

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

APPEAL NO. 907/ATMCD/2024

**Dinesh Kumar Bahl
S/o Jagdish Mitter Bahl
R/o 82D, LIG Flats, DDA Colony
Gulabi Bagh
New Delhi - 110007**

..... Appellant

Versus

- 1. Municipal Corporation of Delhi
Through its Commissioner
Civic Centre, Minto Road
New Delhi**
- 2. Assistant Engineer (Bldg.)-II
Keshav Puram Zone
A-1 Block, MCD Primary School
Keshav Puram
Delhi-110035**
- 3. Delhi Development Authority
Through its Chairman
Barapullah Rd., beside SBI Bank
Aviation Colony, INA Colony
New Delhi-110023**

..... Respondents

Date of Filing of Appeal	:	09.10.2024
Date of Judgment	:	28.09.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 16.08.2024 passed in respect of unauthorized construction carried out in the flat number 82-D, Gulabi Bagh, DDA LIG Flats, New Delhi in the shape of deviations/excess coverage against Standard DDA Plan by covering front and rear courtyard

and unauthorizedly constructed floor over the roof of flat no. 82-D in the shape of three rooms, balcony & toilet Block (old and occupied) (here in after referred as subject property).

2. The brief facts necessary for disposal of this appeal are that the father of the appellant was the original allottee of this flat vide conveyance deed dated 16.02.2001, being a flat at third floor. The respondent booked the unauthorized construction vide show cause notice dated 07.12.2022. The same was duly replied by the appellant and after giving personal hearings to the appellant, the impugned demolition order was passed.
3. The appellant has challenged the demolition order on the ground that the construction of the entire property including the covering of the front and rear courtyard is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant in support of this argument has relied upon a notice dated 16.09.1997 issued by DDA recording that construction of full terrace on the top floor. It was argued for the appellant that the father of the appellant constructed over the terrace of the third floor way back in 1997 when it was booked by DDA and since this construction is much prior to 08.02.2007, the same is protected and the demolition order should be set aside.
4. Ld. counsel for respondent on the other hand argued that the appellant has not filed any property tax return to show that the construction at the terrace is prior to 08.02.2007 and that the front and the rear courtyard have been covered prior to 08.02.2007. The tax calculation filed by the appellant are only in respect of third floor and thereafter, no tax was deposited as per covered area shown in the tax calculation sheet and same cannot be relied upon. The existing covered area at third floor is 67.96 sq meters and at the fourth floor is 50.17 sq meters which is much more than the covered area shown in the property tax return for the third floor which is only 31.70 sq meters and therefore, there are no merits in this appeal.
5. I have perused the record. The show cause notice was duly replied and personal hearings were granted to the appellant and the principles of natural justice were duly followed.
6. Coming to the merits of the appeal, the MCD record shows that a counter-claim was filed by the appellant in a civil suit pending in the Court of Sr. Civil

Judge, Central District, Tis Hazari wherein MCD filed status report on 12.02.2024. In that status report, the MCD stated that property bearing flat no. 82-A (ground floor), 82-B (first floor), 82-C (second floor) and 82-D (third floor) were booked for unauthorized construction in the shape of deviation/excess coverage by covering front and rear courtyard. All the four flats were booked for same unauthorized construction apart from construction of three rooms etc. over the roof of 82-D(subject property).

7. This shows that the covering of front and rear courtyard exist from ground to top floor and the same is old and occupied even as per the booking. The appellant has raised construction in the shape of covering of front and rear courtyard only after all the three flats owners below him covered their front and rear courtyards. The respondent has passed demolition orders in respect of all the four flats existing in the same vertical stack but has recorded that the same is old and occupied. At the time of booking, no on-going construction was found and it was only because of a court case and the counter-claim, the properties were booked for this common unauthorized construction.
8. The covering of front and rear courtyard is old and without any material in the MCD record of on-going construction, the same is entitled for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Though, it is correct that this covered area is not reflected in the property tax returns but same alone cannot be a ground to reject protection when this unauthorized construction exist from ground to top floor.
9. Coming to the construction over the roof of the flat, the appellant has relied upon a letter dated 16.09.1997 issued by DDA booking unauthorized construction of full terrace on the top floor. Existence of this letter has not been disputed by DDA, though as per it, the record of this letter is not traceable as the then enforcement branch of DDA does not exist. The DDA filed status report stating that this notice pertains to erstwhile Enforcement Branch of DDA, but despite efforts, the record is not traceable. DDA however did not dispute this document and stated under RTI that the said letter was issued by the Enforcement Branch which now does not exist.
10. From this stand taken by DDA, it is clear that the construction over the terrace of the subject property was raised in 1997 when it was booked by DDA and

therefore, the same being prior to 08.02.2007, is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

11. In view of this discussion that the booking itself records that the construction is old and occupied and the covering of front and rear courtyard exist from ground to top floor and the construction over the terrace is prior to 08.02.2007, 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. The respondent shall be at liberty to take action once this Act ceases to be in force.
12. 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 28.09.2026**

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