

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

APPEAL NO. 150/ATMCD/2018 & NO. 373/ATMCD/2018

- 1. Dr. Dumpala Santosh Rupa D/o Ram Reddy**
- 2. D. Payal L D/o Laljibhai Dhameliya**
- 3. Nilima Gupta D/o Bhagwan Das Gupta**
- 4. Naga Sai Sowmya D/o Satyanarayana**
- 5. Urjita D'silva D/o Deepak D'silva**

All are residing at
346 to 349, 351 & 352, Vijay Vihar, Phase-1, Delhi-110085

And also at
A-339, Vijay Vihar, Phase-1, Delhi-110085

..... Appellants

Versus

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

..... Respondent

Date of Filing of Appeals	:	22.02.2018 & 04.06.2018
Date of Judgments	:	30.09.2026

JUDGMENT

1. These are the two appeals challenging the demolition order dated 20.02.2018 in appeal no. 150/18 and the sealing order dated 01.06.2018 in appeal no. 373/18 passed in respect of unauthorized construction carried out in the Property No. A-1/339, VijayVihar, Phase-I, Delhi in the shape of Ground Floor, First Floor, Second Floor, Third Floor & Fourth Floor (here in after referred as subject property).

2. The brief facts necessary for disposal of these appeals are that the appellants claim to be the tenants in the subject property by virtue of an unregistered lease agreement dated 03.04.2017 executed by Mr. Virendra Dev Dixit for a period of five years. The respondent vide show cause notice dated 06.02.2018 booked the unauthorized construction in the shape of Ground Floor, First Floor, Second Floor, Third Floor & Fourth Floor. Since no reply was received to the show cause notice, the impugned demolition order was passed. The respondent thereafter issued vacation notice dated 07.03.2018. The appellants filed Writ Petition (c) no. 2250/18 before Hon'ble High Court wherein the interim protection was granted vide order dated 09.03.2018 and the writ was disposed of on 04.05.2018, with interim protection till the appeal is heard by this Tribunal. The respondent in the meantime also issued show cause notice under section 345A of the DMC Act followed by the sealing order dated 01.06.2018.
3. The appellants have challenged these two orders on the ground that the show cause notice(s) were neither issued in the names of the appellants nor were served upon them. The property was purchased in the year 1996 by Mr. Virendra Dev Dixit and Smt. Kamla Devi Dixit and the entire structure from ground to fourth floor was constructed till 2012. The electricity connection was installed in 1996 which show that the property is existing prior to 01.06.2014. The property is in unauthorized colony where no sanction building plan is issued by the respondent. The construction being prior to 01.06.2014 is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was also argued that there are several other properties having similar construction in this unauthorized colony but no action has been taken against them and the respondent cannot be permitted to pick and choose by booking the subject property alone and therefore, the impugned orders are liable to be set aside. Ld. Counsel for the appellants has placed reliance on the following judgments:

1. 'Kolmet Enterprises Vs. New Delhi Municipal Council' Reported as 2017 (240) DLT 103.
2. 'Common cause Vs. Union of India' 73 (1998) DLT 451.
3. 'Manju Chaurasia Vs. DDA' 107 (2003) DLT 23.

4. 'Village Pul Pehladpur Residents Welfare Association Vs. Union of India and Ors. 127 (2006) DLT 313 '.

5. Nirmala Jain Vs. Municipal Corporation of Delhi and Another'in WP © No. 12491/2005, WPC No. 12111/2005, WPC No. 12120/2005, WPC No. 12944/2005.

6. ANZ Grindlays Bank Plc V. Commissioner, Municipal Corporation of Delhi' reported as 1995 (34 DRJ 492).

7. 'Municipal Corporation of Greater Bombay Vs. Lala Pancham of Bombay and Others' AIR 1965 SC 1008.

4. Ld. counsel for MCD on the other hand argued that the subject property is not being used as a dwelling house. It is a building having cages where the persons were kept on the pretext of giving spiritual services and the same cannot be protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Further, it was argued that otherwise also, the appellants have failed to show that the property was constructed prior to 01.06.2014 and protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is available. It was argued that the show cause notices were duly served through pasting as the alleged owner is absconding and pasting is appropriate mode of service, if the owner is not available to receive the notice.
5. I have perused the record. Admittedly, the owner Mr. Virendra Dev Dixit and his wife Smt. Kamla Devi Dixit in whose favour the GPA of the subject property was executed are not traceable. The show cause notices were sent through speed post and there is presumption of service under General Clauses Act. Further, the respondent served the notices by way of fixation as well and the photographs of the affixation are available in the office record. Pasting is appropriate mode of service under section 444 of the DMC Act for which reliance can also 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.

6. Coming to the merits of the appeals. The appellants have claimed that the construction of the subject property is prior to 01.06.2014 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellants in this regard have not filed even a single document to show that the construction of the subject property is prior to 01.06.2014. Even the lease deed executed in their favour is of 03.04.2017 and therefore, does not help the appellants to establish that the construction is prior to 01.06.2014.
7. The only document in this regard is an amount deposited by Smt. Kamla Devi on 17.09.1996 with erstwhile Delhi Electric supply Undertaking for obtaining electricity connection. This payment receipt does not show that the property was built up from ground to fourth floor in 1996 or prior to 01.06.2014. The owners as per GPA dated 04.09.1996 purchased one plot and thereafter immediately applied for electricity connection on 17.09.1996 and this receipt is of no help to the appellants. All other documents relied by the appellants are subsequent to 01.06.2014 and are not relevant to establish the existence of property prior to 01.06.2014 and therefore, the appellants have failed to show that the construction of subject property is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
8. Coming to the arguments of the appellants of pick and choose approach adopted by MCD. Though it is correct that the respondent is duty-bound to ensure that there is no pick and choose in dealing with the properties of the same unauthorized colony and to adopt uniform approach, but it is also correct that one wrong doer should not be permitted to escape only because the other wrong doers have not been caught or booked. The appellants cannot escape liability in respect of an unauthorized construction raised up to 4th floor, simply because action has not been taken against other properties. The respondent is required and directed to take action as per law against all other similar properties in the vicinity, if not already taken. However, pending compliance of this direction, the appellants cannot seek abeyance of impugned orders nor it can be a ground to set aside the impugned orders.
9. The appellants have failed to show that the subject property was constructed prior to 01.06.2014 and is protected under National Capital Territory of Delhi

Laws (Special Provision) Second Amendment Act, 2011. There is no material to support their case. The owners have not come forward to challenge these orders. Alleged non-action against other some properties in the vicinity cannot be the sole ground to allow these appeals. The impugned orders are therefore upheld and appeals are dismissed being meritless.

10. 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 30.09.2026**

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