

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

APPEAL NO. 327/ATMCD/2026

**Animesh Sharma
S/o Late Shri Atul Sharma
R/o 4, GF, Ambica Vihar
Paschim Vihar
New Delhi - 110087**

..... Appellant

Versus

- 1. Municipal Corporation of Delhi
Through its Commissioner
Civic Centre, Minto Road
New Delhi**
- 2. Deepak Aggarwal
S/o Late Shri Ashok Sain Aggarwal
R/o F-19/71, Sector – 8
Rohini
Delhi - 110085**

..... Respondents

Date of Filing of Appeal	:	21.04.2026
Date of Judgment	:	09.10.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 06.01.2025 passed in respect of unauthorized construction carried out in Property No. J-28, Udyog Nagar Industrial Area, Peeragarhi, New Delhi (hereinafter referred as subject property) in the shape of, as detailed in the demolition order, which is reproduced below:

“The unauthorized construction at Ground Floor consisting of two small toilet block and one guard room/store room (newly constructed) in the front court open, a truss structure pully mechanism to move heavy load/materials (from one place to another) starting from front open court through side open, till rear open court. The rear open court

covered by truss & tin shade, the gate at the rear open to assess the service lane was also found closed by brick wall, however, the work shop truss structure which was shown in sanctioned building plan was found replaced by RCC slab”.

2. The brief facts necessary for disposal of this appeal are that the appellant is in possession of a small room at ground floor, common courtyard passage, tin shed area at the backside of ground floor, entire mezzanine floor and terrace of this property. The respondent earlier vide show cause notice dated 12.08.2022, booked the unauthorized construction in the shape of basement, ground floor, mezzanine and a tin shed along side mummy at first floor. The same was duly replied by the appellant on 22.08.2022 and thereafter the demolition order dated 19.10.2022 & sealing order dated 25.10.2022 was passed in respect of the tin shed along with mummy at terrace and a toilet in the front set back at ground floor only. The respondent gave protection to the remaining booked property being part of sanctioned building plan and also being existing prior to year 2007 and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant challenged these two orders before this Tribunal vide appeals no. 686/22 and 687/22 which were dismissed for non-prosecution on 26.04.2024. The respondent thereafter issued vacation notice dated 01.07.2024 in respect of the unauthorized construction in the shape of mummy at terrace and a toilet in the front set back at ground floor. The appellant demolished this unauthorized construction and submitted compliance with MCD vide letter dated 11.07.2024.

3. Respondent no. 2 in the meantime purchased the subject property through registered sale deed dated 23.03.2023. The respondent/MCD visited the property with police force and labour on 10.10.2024. The appellant challenged this action in W.P. (C) NO. 14568/24 wherein the Hon'ble High Court disposed of the writ petition on 23.10.2024 directing the respondent to take action only after inspection and issuance of show cause notice. The respondent thereafter issued fresh show cause notice dated 05.11.24 in respect of unauthorized construction referred herein above. The appellant challenged this show cause notice in another W.P. (C) NO. 15652/24 which was disposed of on 11.11.2024 directing the appellant to respond to the show cause notice and MCD to take decision thereafter. The appellant challenged this order dated 11.11.2024 in LPA No. 1159/24 which was disposed of on 27.11.2024

upholding the order of the Hon'ble Single Judge and giving liberty to the appellant to seek relief subject to outcome of show cause notice proceedings. The appellant and respondent no.2 thereafter replied to the show cause notice and the impugned demolition order was passed.

4. The appellant has challenged this demolition order on the ground that the respondent violated the directions given by the Hon'ble Supreme Court in the judgment of *In Re: Directions in the matter of demolition of structures*, (2025) 5 SCC 1, and further, despite earlier protection given while passing the demolition order dated 19.10.2022, passed the fresh demolition order even in respect of portion which was given protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was argued for the appellant that the respondent no. 2 in connivance with MCD deliberately and with malafide intention tried to demolish the property on 10.10.2024 and respondent no. 2 raised unauthorized construction on the ground floor so that the entire property can be demolished for violating the status quo qua construction, required to be maintained under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and therefore, the impugned order passed without following the directions of Hon'ble Supreme Court is liable to be quashed.

5. Ld. counsel for MCD on the other hand argued that after the orders of Hon'ble High Court passed on 23.10.2024 in W.P. (C) NO. 14568/24, the MCD was at liberty to take action in accordance with law and therefore, the property was inspected and unauthorized construction found in the property was booked and after considering the reply and documents of the appellant and respondent no. 2 and after providing personal hearings to them, the speaking and reasoned demolition order was passed. There is no violation of the directions of Hon'ble Supreme Court. The respondent visited the property on 10.10.2024 only for inspection which was prefixed as per the schedule for the month of October, 2024 as per police assistance provided to the respondent and there was no malafide on the part of MCD in visiting the property on 10.10.24. The labour and police force was with the officials of MCD for the program fixed against unauthorized construction in the vicinity and no action was to be taken at the subject property except for the inspection and therefore, the appeal should be dismissed.

6. Ld. counsel for respondent no. 2 on the other hand argued that the property was sold to respondent no. 2 by the grandfather of the appellant in 2023 and

appellant is a tress passer and has no authority to file this appeal. There are cross FIRs filed by the parties against each other. The appellant raised unauthorized construction after the first demolition order dated 19.10.2022 was passed and therefore, the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available and the appeal should be dismissed.

7. I have perused the record. Undisputedly, the respondent/MCD while the previous demolition order dated 19.10.2022 and sealing order dated 25.10.2022, gave protection to the entire construction in the property being part of sanctioned building plan and also existing prior to 2007 except for tin shed at terrace and toilet in the front setback. The respondent directed demolition only of tin shed at terrace and toilet in the front setback. The appellant demolished those structures on 11.07.2024 and also intimated the same to the respondent. There is no material in the MCD record to show that any fresh construction has been raised by the appellant in the property after 19.10.2022 or even after 11.07.2024.

8. Though it is correct that the respondent was given liberty by Hon'ble High Court vide order dated 23.10.2024 to take action in accordance with law but that does not mean that the respondent can pass demolition order even in respect of the construction which was found protected vide demolition order 19.10.2022. The photographs annexed by the appellant with his earlier writ petition no. 13502/22 challenging the previous show cause notices dated 12.08.2022 and 13.09.2022 under section 344/343 of DMC Act and 345A of the DMC Act respectively, clearly show that the unauthorized construction booked now vide fresh show cause notice dated 05.11.2024 was existing even in 2022. The truss structure from front setback to side setback and rear setback along with tin shed is clearly visible in those photographs. The respondent/MCD did not bother to check these photographs and passed the demolition order only on the ground that some new construction in the shape of toilet block and store room at front setback has been found.

9. There is no material to show that this toilet block and store/guard room in the front setback has been built by the appellant after 11.07.2024 when the earlier unprotected toilet in the front setback was demolished along with tin shed at terrace. There is no reason with the appellant to raise this construction after demolishing the same on 11.07.2024. Even if it is presumed for the sake of arguments, though disputed by the appellant, that this toilet block and store/guard room in the front

setback has been newly built by the appellant, the respondent cannot direct the demolition of the entire existing structure which was protected on 19.10.2022. Respondent no. 2 who has such strain equation with appellant shall never allow the appellant to raise such massive construction as booked by MCD.

10. The impugned demolition order therefore is liable to be kept in abeyance as the construction already existing except of the toilet block and store/guard room in the front setback is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It is also relevant to note that the impugned order does not specify as to which part of the property is as per sanctioned building plan and which part of the property is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The impugned order should have specified these details.

11. The appellant has also prayed for findings in respect of violation of the directions given by the Hon'ble Supreme Court in the judgment of In Re: Directions in the matter of demolition of structures. The respondent issued show cause notice dated 05.11.2024 giving complete details of the unauthorized construction, the appellant and respondent no. 2 were given opportunity to reply as well as personal hearings. The respondent as such complied with the directions of Hon'ble Supreme Court except of mentioning the particulars of compoundable and non-compoundable deviations and as to which part of the property is as per sanctioned building plan and which part of the property is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The respondent was required to mention these details which are missing in the impugned order, but otherwise all other directions given by the Hon'ble Supreme Court have been duly complied.

12. The appellant has also prayed for a time-bound inquiry in respect of the attempt of demolition at the subject property by MCD on 10.10.2024. The respondent in this regard has placed on record the copy of a letter dated 23.09.2024 written by MCD to Delhi Police seeking police force for the demolition drive for the month of October, 2024. As per this schedule, police assistance was sought for the vicinity of Paschim Vihar-West, New Delhi where the subject property is situated for 10.10.2024. The respondent visited the subject property, though with police force and labour, were was accompanying MCD only for inspection and the police force and labour were not meant for demolishing the subject property. They were just accompanying the officials of MCD for demolition programme scheduled in the

vicinity and not at the subject property and in these facts, no inquiry as prayed is required.

13. In view of this discussion the appeal is allowed and the impugned demolition order is kept in abeyance in respect of the subject property except of the toilet block and store/guard room in the front setback of the property till National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in enforce. The toilet block and store/guard room in the front setback are liable to be demolished forth with.

14. 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 09.10.2026**

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