority. The photographs of the pasting are available in the office record.
6. Pasting is proper and approved mode of service as provided under section 444 of the DMC Act and the Hon'ble High Court has also held that service through pasting is proper service for which reliance can be placed on the following judgments:

- 1) Paramjeet Kaur V/s MCD 1994 (56) DLT 720.
- 2) Narender Prasad Dube V/s. Union of India 1999 (81) DLT 378.
- 3) Hari Dutt Vashistha V/s. MCD 1978 (2) ILR (Delhi) 28.
- 4) Usha Devi Sharma V/s. MCD 2020 (271) DLT 76.

7. Coming to the merits of the appeal. The agreement to sell executed in favour of the father of the appellant mentions that the property was a double storey building as on 10.07.1989. It means that there were only ground and first floor at that time. However, the site plan filed by the appellant, to show existing construction, reflects that there exist three completely constructed floor (Ground, First & Second) and partly constructed third floor in the property. The affidavit of the appellant filed along with this appeal mentions in para 2 that the property no. M-70 was constructed in 2009 and is 9 year old construction. In view of this affidavit, it is clear that the old structure existing on 10.07.1989 was demolished which was a double storey building and fresh construction from ground to second floor and part third floor was raised in 2009.
8. Admittedly there is no sanction building plan and as stated by the appellant himself in his affidavit, the construction was raised in 2009 and therefore, the same is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 as only the construction prior to 08.02.2007 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 in respect of the subject property.
9. Even the civil suit filed by the brother of the appellant, it was mentioned in para 9 that the balcony at the first floor and complete set of 2 BHK on the second floor was constructed in 2012-13. The appellant in the written statement denied this and stated that it is an old construction and is permissible as per building bye laws. The appellant did not mention in that written statement that the construction is prior to 08.02.2007.
10. Keeping in view the affidavit of the appellant which records that the construction was raised in 2009, the subject property is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and there is no sanction building plan as well. There are no merits in this appeal and the same is dismissed and the demolition order is upheld.

11. Records 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 23.09.2026**

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