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

APPEAL NO. 548/ATMCD/2025

1. Shri Ravinder Singh
S/o late Ishwar Singh

2. Smt. Babita
W/o Shri Ravinder Singh

Both R/o 1-B, 2-A, 3-A & 4-A, 4th Floor,
Adhchini
New Delhi - 110017

…….. Appellants

Versus

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

…… Respondent

Date of Filing of Appeal	**:**	**04.08.2025**
Date of Judgment	**:**	**29.10.2026**

JUDGMENT

1. This is an appeal challenging the demolition order dated 28.07.2025 passed in respect of unauthorized construction carried out in Property No. 2A, 3A, 4A & 1B Fourth Floor, Adchini Village, New Delhi (hereinafter referred as subject property) in the shape of Fourth and Fifth Floor.

2. The brief facts necessary for disposal of this appeal are that the appellants purchased the top floor of property no. 3-A, 4-A and 1-B total measuring 263 sq yards out of total area of 280 sq yards vide registered sale deed dated 22.11.2018 from the erstwhile owners Mr. Praveen Jain, Ashok Kumar Jain, Smt. Madhuri Devi Jain and Smt. Manju Jain. The appellant no. 1 further purchased the open terrace rights over and above the third floor measuring 208 sq yards in property no. 2-A vide GPA dated 10.12.2019. The respondent booked the unauthorized construction in the shape of five toilets at third floor in property no. 2-A, 3-A and 4-A vide show cause

notice dated 31.08.2022 and passed the demolition order dated 17.10.2022. The owner/occupant of this third floor demolished these five toilets and the demolition order dated 17.10.2022 stood complied with. The respondent thereafter vide fresh show cause notice dated 28.04.2023 booked unauthorized construction in the shape of basement to third floor and part fourth and fifth floor with amalgamation of property no. 2-A, 3-A , 4-A and 1-B. Thereafter, the demolition order dated 02.11.2023 was passed. The appellants challenged this order in appeal no. 598/24 in respect of fourth and fifth floor. This Tribunal vide order dated 23.04.2025 set aside the order only in respect of fourth floor and kept it operational for the fifth floor with directions to Quasi Judicial Authority to hear the appellants and pass fresh order in respect of the fourth floor. Thereafter, the Quasi Judicial Authority provided opportunity of being heard to the appellants and passed the impugned demolition order dated 28.07.2025 in respect of the fourth floor in continuation to the earlier demolition order dated 02.11.2023 which was upheld for the fifth floor.

3. The appellants have challenged this order primarily on the ground that the Quasi Judicial Authority did not give any findings in respect of the legal notices dated 16.05.2013 and its replies dated 31.05.2013 exchanged between predecessor in interest of the appellants (Mr. Praveen Jain, Ashok Kumar Jain, Smt. Madhuri Devi Jain and Smt. Manju Jain) and the other owners of the property where the existence of fourth floor was duly mentioned. The Quasi Judicial Authority also ignored the sale deed of the appellants which mentions the top floor existing in the property and the impugned order is liable to be set aside as it does not follow the mandate of law laid down by the courts in the following judgments:

i) Nazir ahmed Vs. King Emperor AIR 1936 PC 253.
ii) Mohinder Singh Gill and Anr Vs. the Chief Election Commissioner and Ors. AIR 1978 SC 851.
iii) Praveen Jain and Ors. Vs. Union of India 99 (2002) DLT 646 (DB).
iv) Masonic Club Vs. MCD 2001 I AD (Delhi) 911.
v) Jaspal Singh Jolly Vs. MCD 125 (2005) DLT 592.
vi) Prem Dass Gupta Vs. MCD 1974 RLR 163.

4. Ld. counsels for MCD and the intervener on the other hand argued that the appellants have not approached the court with clean hands. They have not demolished the fifth floor till date despite that the previous demolition order dated 02.11.2023 was upheld in respect of the fifth floor. The construction of fifth floor violates the status quo qua construction required to be maintained to seek protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellants have not filed any documents in the shape of property tax return, electricity bill etc. to show that the fourth floor is existing since prior to 01.06.2014, which is the cut of date for protection under this Act. The legal notices dated 16.05.2013 and the replies dated 31.05.2013 do not reflect extent of construction at the fourth floor. The height of the building is almost 20 meters and much beyond the permissible height of 15 meters. The fourth floor in any case is not permitted nor protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The sale deed only refers to the top floor and does not reflect construction existing at fourth floor. The Hon'ble High Court in its order dated 14.08.2024 passed in WP (C) No. 10653/24 filed by the appellants observed that the construction above third floor is not protected under any provision of law and did not extend the interim protection to the appellants beyond third floor and directed MCD to take action to the unauthorized construction existing above third floor and in view of the same, the appeal is without merits and liable to be dismissed.

5. I have perused the record. Undisputedly, this court while deciding the previous appeal and while reminding the matter back to the Quasi Judicial Authority, upheld the earlier demolition order dated 02.11.2023 in respect of the fifth floor. The appellants as on date have not demolished the fifth floor and this appeal lacks bonafide. The appellants should have approached this tribunal challenging the impugned order for the fourth floor, only after demolishing the fifth floor. The part demolishing carried at fifth floor during this appeal is only cosmetic. MCD is directed to demolish the fifth floor immediately.

6. Be that as it may, the appellants have sought protection for the fourth floor on the ground that the same is prior to 01.06.2014 and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. In this regard, the main reliance has been placed on the legal notices dated 16.05.2013 issued by their predecessor in interest to the other owners of the property and the

replies of the other owners dated 31.05.2013. I have gone through these notices. In this notice, it was claimed in para 2 by the then owners of the terrace i.e. the fourth floor (except 550 sq feet), that half of the terrace is constructed. The other owners did not dispute this fact. These notices also show that the 550 sq feet on the terrace was owned by M/s India Carpet Center and M/s Consolidated Carpet Industries Ltd. It means that the predecessors in interests of the appellants were the owner of the entire terrace in these properties except of 550 sq feet and half of the portion owned by them was constructed.

7. The sale deed and the GPA executed in November 2018 and in December 2019, in favour of the appellants, show that the appellants purchased the top floor measuring 263 sq yards equivalent to 220 sq meters in property no. 3-A, 4-A and 1-B. The GPA is in respect of 208 sq yards open terrace above third floor in property no. 2-A. This reflect that there was no construction at the fourth floor in the area measuring 208 sq yards of property no. 2-A and the top floor, above third floor, was existing only in area measuring 263 sq yards of property no. 3-A, 4-A and 1-B. This was the extent of construction at the fourth floor at that time.

8. If the same is compared with the averments of the legal notices dated 16.05.2013, then only half of the fourth floor owned by the predecessor in interest of the appellants was constructed. They owned only 280 sq yards in property no. 3-A, 4-A and 1-B and half of it comes to 140 sq yards equivalent to 117 sq meters. It means that as on 16.05.2013, the extent of construction at fourth floor was only 117 sq meters, even if the contents of the legal notices are considered to be gospel truth.

9. As per the site plan filed by the appellants at running page 208 of the appeal, the open terrace as on the date of appeal is only about 137 sq meters and the covered area in all the four properties is almost 290 sq meters. The appellants raised construction in the remaining half of property no. 3-A, 4-A and 1-B and also raised construction on the terrace above third floor in property no. 2-A. The covered area was enhanced from only half of 234 sq meters i.e. 117 sq meters to almost 300 sq meters. There is no document filed by the appellants to show that this covered area existing as on date at the fourth floor is prior to 01.06.2014.

10. Apart from these legal notices and their replies, there is no document to hold that the existing construction of the fourth floor is prior to 01.06.2014. The appellants purchased the property in 2018 and 2019 and obviously raised construction thereafter. The construction being raised without any sanction and after the cutoff

date for protection, is not entitled for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

11. It is also relevant to mention that the Hon'ble High Court in its order dated 14.08.2024 passed in WP (C) No. 10653/24 filed by the appellants observed that there can be no protection under any law to construction above third floor and directed MCD to take action as per law.

12. In these facts, the appeal is without merits and the same is dismissed and the demolition order is upheld.

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 29.10.2026

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