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

APPEAL NO. 189/ATMCD/2024
APPEAL NO. 324/ATMCD/2024
APPEAL NO. 439/ATMCD/2024

Shri Anubhav Nath
S/o Shri Ashok Kumar
R/o 92/94, Sunder Nagar, Lodhi Road
New Delhi – 110003

…….. Appellant

Versus

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

…… Respondent

Date of Filing of Appeal	**:**	**12.03.2024, 07.05.2024 &14.06.2024**
Date of Judgment	**:**	**16.10.2026**

JUDGMENT

1. These are the three appeals challenging the demolition order dated 20.12.2023 in appeal no. 189/24 and the sealing order dated 12.04.2024 in appeal no. 324/24 passed in respect of unauthorized construction carried out in Property bearing No. A-1/A part of Khasra No. 1518, Ward No. 1, (identified & booked with particulars property adjacent to Qutub Restaurant) Aurobindo Marg, Mehrauli, New Delhi (hereinafter referred as subject property) in the shape of Ground Floor-front side (back side old building constructed /consistingGround Floor) by Girders & Stone Slabs. The appellant has further challenged the rejection order dated 10.05.2024 of proposal for regularization in respect of the subject property in appeal no. 439/24.

2. The brief facts necessary for disposal of these appeals are that the appellant is the owner of single storey property bearing no. A-1/A forming part of khasra no. 1518, village Mehrauli, New Delhi by virtue of a Will dated 15.01.2001 executed by his grandfather in his favour. The respondent booked the unauthorized construction in the shape of ground floor front side vide show cause notice dated 28.11.2022 followed by the demolition order dated 09.12.2022. Another sealing order dated 20.02.2023 was also passed in pursuance to this booking dated 28.11.2022. The appellant challenged this demolition order and the sealing order in appeals no. 384A/23 and 389/23 respectively and these appeals were allowed on 20.09.2023 and the matter was remanded back for fresh decision after hearing the appellant. The respondent in pursuance to this order provided fresh hearings to the appellant and passed the impugned demolition and sealing orders. The appellant in the meantime also applied for regularization which was rejected on 12.04.2024 for non compliance of invalid notice but this Tribunal on 15.04.2024 directed the respondent to reopen the regularization application and decide afresh and thereafter, the regularization application was reopened and again rejected on 10.05.2024.
3. The appellant has challenged these three orders on the ground that the construction existing in the property is old and much prior to 01.06.2014 which is the cutoff date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The grandfather of the appellant was paying property tax for covered area of 152.08 sq meters since 1st April, 1984 and therefore, the construction being old is protected. It was also argued for the appellant that the rejection of regularization application was improper as the construction at site is within permissible limit and can be regularized as per clause 2.8 of UBBL-2016. The property is situated in village Mehrauli and is comprising of ground floor only where 100% ground coverage is permissible and further, no permission from Archaeological Survey of India(ASI) is required as the property exist prior to coming into force of ASI Act in 1992 and therefore, the appeals should be allowed and the respondent should be directed to regularize the property or else same is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

4. Ld. counsel for MCD on the other hand argued that there are photographs to show that the appellant raised fresh construction at front portion at ground floor and thereafter fixed shutters. The covered area is much more than the covered area of 103 sq meters disclosed by the appellant in his property tax returns and same is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Further, the size of the plot is claimed to be 200 sq yards whereas, as per regularization plan same has been shown to be 177.66 sq yards and the positioning of the site has not been shown on layout plan and therefore, the regularization was rightly rejected and the appeals are without merits.
5. I have perused the record. The impugned rejection of regularization application order records the contention of the appellant at point number 7 that as per property tax record of 1984/1985, the covered area at ground floor is 152.08 sq meters. How the appellant arrived at this figure of covered area is not clear. The property tax form does not reflect the same. It shows construction of only 224 sq. feet in the property. So the contention of the appellant that the covered area in 1984 was 152.08 sq. meters is incorrect.
6. The appellant subsequently paid property tax of an area measuring 103 sq meters since financial year 2012-13 which clearly show new construction having covered area of 103 sq meters was raised. The appellant claims that the property was inspected by the zonal inspector in September 2022, who found that the actual covered area is 148.55 sq meters, but no document in respect of this inspection has been placed on record and the appellant kept on paying property tax for a covered area of 103 sq meters. Thereafter, in the Amnesty Scheme known as Samridhi, the appellant paid property tax for the ground floor for an area measuring 148.55 sq meters starting from 2023-24. This obviously was subsequent to the booking dated 28.11.2022 and cannot be relied upon by the appellant to claim that the covered area at ground floor is 148.55 sq meters since prior to 01.06.2014.
7. Further, there are documents in the shape of photographs taken by the respondent which clearly show that fresh unauthorized construction being raised in the front portion of the property. Such photographs are available in the sealing record of MCD as well as in the record relating to regularization application. So the contention of the appellant that no fresh construction was

raised after 01.06.2014 is contrary to record. The appellant raised fresh construction after becoming owner of the property and much after 01.06.2014, which is the cut of date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. So the protection under this act is not available to the subject property.

8. The respondent was directed to file status report as to how much area of the property on the front side has been booked and which portion being old has not been booked. The respondent filed status report on 06.05.2026 and in that status report stated that the old construction is only 57 sq meters whereas the booked new construction is about 138.44 sq meters. Though the appellant did not file any objection to this status report but the same appears to be factually incorrect. The appellant has filed his property tax returns showing that he paid arrears of property tax from 2004-05 to 2016-17 and for the year 2017-18 on 06.04.2017 for covered area of 103 sq meters, which was much prior to booking. These arrears were paid at the time of mutation of the property in the name of the appellant when unit area method came into force. Thus the appellant has been able to show that the covered area of 103 sq meters exist since 2004-05 and therefore, is entitled to protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The status report dated 06.05.2026 shows the total covered area as 138.44 sq meters and out of this, an area measuring 103 sq meters is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and the appellant raised unauthorized construction of around 35.44 sq meters after 01.06.2014 which is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and is liable to be demolished.

9. The impugned sealing and demolition order are silent in respect of the measurement of the newly added construction directed to be demolished. The status report dated 06.05.2026 compared with the property tax returns show that out of 138.44 sq meters existing in the property only 35.44 sq meters is actionable. In these facts the demolition and sealing orders are upheld with observation that only area measuring 35.44 sq meters on the front side of the subject property is actionable and liable to be demolished. The remaining area of 103 sq meters is protected under National Capital Territory of Delhi

Laws (Special Provision) Second Amendment Act, 2011 and the impugned demolition and sealing orders are kept in abeyance in respect of this area till the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force. The respondent shall be at liberty to demolish the area measuring 103 sq meters as and when the act ceases to be in force.

10. The impugned orders are upheld as observed herein above. The appellant shall be at liberty to demolish the unauthorized construction of 35.44 sq meters after getting the property temporary desealed from the Quasi Judicial authority and after demolishing the same, the property be desealed permanently till National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is in force with liberty to the appellant to use the same as per law, with condition that no fresh construction shall be raised without following the due process of law.

11. Coming to the third appeal challenging the rejection of regularization application. The respondent rejected the regularization application on several grounds including the ownership documents, no NOC from ASI and variation of size as per mutation and regularization application. The appellant claimed that no NOC from ASI required as the property exist prior to coming into force of ASI Act and that the regularization was sought for an area lesser than that of the plot which is permissible and further, that the ownership documents are proper and there is no ambiguity in the title documents.

12. As already discussed, the construction beyond 103 sq meters has been raised recently without NOC from ASI which is mandatory as the subject property is situated within the limits of protected monuments. Further, the titled documents of the appellant are of 200 sq yards whereas the regularization has been sought only for 177.66 sq yards and the plot having area of 177.66 sq yards is not a part of the layout plan. The appellant is required to earmark the location and positioning of the subject property precisely on layout plan and the appellant has failed to do so. The appellant failed to comply with the mandatory requirements and the application for regularization was rightly rejected. In these facts, the appeal challenging the rejection of regularization application order is without merits and is dismissed.

The appellant is at liberty to apply afresh for regularization after complying with the mandatory conditions.

13. All the three appeals stand disposed of in these terms.
14. Records 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 16.10.2026

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