

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

APPEAL NO. 724/ATMCD/2024

**Shri Ram Niwas Jain
S/o Late Sh. B.S. Jain
R/o Flat No. 42, Mitra Vihar
Pitampura
Delhi - 110034**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	05.09.2024
Date of Judgment	:	06.10.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 14.08.2024 passed in respect of unauthorized construction carried out in Flat No. 42, Srinivasपुरi Mitra Mandal Co-operative Group Housing Society, Pitampura Delhi-110034 (hereinafter referred as subject property) in the shape of two rooms at terrace and extended balcony in back side and deviation from Standard Building Plan.
2. The brief facts necessary for disposal of this appeal are that the appellant is the original allottee of this flat having a conveyance deed dated 20.02.2008 executed by DDA in his favour. The respondent booked the unauthorized construction in the shape of two rooms at terrace and extended balcony in back side and deviations from Standard building plan in second floor flat vide show cause notice dated 16.04.2024, noting that the property is old and occupied. It was booked in pursuance of a court case. The show cause notice

was duly replied by the appellant and after giving personal hearings to him, the impugned demolition order was passed recording that the total existing covered area in the property is 108.81 sq meters against covered area of 82.5 sq meters shown in the self assessment property tax form for the year 2006-2007 and the additional construction beyond 82.5 sq meters being raised after 08.02.2007 is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act,2011 and is liable to be demolished.

3. The appellant has challenged this order on the ground that the construction in the property is old and prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act,2011. The concerned Junior Engineer inspected the property after the personal hearing was closed and his inspection report was never brought to the notice of the appellant and the impugned order passed on the basis of that inspection report is liable to be set aside. It was argued for the appellant that the impugned order relying upon a subsequent inspection report, which was never provided to the appellant nor an opportunity was given to rebut the inspection report, is liable to be set aside.
4. Ld. counsel for MCD on the other hand argued that the show cause notice was duly replied and the appellant was heard and after comparing the documents relied by the appellant with the existing covered area of the property, the demolition order was passed and there are not merits in this appeal.
5. I have perused the record. The impugned order records that the proceedings were concluded on 15.07.2024 and thereafter, the site inspection was carried out and during that site inspection, the Junior Engineer noted that the covered area at first floor is 88.50 sq meters and at the second floor is 20.31 sq meters. The respondent relying upon this inspection report which was conducted subsequent to the closing of personal hearing, passed the impugned demolition order without bringing the said inspection report to the notice of the appellant and without providing an opportunity to reply this inspection report.
6. Admittedly, the inspection was carried out on 12.08.2024 after about a month of closing the personal hearing on 15.07.2024. The respondent relied upon

an inspection report which came into existence subsequent to closing of personal hearing and the impugned order is liable to be set aside since this inspection report, which was the basis of passing the impugned order, was neither provided to the appellant nor he was given an opportunity to rebut this inspection report.

7. It is also relevant to note that no on going construction was noticed at the time of booking and respondent itself recorded that the property is old and occupied and was booked in pursuance of a court case.
8. In these facts the demolition order dated 14.08.2024 is set aside and the matter is remanded back with directions to the respondent to provide copy of the inspection report dated 12.08.2024 to the appellant and given him opportunity to give response to this inspection report and pass fresh speaking order. The appellant shall appear before the Quasi Judicial Authority on 22.10.2026 at 03.00 PM and speaking order be passed within six weeks of conclusion of the hearing.
9. The appeal stands 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 06.10.2026**

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