

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

APPEAL NO. 693/ATMCD/2023

Mrs. Kanta Devi
Wife of Late Shri Lalu Ram
Resident of D-49
Swami Dayanand Colony
Sarai Rohilla
Delhi - 110007

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	18.10.2023
Date of Judgment	:	05.10.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 04.09.2023 passed in respect of unauthorized construction carried out in adjoining Flat No. D-49 & D-50, Swami Dayanand Colony, Sarai Rohilla, Delhi-110007, in the shape of Shop at common space of Ground Floor adjoining these two flats No. D-49 & D-50.
2. The brief facts necessary for disposal of this appeal are that the appellant is the owner of flat no. D-49 (subject property) by virtue of registered documents executed in her favour by her mother on 23.05.2001. The respondent booked the unauthorized construction vide show cause notice dated 13.03.2023 in pursuance to directions passed by the Hon'ble High Court in W.P. (C) No. 1333/2023 filed by the intervener against MCD. The appellant submitted her

reply to the show cause notice and thereafter, the impugned demolition order was passed.

3. The appellant has challenged this order on the ground that the construction of the shop which has been booked by MCD is old and prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Ld. Counsel for the appellant argued that the respondent failed to consider the registered GPA dated 23.05.2001 executed in favour of the appellant by her mother wherein the description of three shops is given and as on date, there are three shops only in the subject property of the appellant and same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The respondent cannot travel beyond the show cause notice by passing demolition order in respect of some other portion of the subject property and therefore, the impugned order is liable to be set aside.
4. Ld. counsel for the respondent/MCD on the other hand argued that the subject property has been constructed after 08.02.2007 and is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The intervener argued that the Hon'ble High Court vide order dated 12.09.2023 passed in WP (C) No. 1333/2023 directed the MCD to demolish the unauthorized construction within six days which still exists and is on government land and is liable to be demolished.
5. I have perused the record. The respondent booked the unauthorized construction in the shape of shop only at common space at ground floor adjoining flat no. D-49 & D-50. This show cause notice was only in respect of one shop at ground floor. However, after this show cause notice dated 13.03.2023, respondent inspected the property on 20.04.2023 and found that shops have been constructed adjoining property no. D-50 as well by Sh. Ishwar Chand Garg, Mohd. Jamal, Sh. Gulab Singh, Sh. Praveen Bedi and Sh. Gulshan Aara. Thereafter, the respondent in the impugned order, gave protection to all these shops except the shops/room at common space/setback portion at the ground floor adjoining the subject property of the appellant.
6. The booking was in respect of a shop at common space adjoining D-49 & D-50 and the demolition order was passed for unauthorized construction of

shops/room at common space/setback portion at ground floor adjoining flat no. D-49. The demolition order cannot travel beyond the booking as appellant did not get an opportunity to respond the same.

7. The GPA executed in favour of the appellant by her mother show that the property no. D-49, at that time, was consisting of one room, one kitchen, one latrine, bathroom, gallery, varendah and three shops in 2001. The status report along with rough site plan filed by the respondent show that the subject property as on date has only three shops along with three rooms, toilet, store etc. Though the number of rooms have increased from one to three after 2001, but the number of shops remain the same being three shops. The booking is only of the shop and not of the room (s) and the demolition order travelled beyond the show cause notice.
8. Any order passed beyond the show cause notice is not sustainable as the appellant did not get the opportunity to show cause in respect of the extra number of rooms. The appellant gave reply only in respect of the booking which was for the shop. As already said, there were three shops in the property as on 23.05.2001 and as per status report filed by the MCD, still there are three shops in the property which are protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011., being prior to 08.02.2007.
9. Coming to the argument of the intervener regarding directions of Hon'ble High Court in the order dated 12.09.2023, the Hon'ble High Court in para 5 of this order specifically said that the aforesaid submissions have been recorded without prejudice to the rights and contentions of the appellant before me, whose statutory remedies were kept reserved. The Hon'ble High Court therefore kept the remedies of the appellant open which have been sought in this appeal. The appellant was not impleaded in that writ petition.
10. In these facts the demolition order is upheld in respect of shop(s) but kept in abeyance in respect of three shops existing in property no. D-49, Swami Dayanand Colony, Sarai Rohilla, Delhi-110007 till National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. The respondent shall be at liberty to take action against the unauthorized construction once this Act ceases to be in force. The demolition order in

respect of rooms etc. is set aside as same were never booked. The respondent is at liberty to take fresh steps in this regard.

11. The appeal stand disposed of. Record 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 05.10.2026**

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