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

APPEAL NO. 312-A/ATMCD/23

Ms. Kusum Lata Sharma
W/o Sh. Jitender Kashyap,
Presently at R/o 24, Gandhi Market ,
Mirdard Road, New Delhi-110002. …….. Appellant

Vs

Municipal Corporation of Delhi.
Through its Commissioner,
17th Floor, Dr. S.P.M. Civic Centre,
Minto Road, New Delhi. …….Respondent

Date of Filing of Appeal : 23.05.2023
Date of Order : 27.10.2026

ORDER

1. This is an appeal challenging the demolition order dated 10.04.2023 passed in respect of unauthorized construction in the shape of ground, first and second floor and raising of walls at third floor in the property no. 24 (Part), Gandhi Market, Mirdard Road, Minto Road, Delhi.
2. The brief facts necessary for disposal of appeal are that this property no. 24 Ghandhi Market measuring 40 sq. yards which was a piece of land was allotted to two brothers Mr. Prem Prakash and Mr. Ram Lal vide lease deed dated 30.09.1967 being refugees from Pakistan. They were allowed to construct single or double storey at the plot. They started running shop from the ground floor. Subsequently, the legal heirs of these two brothers executed relinquishment deed in favour Smt. Satya Rani who was widow of Mr. Darshan Lal who was son of Late Sh. Ram Lal and thus Smt. Satya Rani became the absolute owner of this property. Smt. Satya Rani sold 20 sq.

yards consisting of first, second and third floor to the appellant vide unregistered documents dated 08.08.2006. She sold the remaining 20 sq. yards consisting of ground floor with terrace rights to one Smt. Asha Kawatra on 17.06.2010 vide registered agreement to sell. Smt. Asha Kawatra on 11.10.2017 sold this 20 sq. yards to the appellant consisting of ground and first floor vide registered agreement to sell. The respondent booked the unauthorized construction in the shape ground, first and second floor and raising of columns at third floor vide show cause notice dated 01.04.2022 followed by the demolition order dated 11.04.2022. The appellant filed appeal no. 443/22 challenging this demolition order and the same was allowed on 04.01.2023 and matter was remanded back for fresh adjudication after providing opportunity of person hearing to the appellant. The respondent thereafter provided person hearing to the appellant and passed the impugned demolition order.

3. The appellant has challenged this order primarily on the ground that the construction 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 for the appellant that the property tax record filed by the appellant as well as the title documents of the appellant clearly show that the property was consisting of ground to third floor since prior to 08.02.2007 but the Quasi Judicial Authority did not consider the documents of the appellant and passed the impugned demolition order which is liable to be set-aside and the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 should be given to the property.
4. Ld counsel for the respondent/MCD on the other hand argued that the property was booked at the ongoing stage of construction when the columns at third floor were being raised and the appellant did not stop the unauthorized construction and constructed even the third floor. It clearly shows that unauthorized construction has been raised after 08.02.2007 and after the appellant purchased the half portion from Asha Kawatra on 11.10.2017 and the same was without sanctioned building plan and much

after 08.02.2007 and therefore the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available and the appeal is liable to be dismissed.

5. I have perused the record. Admittedly a plot measuring 40 sq. yards was leased out by the DDA to M/s Ram Lal Prem Praksh in 1967. Later on the legal heirs of these two brothers executed relinquishment deed on 17.04.2006 in favour of one of the legal heirs, namely, Smt. Satya Rani making her the absolute owner of the entire property. Smt Satya Rani thereafter sold through unregistered documents 20 sq. yards to the appellant on 08.08.2006 comprising of first, second and third floor. These documents are unregistered documents and the contents of these documents cannot be relied and considered as an evidence to conclude that the property was constructed upto third floor as on the date of execution of these documents in half portion of the property.
6. Smt. Satya Rani sold the remaining 20 sq yards to Smt. Asha Kawatra through registered agreement to sell on 17.06.2010 and as per these documents this remaining portion of 20 sq yards was having only ground floor. The calculation of circle rate at running page 7 of this registered agreement to sell show that the total plot area is 33.444 sq. mtr. equivalent to 40 sq. yards and plinth area for sale was 16.722 sq. mtr. equivalent to 20 sq. yards. It means that as on 17.06.2010 there was only ground floor in this remaining area of 20 sq yards purchased by Smt. Asha Kawatra.
7. Smt. Asha Kawatra thereafter sold this 20 sq yards to the appellant through registered agreement to sell dated 11.10.2017. As per this document the plinth area under sale was 33.744 sq. mtr. It shows that Smt. Asha Kawatra after purchasing the ground floor in 2010 constructed the first floor over it and the appellant purchased the ground and first floor constructed 20 sq. yards from Smt. Asha Kawatra.
8. These registered documents clearly show that in 2010 the 20 sq. yards sold to Asha Kawatra was having only ground floor and in 2017 it was having ground and first floor purchased by the appellant. The first floor was added

after 2010 and much later to the cut-off date of protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 i.e. 08.02.2007 for the subject property.

9. The appellant thereafter constructed the second floor and third floor in this portion and is now claiming protection for the entire property under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 which is not available. The MCD record contains the photographs at running page 1/C of the record with clearly show that the columns are being raised at the third floor of the property when it was booked on 01.04.2022. The photographs of the latest construction taken on 07.02.2023 show that the third floor has been completely constructed and the property now consist of ground to third floor. This construction has been raised despite booking and the appellant did not bother to stop unauthorized construction despite booking and took law in her hands.

10. The appellant has also relied upon one G-8 receipt dated 24.12.2002 showing payment of property tax for the years 1995-96 to 2001-02 to claim that the third floor is in existence since prior to 08.02.2007. This G-8 receipt could not be verified as no such record is available in the property tax records. However, even if this receipt is presumed to be genuine, the same does not help the appellant as the booking is of the part portion of property no. 24 where there was only ground floor in 2010 and is not of the remaining part portion which was purchased by the appellant from Smt. Satya Rani. It is also relevant to note that the suo-moto assessment under Section 123-D of the DMC Act dated 07.01.2023 at running page 44/C of the property tax record file show that the covered area in the property from ground to third floor is 62.66 sq. mtr. When the allotted area was only about 33.444 sq. mtr., how it increase to 62.66 sq. mtr. as suo-moto assessed by the appellant is unexplained. This document shows that there is encroachment on public land as the plinth area of 33 sq. mtr. has increased to 62 sq. mtr. and the respondent did not examine this aspect while booking the property.

11. The appellant has failed to show that the construction in part portion of this property which has been booked exist since prior to 08.02.2007 and there are documents to show that this construction has been raised after 2010 and after 2017 and lastly in 2022 when it was booked. Same was done without sanctioned building plan and after 08.02.20007 and the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 is not available.
12. In view of the above, the appeal stands dismissed.
13. 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 27.10.2026

(AMIT KUMAR)
District Judge-cum-P.O.
Appellate Tribunal : MCD Delhi