

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

APPEAL NO. 5/ATMCD/2024 - Sunita Devi And Ors. Vs. MCD
APPEAL NO.56/ATMCD/2024 - Sunita Devi And Ors. Vs. MCD
APPEAL NO. 6/ATMCD/2024 - Meera Singh And Anr. Vs. MCD
APPEAL NO. 55/ATMCD/2024 - Meera Singh And Anr. Vs. MCD
APPEAL NO. 729/ATMCD/2024 - Bhupender Singh Balhara Vs. MCD

**Date of Filing of Appeals : 03.01.2024, 31.01.2024
& 05.09.2024**
Date of Judgment : 08.10.2026

JUDGMENT

1. These are the five appeals challenging the two demolition orders, two sealing orders and one vacation notice passed in respect of unauthorized construction carried out in Property No. C-50, Freedom Fighter Enclave, New Delhi (hereinafter referred as subject property) in the following manner:

- i) The appellant Sunita Devi, Prem Prakash gupta and Prabhat Kr. Saxena have filed appeal challenging the demolition order dated 30.10.2015 in appeal no. 5/24 and the sealing order dated 20.01.2016 in appeal no. 56/24 passed in respect of the unauthorized construction carried out in the shape of Stilt and Ground Floor in property no. C-50, Freedom Fighter Enclave, New Delhi.
- ii) The appellant Meera Singh and Narender Kumar Jain have filed appeal challenging the demolition order dated 29.01.2016 in appeal no. 6/24 and the sealing order dated 11.03.2016 in appeal no. 55/24 for the unauthorized construction carried out in the shape of First Floor in Property No. C-50, Freedom Fighter Enclave, New Delhi.
- iii) The appellants Bhupender Singh Balhara, Avtar Singh and Rakesh Kumar Jain have filed appeal against the vacation notice dated 30.08.2024 in appeal no. 729/24 for the unauthorized construction carried out in the shape of Second Floor and Third Floor.

2. The brief facts necessary for disposal of these appeals are that the:
- a) appellant Sunita Devi purchased flat no. 2 at stilt floor on 06.03.2017
 - b) appellant Prem Prakash Gupta purchased the upper ground floor left side flat on 27.05.2022.
 - c) appellant Prabhat Kumar Saxena purchased upper ground floor right side flat on 14.07.2018.
 - d) appellant Meera Singh purchased first floor left side flat on 08.11.2022.
 - e) appellant Narender Kumar Jain purchased first floor right side flat on 21.06.2022.
 - f) appellant Bhupender Singh purchased third floor left side flat on 31.07.2024.
 - g) appellant Avtar Singh purchased second floor right side on 04.01.2024 and
 - h) the appellant Rakesh Kumar Jain who sold all these flats to the remaining appellants, himself occupied the second floor left side and third floor right side flat.
3. The respondent booked the unauthorized construction in the shape of stilt and ground floor vide show cause notice 20.10.2015 followed by the demolition order dated 30.10.2015. Thereafter, the unauthorized construction in the shape of first floor was booked vide show cause notice dated 09.01.2016 followed by the demolition order dated 29.01.2016. Lastly, the unauthorized construction in the shape of second and third floor was booked vide show cause notice dated 18.04.2023 followed by the demolition order dated 27.04.2023.
4. Similarly, the respondent issued the first sealing notice under section 345A of DMC Act on 09.12.2015 followed by the sealing order dated 20.01.2016, second sealing notice dated 19.02.2016 followed by the sealing order dated 11.03.2016 and the third sealing notice dated 09.05.2023 followed by the demolition order dated 24.05.2023.
5. The appellants have challenged these orders primarily on the ground that neither the show cause notices nor the impugned orders were served upon them. They came to know about these orders only when the vacation notice dated 30.08.2024 was served. The property is old and occupied and existing prior to 01.06.2014 and was booked on a motivated WP (C) No. 6177/23 filed by one Rahul

Kumar wherein the appellants were deliberately not made a party and since the opportunity of being heard was not provided nor an opportunity of reply was given, the impugned orders should be set aside.

6. Ld. counsels for the respondent on the other hand argued that the appeal no. 729/24 challenging the vacation notice is not maintainable as the vacation notice is not appealable before this Tribunal. Further it was argued that Mr. Rakesh Jain who is one of the appellants in appeal no. 729/24, raised unauthorized construction in the shape of flats from stilt to third floor and thereafter, sold the same to the other appellants and this construction was raised without sanction and was booked at every stage starting from stilt to third floor. The construction was raised after 01.06.2014 as the first booking of stilt and ground floor is of 20.10.2015 and subject property is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Mr. Rakesh Jain tampered with the seal affixed at the stilt floor and at approach to the upper floor, for which FIR was registered with the concerned police station and Mr. Rakesh Jain was also arrested by the police and yet, he continued the illegal act and constructed the building up to third floor and therefore, the appeals are without merits and should be dismissed with cost.

7. I have perused the record. The appellants have claimed that the show cause notices were never served on them. In this regard the date of purchase of the respective flats and the booking of that particular floor are relevant. Appellant Sunita Devi who is the first purchaser in time of the flat no. 2 at stilt purchased her flat on 06.03.2017 whereas the booking for stilt and ground floor is dated 20.10.2015. There was no occasion or reason with MCD to serve her as she was not even an owner or occupier of her flat at the time of booking dated 20.10.2015 or at the time of demolition order dated 20.01.2016. Same is the case with the other two flat owners of the ground floor who became owners on 27.05.2022 and 14.07.2018.

8. Coming to the owners of the first floor flats. Smt. Meera Singh became owner of her flat on 08.11.2022 and Narender Jain on 21.06.2022. The first floor was booked on 09.01.2016 and the demolition order was passed on 29.01.2016. The MCD had no occasion or reason to serve them as they were neither owners nor occupiers in 2016.

9. Similarly, the appellant Bhupender Singh purchased third floor left side flat on 31.07.2024, Avtar Singh purchased second floor right side on 04.01.2024 and the

booking for the second and third floor is dated 18.04.2023 and the demolition order is 27.04.2023. The MCD had no occasion or reason to serve them as they were neither owners nor occupiers in 2023.

10. The only appellant who was in this property at the time of every booking and raised construction of the entire property is Mr. Rakesh Jain who kept the second floor left side and third floor right side flats with him. As far as service of show cause notices and the impugned orders upon him is concerned, the show cause notices were duly served through pasting which is proper mode of service as per section 444 of the DMC Act. The Hon'ble High Court has also approved this mode of service in the following judgments:

a) Paramjeet Kaur V/s MCD 1994 (56) DLT 720.

b) Narender Prasad Dube V/s. Union of India 1999 (81) DLT 378.

c) Hari Dutt Vashistha V/s. MCD 1978 (2) ILR (Delhi) 28.

d) Usha Devi Sharma V/s. MCD 2020 (271) DLT 76.

11. Otherwise also, the respondent not only booked the construction at every stage from stilt to third floor but also took repeated coercive action against the property. The RCC panel at first floor were cut and demolished on 19.01.2016, property was sealed at stilt and entrance of stilt staircase on 07.04.2016. This seal was tampered for which an FIR was lodged with police on 30.03.2017. One RCC column and partition walls at the terrace of third floor were demolished on 26.05.2023. Two flats at third floor were sealed on 27.10.2023. This seal was again tampered and same was re-affixed by MCD after demolishing one RCC panel. Similarly, demolition and sealing actions were continuously taken till 09.09.2024. Mr. Rakesh Jain despite these actions, not only tampered with the seal but also continued to raise construction unauthorizedly and was also arrested by the officials of police station Mehrauli in FIR No. 230/17 registered under section 448/188 IPC and 461 of DMC Act.

12. This clearly show that the predecessor in interest of all the appellants namely Mr. Rakesh Jain was duly served with the show cause notices as well as the impugned orders. He took law in his hands and tampered with the seals and raised construction till third floor despite the property being booked at initial stage of stilt and ground floor. The appellants cannot have a right better than that of Mr. Rakesh Jain and once it is shown that Mr. Rakesh Jain was duly served with show cause

notices and the appellants were not even in the property as owner/occupier, there is no merit in the argument that appellants were not properly served.

13. Coming to the aspect of old and occupied property, the initial booking of the stilt and ground floor is of 20.10.2015 which was much after the cutoff date of protection for unauthorized construction under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 which is 01.06.2014. The property constructed after 01.06.2014 is not entitled to protection under this Act. Admittedly there is no sanction building plan.

14. Further, an appeal against a vacation notice is not maintainable and appeal no. 729/24 is liable to be dismissed on this ground alone. However, even if this appeal is considered to be against the demolition order dated 27.04.2023 passed for the second and third floor, the same is without merits as the construction is unauthorized and not protected under any law.

15. In view of this discussion, there are no merits in these appeals and all the five appeals are dismissed. Impugned demolition orders and sealing orders are upheld.

16. Record of the respondent, if any, be returned along with copy of this order and appeals file be consigned to record room.

**Announced in the open Court
today i.e. on 08.10.2026**

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