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

APPEAL NO. 496/ATMCD/2017
APPEAL NO. 738/ATMCD/2017

1. Shri Sushil Kumar Goyal
S/o Late Shri Gauri Shanker Goyal
R/o 33, Prakash Apartment
Ansari Road, Darya Ganj
New Delhi-110002

2. Smt. Vandana Dalmia
W/o Sh. Pradeep Kumar Dalmia
R/o 124, Kapil Vihar
Pitampura
Delhi-110034

3. Sh. Ashish Chhabra
S/o Sh. Bipan Chhabra
R/o Avtar Enclave
Paschim Vihar
Delhi-63

…….. Appellants

Versus

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

Date of Filing of Appeal	**:**	**07.07.2017 & 10.08.2017**
Date of Judgment	**:**	**23.10.2026**

JUDGMENT

1. These are the two appeals challenging the demolition order dated 03.07.2017 in appeal no. 496/17 and the sealing order dated 28.07.2017 in appeal no. 738/17 passed in respect of unauthorized construction carried out in properties No.500-501, Katra Asharfi & backside property number 1050, Gali Hiranand, Maliwara, Delhi-110006 (hereinafter referred as subject property) in the shape of hall and coverage of jaal at the Third Floor.
2. The brief facts necessary for disposal of these appeals are that the appellants purchased the subject property by virtue of three sale deeds on

07.08.2015 and applied for repairs on 10.08.2015 which was permitted on 20.08.2015 in accordance to clause 6.4.1 of Building Bye Laws-1983. The respondent booked the unauthorized construction in the shape of hall at third floor and coverage of jaal vide show cause notice dated 24.03.2017. It was duly replied on 29.03.2017 and the respondent passed the impugned demolition order followed by the impugned sealing order. In between, a work stop notice dated 06.02.2017 was also issued and was withdrawn on 07.02.2017.

3. The appellants have challenged the impugned orders on the ground that the construction in the property is old and existing since prior to 08.02.2007 and is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. It was argued for the appellants that the appellants after purchasing the property carried out certain repairs as permissible under law. The MCD itself withdrew the work stop notice issued on 06.02.2017 only for the reason that no fresh construction except repairs were carried out and yet unlawfully booked the property on frivolous complaints and therefore, the impugned orders should be set aside.

4. Ld. counsel for MCD on the other hand argued that the appellants have failed to file any document to show that the construction at third floor exists since prior to 08.02.2007 and admittedly, there is no sanction building plan and therefore, there are no merits in these appeals which are liable to be dismissed.

5. I have perused the record. The impugned demolition order has been passed primarily relying on a report of the Local Commissioner given in an earlier suit filed by the erstwhile owner Seth Ramlal Khemka Dharamshala against Basheshwar Lal Goel. The Local Commissioner appointed by the ld. Civil Court in that suit reported that there was open space at third floor consisting of one tin shed, barsati and one room. As per demolition order, there exist a hall at third floor which is unauthorized and is liable to be demolished. This report of the Local Commissioner in that suit was filed on 01.06.2004 and the appellants purchased the property on 07.08.2015. The sale deeds of the appellants have site plan annexed with them which show construction of hall and room at third floor. It means that the third floor has been constructed after 01.06.2004 but before 07.08.2015.

6. The appellants in this regard filed an assessment order of property tax department of MCD dated 20.06.2006 which shows that the third floor construction is existing since prior to 08.02.2007. They have also filed copy of the G-8 receipt showing payment of property tax in pursuance to this assessment order. The respondent stated that the property tax record pertaining to the subject property was destroyed in fire and is not available. The assessment order and the G-8 receipt relied by the appellants have to be believed as the respondent could not produce its property tax records.
7. Further, in another civil suit filed by one Parag Jain in 2015 against the appellants and MCD, alleging unauthorized construction in the subject property, the ld. Civil Court vide order dated 19.04.2016 dismissed the injunction application on the ground that the MCD stated in the written statement that the property was inspected by the staff on 18.04.2016 and neither on-going construction activity was noticed nor any building material and labor were found and the properties are old and occupied. This clearly show that till 19.04.2016, no fresh construction was noticed by MCD in the property. The respondent thereafter booked the unauthorized construction on 24.03.2017 but even at that time, no on-going construction was found.
8. In view of this discussion and considering the assessment order passed in 2006, the booked construction is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 being raised prior to 08.02.2007. The impugned orders are 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.
9. The appeals stand disposed of. 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 23.10.2026

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