

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

APPEAL NO. 470/ATMCD/2023

**1. Mohd. Sajid
S/o Mohd. Rafiq**

**2. Mohd. Sameer
S/o Mohd. Rafiq**

**Both Residents of:
House no. 3886, Gali Khak Rob,
Behind MCD School,
Ajmere Gate, New Delhi – 110006.**

..... Appellants

Vs

**1. Municipal Corporation of Delhi
(Through its Commissioner)
17th Floor, Dr. S.P.M. Civic Centre,
Minto Road, SKD Basti,
New Delhi – 110002.**

**2. Assistant Engineer (Building)
City S.P. Zone,
Municipal Corporation of Delhi,
New Delhi.**

..... Respondents

**Date of Filing of Appeal : 26.07.2023
Date of Order : 25.04.2024**

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 19.07.2023, passed with respect to property bearing no. 3886, Gali Khak, Behind MCD School, Ajmere Gate, Delhi –

110006 for unauthorized construction in the shape of third floor and fourth floor.

2. Sh. Sandeep Khatri, Ld. counsel for appellants has contended that the construction in question has been in existence much prior to 07.02.2007. He further contended that appellants had applied for sanction of installation of a mobile tower, which was accorded by the respondent and after that mobile tower was got installed. He further contended that the Quasi Judicial Authority considered the said aspect and has concluded that the mobile tower was installed as per valid permission. He further contended that the Quasi Judicial Authority has passed the demolition order under Section 343 of the DMC Act, ignoring the fact that construction in question has been in existence much prior to 07.02.2007. He further contended that the construction at the third floor and fourth floor of the property in question were entitled for protection and appellants had placed on record copy of house-tax receipts to prove the said fact but the Quasi Judicial Authority had not considered those documents and passed the demolition order. He prayed that appeal may be allowed and protection may be granted.

3. Sh. V.K. Aggarwal, Ld. counsel for the respondent has contended that the property in question was booked for installation of

mobile tower without permission and for unauthorized construction of third floor and fourth floor and show cause notice dated 03.04.2023 was issued in the name of owner / occupier, which was served upon appellants, who attended the hearing and placed on record copy of permission obtained for installation of mobile tower, therefore, the Quasi Judicial Authority dropped the proceedings regarding unauthorized installation of mobile tower. He further contended that the appellant however could not produce any proof to show that the third floor and fourth floor of the property in question were constructed on the basis of sanction building plan and were entitled for protection, therefore demolition order was passed. He prayed that appeal may be dismissed.

4. Sh. Sanjeev Tiwari, Ld. proxy counsel for Mohd. Rashid, Ld. counsel for the intervener has contended that the third floor and fourth floor of the property in question were constructed in the year 2022. He prayed that appeal may be dismissed.

5. I have heard Ld. counsel for appellants, Ld counsel for the respondent, Ld. proxy counsel for the intervener and perused the appeal, impugned order as well as the record. Perusal of the above shows that property bearing no. 3886, Gali Khak, Behind MCD School, Ajmere Gate, Delhi – 110006 was booked for installation of mobile tower without permission and for unauthorized construction of third floor and fourth

floor, pursuant to which, show cause notice dated 03.04.2023 was issued to owner / occupier, which was served upon appellants, who attended the hearing and also placed on record copy of permission obtained for installation of mobile tower. The Quasi Judicial Authority dropped the proceedings regarding unauthorized installation of mobile tower but passed the demolition order with respect to the third floor and fourth floor of the property in question.

6. The plea of appellants is that the third floor and fourth floor were constructed much prior to 07.02.2007, therefore same were / are entitled for protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
7. The appellants have placed on record copy of sale deed dated 16.10.2020, vide which they purchased the property in question from its previous owner Sh. Rakesh Kumar Sehgal S/o Late Sh. Harbans Lal Sehgal.
8. The appellants have also placed on record copy of house-tax receipts, commencing from page no. 97 of the appeal, which show that the property in question was consisting of first floor to fourth floor. The said house-tax receipt is dated 26.06.2006. Another house-tax receipt

dated 28.06.2004, with respect to the same construction has also been filed.

9. Both these house-tax receipts were also placed by the appellant before the Quasi Judicial Authority, which are available in the record file at page(s) no. 13/C and 14/C.

10. The Quasi Judicial Authority however has not considered these house-tax receipts and passed the impugned demolition order dated 19.07.2023, simply on the ground that third floor and fourth floor of the property in question were constructed without any sanction building plan.

11. ***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) *****

12. A perusal of Section 3 (2) (iii) shows that status qua to be maintained in respect to the property falling in Special Areas as per the Building Regulation for Special area, unauthorized regularized colonies and village abadis, 2010. Though, no cut-off date is given qua the properties situated in Special Area. But the term Special Area was introduced first time in 17.01.2011.

13. The property in question is situated in Ajmeri Gate, Delhi - 110006, which is situated in the Walled City, thus is falling in Special

Area as defined in Section 2 (1) (J) of the Act. Thus any construction raised prior to 07.02.2007 or 17.01.2011 is exempted from any punitive action till the protection is removed by the Parliament.

14. The appellants have placed on record cogent proof in the form of house-tax receipts to show that the third floor and fourth floor of the property in question have been in existence much prior to 07.02.2007, therefore, same are entitled for the protection under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

15. In view of the above facts and circumstances, the appeal filed by appellants is allowed. The impugned demolition order dated 19.07.2023 is put in abeyance, till the protection granted by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 is not withdrawn. The respondent is however at liberty to take appropriate legal action once the protection granted by the Act is withdrawn, after giving due notice to appellants.

16. The appellants shall not raise any unauthorized construction in the property in question.

17. 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 25.04.2024.**

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