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

APPEAL NO. 758/ATMCD/2018

Mrs. Manohar Mani
W/o Sh. Sunder Murthy
R/o C-45, Staff Quarter
Ashoka Hotel, Chanakyapuri
New Delhi – 110021 …….. Appellant

Versus

New Delhi Municipal Council
Through its Chairperson
Palika Kendra
Parliament Street
New Delhi – 110001 …… Respondent

Date of Filing of Appeal	**:**	**10.10.2018**
Date of Judgment	**:**	**28.10.2026**

JUDGMENT

1. This is an appeal challenging the demolition order dated 12.11.2018 passed in respect of unauthorized construction carried out at HPCL Petrol Pump, Niti Marg, New Delhi in the shape of construction of Shop/Kiosk of size measuring about 8 feet x 6 feet at HPCL Petrol Pump, Niti Marg, New Delhi unauthorizedly without prior approval of NDMC (hereinafter referred as subject property).
2. The brief facts necessary for disposal of this appeal are that one Shri P.K. Chander Sheikher had been running a stall from subject property at this petrol pump since long and has been paying tax license fees etc. for running this stall since 1976-77. He thereafter executed one partnership deed with the appellant for running this stall / kiosks in 1977 and later executed a GPA on 26.07.1988 in favour of the appellant. The respondent issued show cause notice dated 05.10.2018 under section 247 of the NDMC Act 1994 claiming construction of this shop / kiosk unauthorizedly without prior approval of

NDMC. The appellant duly submitted her reply on 11.10.2018 to the show cause notice. Thereafter, the impugned demolition order dated 12.11.2018 has been passed.

3. The appellant has challenged this order primarily on the ground that this kiosk is in existence since 1966 for which property tax has been duly paid by the predecessor in interest of the appellant namely Shri P.K. Chander Sheikher. He also had proper license issued by respondent/NDMC for running this kiosk since prior to 08.02.2007. There is no material available with the respondent that any new construction has been raised by the appellant after 08.02.2007 and this kiosk is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

4. Ld. counsel for the respondent on the other hand argued that the license was only in respect of a counter being run and now in place of the counter, a complete shop has been constructed which is unauthorized and is liable for action under NDMC Act and is not protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 and this appeal is liable to be dismissed.

5. I have perused the record. The Director (Health Licensing) of respondent/NDMC issued a letter dated 02.05.2018 to the appellant informing that the health license of the kiosk has expired on 21.03.2017 and the appellant was asked to furnish documents as to why the kiosk should not be sealed by the Enforcement Department being run without a health license. Thereafter, the respondent issued another show cause notice under section 247 of the NDMC Act dated 05.10.2018 claiming unauthorized construction of the kiosk without prior approval. This show cause notice was duly replied by the appellant on 11.10.2018.

6. The appellant has placed on record several documents which clearly show that this kiosk is in existence at least since 1976-77. The predecessor of interest of the appellant Shri P.K. Chander Sheikher, lodged a police complaint on 12.01.1977 mentioning that he is carrying on the business from this kiosk. He also wrote a letter to the Station Manager of HP Petrol Pump where this kiosk is located on 17.02.1977. There is a partnership deed between Shri P.K. Chander Sheikher and the appellant dated 30.04.1977 and

thereafter, a GPA executed by him in favour of the appellant dated 26.07.1988.

7. Apart from these personal documents, the appellant has filed the house tax receipts from 1982 onward showing existence of this stall / kiosk. The respondent's health department also issued license for this kiosk in 2005. These documents clearly show that this kiosk is in existence since prior to the cutoff date for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 i.e. 08.02.2007. There is nothing on record to even suggest that a stall has been converted to kiosk after 08.02.2007 and as such the argument of the respondent that appellant converted a stall into shop/kiosk is without merits.
8. Whether the appellant is the owner, licensee or unlawful occupant is not the subject matter of the appeal as argued for the respondent nor this Tribunal can adjudicate on these aspects. This kiosk is in existence since much prior to 08.02.2007 and even if, the appellant is not in possession as claimed by the respondent, the protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 shall still be available to the subject property as this Tribunal has to adjudicate as to whether the subject property is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 or not, irrespective of the title and possession of the appellant.
9. The appellant has shown ex-facie that this kiosk is in existence since much prior to 08.02.2007 and thus is protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Further, it is not an encroachment on Government land.
10. In these facts the impugned 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.

11. 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 28.10.2026

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