

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

APPEAL NO. 373/ATMCD/2024

**Ms. Sita Bansal
W/o Mr. Kalish C Bansal
B-212, Second Floor
Ekta CGHS Satya Shanti Apartment
Sector – 13, Rohini
Delhi-110085**

..... Appellant

Versus

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

..... Respondent

Date of Filing of Appeal	:	27.05.2024
Date of Judgment	:	14.10.2026

JUDGMENT

1. This is an appeal challenging the demolition order dated 13.05.2024 passed in respect of unauthorized construction carried out in Flat No. B-212, Second Floor, Duplex Flat, Ekta CGHS Satya Shanti Apartment, Sector – 13, Rohini, New Delhi in the shape of room on the open terrace space in Duplex Flat upper level against the standard Sanction Building Plan (hereinafter referred as subject property).
2. The brief facts necessary for disposal of this appeal are that the appellant is the original allottee of this flat since 01.05.2001. The respondent booked the above mentioned unauthorized construction on complaint on 22.12.2023 in the shape of a room on the open terrace of this duplex flat. The show cause notice was duly replied by the appellant and after hearing her through her attorney, the respondent passed the impugned demolition order.
3. The appellant has challenged this order primarily on the ground that the construction existing in the flat is old and prior to 08.02.2007 and is protected

under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was argued that the construction exist on the terrace within four corners of the flat and the same was constructed sometime in 2006 and is protected. It was argued that the documents filed by the appellant clearly show that the construction is old but the respondent failed to consider. It was further argued that the respondent cannot adopt pick and choose policy. Almost all the flat owners in the society have carried out unauthorized and illegal construction in their flats but the respondent has not taken any action against those flats and with malafide intention, booked the property of the appellant on complaint of one police official who resides in flat no. B-214. Further the regularization application of the appellant was also rejected unlawfully and therefore, the impugned order is liable to be set aside.

4. Ld. counsel for MCD on the other hand argued that the appellant has not filed even a single document to show that this room at the open terrace exists since prior to 08.02.2007. The property tax return(s) of the appellant do not show any construction at the terrace of the second floor and there are no merits in this appeal and same is liable to be dismissed.
5. I have perused the record. The respondent booked this unauthorized construction on a complaint and the FIR itself mentions that the construction is old and occupied. The respondent only booked the room on the open terrace and no other deviations/excess coverage against standard sanction building plan was found and booked. The property tax return(s) filed by the appellant show that since 2008-09, the covered area of the flat is 160 sq meters at second floor with year of construction mentioned as 2001. Nothing contrary to it is available in MCD record to show that unauthorized construction was raised subsequent thereto. The self assessment property tax form of 2006-07 show the covered area at third floor as 102 sq meters. The respondent did not bother to verify the existing covered area at the second and third floor nor compared the same with covered area at second and third floor mentioned in the property tax documents.
6. The impugned demolition order only states that the covered area in 2007-08 was 92.1 sq meters and the covered area in 2008-09 was 160 sq meters and therefore, the additional construction of about 68 sq meters was not in existence prior to 07.02.2007. The impugned demolition order is not in

respect of the covered area at second and third floor of this duplex flat existing at second and third floor but is in respect of one room constructed at the open terrace. So any observation in respect to the covered area is of no use.

7. The observation of Quasi Judicial Authority in the impugned order in respect of the covered area cannot be the basis to pass demolition order since the flat itself was not booked by the MCD and only a room at open terrace was booked. As already said the covered area as per property tax returns of 2006-07 at third floor is about 102 sq meters and at the second floor is 160 sq meters as per PTR of 2008-09.
8. Coming to this room at the open terrace. The booking itself records that the construction is old and occupied. The respondent earlier filed a letter dated 05.03.2006 written to the society seeking repair, renovation, addition and alteration in the flat. The society vide recent letter dated 06.09.2026 has confirmed that a letter dated 05.03.2006 was received from the appellant seeking repair and renovation in her flat and the society believes that the appellant repaired and renovated her flat including construction of the room at open terrace. This letter of the appellant dated 05.03.2006 shows that the sought permission to alter and add in her flat and the additional room at the open terrace was constructed sometime in 2006 and prior to 08.02.2007 and is thus protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
9. In view of the same the impugned 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.
10. 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 14.10.2026**

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