

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

APPEAL NO. 567/ATMCD/2014

**Sh. Kuldeep Singh
S/o Late Sh. Dharam Singh
R/o 1812A, Shanti Bhawan,
Udai Chand Marg,
Kotla Mubarakpur, New Delhi.**

..... Appellant

Vs

**South Delhi Municipal Corporation
(Through its Commissioner)
Building Department, South Delhi
Green Park, New Delhi**

..... Respondent

Date of Filing of Appeal : 28.07.2014
Date of Order : 18.04.2024

ORDER

1. Vide this order, I shall decide the appeal filed against demolition order dated 24.07.2014, passed with respect to property bearing no. 1812-A, Shanti Bhawan, Udai Chand Marg, Kotla Mubarakpur, New Delhi for unauthorized construction in the shape of ground floor, first floor, second floor and third floor.

2. Sh. Sandeep Sehgal, Ld. counsel for the appellant has contended that the property in question is situated in a village abadi. He further contended that the property in question is existing much prior to

01.06.2014, therefore, same was entitled for the protection and the said plea has been taken by the appellant before the Quasi Judicial Authority as well but same was not considered and demolition order was passed. He prayed that appeal may be allowed and protection may be granted.

3. Sh. Umesh Burnwal, Ld. counsel for the respondent has contended that the property in question was reconstructed, which was booked and show cause notice dated 24.04.2014 was given, which was duly received by the appellant, pursuant to which, appellant filed his reply and also attended personal hearing and thereafter the Quasi Judicial Authority passed the demolition order but as the appellant could not adduce any proof to show that the property in question is existing prior to 08.02.2007, therefore, no protection was granted and demolition order was passed.

4. I have heard Ld. counsel for the appellant, Ld. counsel for the respondent and perused the appeal, impugned order and record. Perusal of the above shows that property bearing no. 1812-A, Shanti Bhawan, Udai Chand Marg, Kotla Mubarakpur, New Delhi was booked for unauthorized construction in the shape of ground floor, first floor, second floor and third floor and show cause notice dated 24.04.2014 was issued in the name of appellant, which was duly served upon the appellant, pursuant to which appellant filed his reply and also attended personal

hearing, thereafter the Quasi Judicial Authority passed the demolition order dated 24.07.2014 was passed.

5. The plea of the appellant is that the property is old constructed and has been in existence prior to 08.02.2007, therefore, same was entitled for the protection but the Quasi Judicial Authority discarded the material placed by him on record along with his reply and passed the demolition order dated 24.07.2014.

6. The respondent during the pendency of this appeal has filed status report, stating in it that the property in question falls in village abadi of Village Kotla Mubarakpur, New Delhi.

7. ***The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011*** was passed by the parliament to provide monetorium to certain class of unauthorized construction. ***Section 3 (2) of the said Act*** is relevant, which is reproduced herein below:-

Section 3. Enforcement to be kept in abeyance –

(1) (a) to (g)****

(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any Court, status quo-

(i) as on the 1st day of January, 2006 in respect of encroachment or unauthorized development;

(ii) in respect of unauthorized colonies, village abadi area

(including urban villages) and their extensions, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and (upto the 1st day of June, 2014), mentioned in sub-section (1); (iii) in respect of special areas as per the Building Regulations for Special Area, Unauthorized Regularized Colonies and Village abadis, 2010; and (iv) in respect of all other areas with the National Capital Territory of Delhi as on the 8th day of February, 2007, shall be maintained.

(3) *****

8. A perusal of Section 3 (2) (i) to (iv) shows that any construction raised in a village abadi prior to 01.06.2014 is protected and no punitive action is required to be taken against such construction.
9. As per the status report filed by the respondent, the property in question is situated in a village abadi, therefore, construction raised in such properties prior to 01.06.2014 was entitled for protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
10. The property in question itself was booked on 24.04.2014 when show cause notice was given i.e. prior to 01.06.2014. Meaning thereby that the construction, which is the subject matter of the show cause notice

dated 24.04.2014, qua which, demolition order dated 24.07.2014 was passed, was existing prior to 01.06.2014, therefore, same was entitled for protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

11. In view of the above facts and circumstances, I am of the considered view that the ground floor to third floor of the property bearing no. 1812-A, Shanti Bhawan, Udai Chand Marg, Kotla Mubarakpur, New Delhi have been in existence prior to 01.06.2014, therefore, same are entitled for protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act 2011. Accordingly, the appeal filed by the appellant is allowed. The Impugned demolition order dated 24.07.2014 is put in abeyance, till the protection granted by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 is not withdrawn.

12. The respondent is however at liberty to take appropriate legal action against the property in question, once the protection granted by the Act is withdrawn, after giving due notice to the appellant.

13. The appellant shall not raise any unauthorized construction in the property in question.

14. The record of the respondent be send back alongwith copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court
Today i.e. on 18.04.2024.**

**(PITAMBER DUTT)
AD&SJ-cum-P.O.
Appellate Tribunal : MCD Delhi**