

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

APPEAL NO. 02/ATMCD/2020

**Smt. Anita
W/o Sh. Raja Ram
R/o House no. 50,
Gali Doman Bagh Diwar,
Fatehpuri, Delhi – 110006**

..... Appellant

Vs

**North Delhi Municipal Corporation
(Through its Commissioner)
MCD Headquarters, Civic Centre,
New Delhi – 110002.**

..... Respondent

**Date of Filing of Appeal : 06.01.2020
Date of Order : 26.04.2024**

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 26.08.2019, passed with respect to property bearing no. 50, Gali Doman Bagh Diwar, Delhi – 110006 for unauthorized construction at the ground floor, first floor and second floor of the property in question.

2. Sh. B.S. Saini, Ld. counsel for the appellant has contended that the construction in question has been in existence much prior to 07.02.2007, therefore, same was entitled for the protection. He further

contended that the property was in a very dilapidated condition, therefore, an application for seeking permission to carry out necessary repair was wrote to the respondent and thereafter only permissible repairs were carried out in the property in question. He further contended that the Quasi Judicial Authority has not considered the reply submitted by the appellant and has passed the demolition order. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. Ashutosh Gupta, Ld counsel for the respondent has contended that the property in question was booked for unauthorized construction of ground floor and first floor and show cause notice was given, which was duly received by the appellant, who submitted her reply and also attended personal hearing. He further contended that in the personal hearing, the appellant admitted that she re-constructed the property in question, which was confirmed in the inspection carried out by the JE(B), who took photographs of the existing construction, and thereafter demolition order was passed. He further contended that the appellant has also constructed the third floor in the year 2022, which has been separately booked and a separate demolition order has been passed. He prayed that appeal may be dismissed.

4. I have heard Ld. counsel for the appellant, Ld counsel for the respondent, and perused the appeal, impugned order as well as the record.

Perusal of the above shows that property bearing no. 50, Gali Doman Bagh Diwar, Delhi – 110006 was booked for unauthorized construction at the ground floor and first floor and show cause notice dated 17.07.2019 was served upon the appellant, who submitted her reply and also attended personal hearing and thereafter impugned demolition order dated 26.08.2019 has been passed.

5. The plea of the appellant is that construction from ground floor to second floor have been in existence much before 07.02.2007 and only permissible repairs were carried out in the property, which was in a dilapidated condition.
6. The appellant has placed on record copy of house-tax receipt at page no. 37 of the appeal, which shows that property in question was consisting of ground floor, first floor and second floor on 13.07.2006 i.e. prior to 07.02.2007.
7. The property in question was booked for unauthorized construction and a show cause notice dated 17.07.2019 was issued. Vide said show cause notice, ground floor and first floor of the property in question was booked for unauthorized construction. The house-tax receipt submitted by the appellant shows that property in question was consisting of ground floor, first floor and second floor even in the year 2006 i.e.

much prior to the date when the property was booked for unauthorized construction, the Quasi Judicial Authority, however, did not mention about the second floor in the show cause notice but passed the demolition order with respect to second floor as well.

8. The show cause notice dated 17.07.2019 was served upon the appellant, who submitted her reply, stating therein that the property in question is 70-80 years old, therefore, same was in a very dilapidated condition and she has only carried out permissible repairs and has not raised any new construction. The said reply has been filed by the appellant Smt. Anita in Hindi language, mentioning all these facts.
9. The Quasi Judicial Authority recorded the proceeding sheet in English language, wherein it is recorded that the appellant has stated that she had re-constructed the property as existing since the last 50 years.
10. The appellant is an illiterate lady, who could hardly put signature in Hindi language. The proceeding sheet was recorded in English language, without mentioning in the proceeding sheet, that same was read over to the appellant Smt. Anita.
11. In the proceeding sheet, there is also a reference that the property in question was inspected on 26.08.2019 and photographs were taken,

which are in the file. However, no such photograph are there in the record submitted by the respondent.

12. The appellant in her reply had clearly stated that she had only carried out repairs in the old existing structure. Photographs of the property in question has also been annexed by the appellant from page (s) no. 5 to 7 of the appeal.

13. *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) *****

14. 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.

15. The property in question is situated in Gali Doman Bagh Diwar, Fatehpuri, 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.

16. The house-tax record submitted by the appellant clearly depict that the ground floor to second floor of the property in question were in existence prior to 07.02.2007, therefore, appellant is entitled for protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
17. If the appellant has raised any construction at the third floor of the property in question, which has been separately booked, and demolition order qua the same has been passed, then the respondent is at liberty to take appropriate action against the third floor, which is not protected.
18. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 26.08.2019 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 the appellant.
19. The appellant shall not raise any unauthorized construction in the property in question.

20. 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 26.04.2024.**

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