

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

APPEAL NO. 145/ATMCD/2026

APPEAL NO. 146/ATMCD/2026

Shri Sachin Tayal
S/o Shri Ram Bhagat Tayal
M-5, First Floor (Front), Hauz Khas
New Delhi

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	19.02.2026
Date of Judgment	:	01.10.2026

JUDGMENT

1. These are the two appeals challenging the demolition order dated 06.02.2026 in appeal no. 145/26 passed in respect of unauthorized construction carried out in Property No. M-5, Hauz Khas, New Delhi in the shape of construction / installation / erection of iron staircases in front and side setback & deviations against regularization plan dated 14.11.2019 and the rejection of regularization application order dated 29.01.2026 in appeal no. 146/26 rejecting the regularization application of Property No. M-5, Hauz Khas, New Delhi.
2. The brief facts necessary for disposal of these appeals are that the appellant along with his father and brother claims to be the owner of the entire property except the rear portions of first and second floor and rear portion of the roof of

the third floor by virtue of a Will dated 26.01.1990. The construction existing in the property was regularized on 14.11.2019 after some sealing action in early 2019. The owner of the rear portions of first and second floor namely Mr. Gautam Tayal filed writ petition before Hon'ble High Court bearing W.P. (C) No. 12761/2025 seeking directions to demolish this construction carried out in front and side set backs at the ground and first floor portions. The respondent vide show cause notice dated 19.08.2025 booked the unauthorized construction as noted above. The same was duly replied by the appellant on 29.08.2025. The appellant also applied for regularization of these staircases in front and side set back areas and the same was rejected vide impugned order dated 29.01.2026 followed by the demolition order dated 06.02.2026.

3. The appellant has challenged these two orders on the ground that the appellant and his immediate family members are the owner of entire property except rear portions of first floor, second floor and roof of third floor. The property was regularized on 14.11.2019 under the signatures of all the co-owners of this property and has been duly mutated for respective portions in their names on the basis of Will dated 26.01.1990. The road abutting the subject property is a notified commercial road and the appellant has deposited all the requisite conversion charges. The portion where these external staircases have been constructed with MS Steel frame are in area exclusively owned by the father of the appellant and neither intervener and nor any other person has any right at the ground floor. The fire staircase in the front set back is permissible and the appellant is required to install external fire staircases under Delhi fire Service norms for which no objection certificate is not required from the other co-owners. The respondent has permitted similar external fire staircase for some restaurant in Green Park Main Market, yet malafidely rejected the regularization application of the appellant on the ground of want of consent from the other co-owners and that the front staircase falls within front set back. The demolition order was passed thereafter and both the orders are liable to be set aside.
4. Ld. counsels for MCD and intervener on the other hand argued that the appellant did not obtain any permission before installing these steel staircases which are in violation of regularization plan dated 14.11.2019. The appellant

despite the orders of Hon'ble High Court dated 22.08.2025 passed in WP (C) No. 12761/2025 continued the illegal act of construction and the respondent rightly rejected the regularization application. The construction is in violation of Ancient Monuments and Archaeological Sites and Remains Act 1958. The MCD does not have powers to regularize construction till permission is received from ASI. Staircases cannot be constructed in the front and side set back which are common area and cannot be encroached. Staircases are not compoundable and no construction in the open space is permitted. The fire staircase must be from ground floor to roof whereas the appellant has constructed it only up to first floor. The side staircase blocks the access to the electricity meters and also hinders the privacy of the intervener. No NOC was obtained from other co-owners of the property and therefore it cannot be regularized and should be demolished being unauthorized.

5. I have perused the record. The demolition action is a consequence of rejection of regularization application. If the rejection order is upheld, the demolition appeal shall automatically fail. The respondent rejected the regularization application on the ground that consent of all co-owners has not been submitted and the front staircase is found lending within front set back which is not permissible.
6. As far as the aspect of consent of all the co-owners is concerned, the appellant along with his family members claims to be the owner of entire property except of rear portions of first floor, second floor and rear portion of roof of third floor. These staircases are not an internal construction but are external construction and shall not be a part of FAR and therefore, no consent from the other co-owners is required. The argument of the intervener that the consent of other co-owner is required even for constructing external fire escape staircase is without merits. The consent of the other co-owners in pursuance to the circular of the MCD dated 17.09.2025 is required only when an issue of FAR of the same flat /unit/floor is in question. Therefore, the rejection order passed on the premise that the consent of all co-owners has not been submitted is not proper. No consent from other co owners is required.
7. Coming to the aspect of refusal that the front staircase is found lending within front set back and is not permissible. The demolition order itself records in

para four that the fire staircase in the front set back area is permissible. It further mentions in the end that in the instant case the bone of contention between the parties is staircases/fire escapes in the set back area and infringing upon the easement right of the other co-owners.

8. The clause 9.3 of UBBL-2016 permits additional fire escape external staircase. However, all fire escapes shall be continuous from ground to terrace. The present staircase in the front and side set back are not from ground to terrace. Though the appellant during arguments showed his willingness to construct the fire escape stairs up to terrace but no such proposal in writing was made with respondent despite that the appellant along with his family members claim to be the owner of entire front portion of the property.
9. The appellant has claimed parity on the basis of Fire Safety Certificate granted to McDonalds Restaurant at S-25, Green Park Main Market but in that case the staircases continues to terrace and therefore, parity cannot be claimed by the appellant. The fire escape external staircase is permitted if it goes till roof.
10. The intervener also raised objection of no NOC from Archaeological Survey of India. In this regard, it is sufficient to note that there is a letter issued by ASI stating that the subject property is at a distance of 127 meters from protected monument and construction of maximum height of 15 meters is permissible and in view of the same, no permission from ASI, for constructing MS Steel frame fire escape external staircase is required.
11. The respondent rejected the regularization application on account of no NOC from other co-owners which is not required. The other ground of rejection was of front staircase which as per demolition order is permissible.
12. As far as the side set back stairs is concerned, the intervener has shown photographs which clearly reflect that electricity meter(s) and power generator are on the adjoining wall as well as beneath the side set back staircase, which may be dangerous as may cause hindrance to get access to the electricity meters installed along with the side set back staircase. The appellant in any case is required to remove the side set back staircase which are also from ground to first floor only.

13. Since the two impugned orders contradicts each other in respect of front fire escape stairs and the appellant is willing to construct the same up to the terrace level, the rejection of regularization application order is set aside with directions to the respondent to re-open the regularization application and decide the same considering that NOC from other co-owners is not required and further that the external fire escape stairs are permitted if constructed from ground to terrace and considering that the fact that front set back area is owned by the appellants and his family members, on the basis of which the earlier regularization dated 14.11.2019 was granted.
14. Till the regularization application is reopened and decided afresh, the impugned demolition order shall be kept in abeyance. The appeal no. 146/26 is disposed of and the matter is remanded back and the appellant is directed to appear before the Quasi Judicial Authority on 28.10.2026 at 02.00 PM.
15. The other appeal no. 145/26 is kept pending awaiting status report of the regularization application.
16. Record of the respondent, if any, be returned along with copy of this order and appeal file number 146/26 be consigned to record room.

**Announced in the open Court
today i.e. on 01.10.2026**

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