

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

APPEAL NO. 906/ATMCD/2018

**Shri Swaran Marwaha
S/o Shri K.L. Marwaha
R/o C-264, Second Floor
Defence Colony
New Delhi**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	12.12.2018
Date of Judgment	:	13.10.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 31.10.2018 passed in respect of unauthorized construction carried out in Property No. C-264, Defence Colony, New Delhi (hereinafter referred as subject property) in the shape of deviations/excess coverage against the Sanctioned Building Plan dated 13.09.1989 at Ground Floor, First Floor & Second Floor and also unauthorized construction/structure at part Third Floor .
2. The brief facts necessary for disposal of this appeal are that the appellant purchased the second floor with terrace right on 18.06.1989 and thereafter raised construction at second floor and got it regularized in 2000. It is claimed in the appeal that the appellant also raised construction at the terrace of the second floor at the same time. The owner of the property at ground and first floor, late Group Captain Ved Kumar filed Civil Suit No. 1127/2000 against the appellant claiming unauthorized construction at the second floor as well as the

terrace of the second floor. The suit was dismissed on 17.02.2006 and the plaintiff therein filed RFA No. 300/2006 before the Hon'ble High Court which was partly allowed on 19.09.2008 to the extent that a rectification deed may be executed by Group Captain Ved Kumar in favour of the appellant inserting clause 15 & 16 in the sale deed to say that appellant shall have only right to take charge of second floor for use and security and not to construct anything. The said rectification deed was duly executed.

3. The respondent booked the unauthorized construction vide show cause notice dated 23.07.2018 which was duly replied by the appellant on 13.08.18 and thereafter the impugned demolition order was passed. The appellant has challenged this order primarily on the ground that the construction at second and third floor was raised in the year 2000 and the same is prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and therefore, the appeal should be allowed. Ld. Counsel for appellant in support of his argument relied upon the pleadings and orders passed in the civil suit as well as in the RFA filed by Group Captain Ved Kumar.
4. Ld. counsel for MCD on the other hand argued that the appellant after regularization of the second floor, raised construction at second and third floor which is not compoundable and is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and is liable to be dismissed.
5. I have perused the record. The respondent booked the unauthorized construction on 23.07.2018 stating deviations against sanctioned building plan dated 13.09.1989 from ground to second floor and unauthorized construction of part third floor. Admittedly, the second floor was regularized in 2000 and this show cause notice is silent in respect of the regularization taken in 2000 as if respondent was not even aware of this regularization.
6. The impugned demolition order however refers to this regularization of the second floor dated 15.02.2000 and mentions the details of sanctioned and regularized area, existing area and excess area in the property. The appellant has shown through the pleadings of the Civil Suit No. 1127/2000 filed by Group Captain Ved Kumar that this unauthorized construction was raised in the year 2000. That civil suit was dismissed and RFA was partly

modified only to the extent of adding two clauses in the sale deed through rectification deed stating that the appellant shall only take charge of the terrace of the second floor but will not construct and Group Captain Ved Kumar shall have a right to use the terrace, only for maintenance of water tank and antenna. The Civil Court as well as Hon'ble High Court did not pass any order on the prayers of mandatory and permanent injunction raised in that suit seeking demolition of unauthorized construction raised by the appellant on the terrace of the second floor.

7. This suit filed in 2000 clearly show that the unauthorized construction at the second floor and third floor was raised in the year 2000 and much prior to the cutoff date of protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 which is 08.02.2007. Since this construction exists prior to 08.02.2007, therefore the same is protected under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The demolition order is upheld but kept in abeyance till the 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.
8. 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 13.10.2026**

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