

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

**APPEAL NO. 36/ATMCD/2018**

**Prajapita Brahma Kumari Pragati Gaikwad  
D/o Sh. Dashrath Gaikwad  
R/o A-351/352, Vijay Vihar,  
Phase – 1, Delhi – 85.**

..... Appellant

**Vs**

**North Delhi Municipal Corporation  
Sector – 5, Rohini Zone,  
Delhi – 110085.**

..... Respondent

**&**

**APPEAL NO. 69/ATMCD/2018**

- 1. Prajapita Brahma Kumari R. Venkata Kanaka Ratnam**
- 2. Sukarma D/o Bhimsingh Rathore**
- 3. Tandra Das D/o Late Shailendranath Das**
- 4. Harsha Kapadia D/o Laljibhai**
- 5. Kala Nepal**
- 6. Manorma Mallick W/o Late Dr. Basant Mallick**
- 7. Poonam Singh W/o Sikander Singh**
- 8. Kiran Darsimbe D/o Laxman Darsimbe**
- 9. Laxmi Singh D/o Umesh Singh**
- 10. Vinita Sen D/o Asharam Sen**

**All Residing at Adhyatmik Vishwa Vidyalaya  
346 to 349, 351 & 352, Vijay Vihar,  
Phase – 1, Delhi – 110085.**

**11. Geeta Singh Payal  
W/o Bhagat Singh Payal  
R/o Suman Vihar, Bapu Gram,  
Post Veerbhadra, Rishikesh,  
District Dehradun, Uttarakhand.**

**Through her Special Power of Attorney  
Hradesh Pandey  
S/o Vishwanath  
Village Shamshabad,  
District Farrukhabad,  
Uttar Pradesh.**

**..... Appellants**

**Vs**

**North Delhi Municipal Corporation  
Sector – 5, Rohini Zone,  
Delhi – 110085.**

**..... Respondent**

**Date of Filing of Appeal : 16.01.2018  
Date of Order : 26.04.2024**

### **ORDER**

1. Vide this common order, I shall decide the above appeals being appeal(s) no. 36/18 & 69/18, filed against impugned demolition order dated 08.01.2018, passed with respect to the property known as Adhyatmik Vishwa Vidhyalaya, bearing property no. A-346-349, 351-

352, Vijay Vihar, Phase – I, Delhi. The brief facts necessitated in filing of the present appeal are given as under:-

2. The appellants have averred that property bearing no. A-346-349, 351-352, Vijay Vihar, Phase – I, Delhi, was purchased by Smt. Kamla Devi Dixit and Sh. Virendra Deo Dixit in July 1995, by virtue of a single General Power of Attorney. Appellants have further averred that they along with other inmates started residing in the property since the year 1996-97, as the major portion of the building i.e. basement, ground floor, first floor and second floor were constructed by the end of 1998 and entire structure of the building was completed prior to year 01.06.2014, therefore, same was entitled for protection under the Special Act.
3. The appellants have further averred that in the year 2007, DDA issued a notice under Section 30 (1) and 31 (1) of the DDA Act, 1957 with respect to the second floor of the property in question, pursuant to which Prajapita Brahma Kumari Tandra Das filed her reply on behalf of Adhyatmik Vishwa Vidyalaya on 16.08.2007 and thereafter the DDA ratified the uninterrupted possession of appellants and did not take any action against the property in question.

4. The appellants have further averred that respondent / MCD issued a show cause notice dated 28.12.2017, which was received by them on 29.12.2017, pursuant to which they filed reply dated 01.01.2018, and also sought two week's time to file detailed reply to the show cause notice but instead of granting time to file a detailed reply, respondent hastily passed the demolition order dated 08.01.2018 under Section 343 (1) of the DMC Act, 1957 against the property in question, which was received by them on 10.01.2018. Feeling aggrieved from the impugned demolition order dated 08.01.2018, the present appeals have been preferred.

5. Sh. Amol Kokne, Ld. Counsel for appellants has contended that the impugned demolition order is bad in law as same has been passed in violation of the principle of natural justice. He further contended that pursuant to the show cause notice, appellants, filed their reply, whereby they sought two week's time for filing a detailed reply but the Quasi Judicial Authority denied the same and passed the impugned demolition order in haste. He further contended that along with the reply, appellant also submitted various documentary proofs to show that the property in question was constructed much prior to 01.06.2014. He further contended that the property in question is situated in an unauthorized colony and

same was purchased in the year 1995 vide registered general power of attorney in the year 1995. He further contended that entire construction in the property in question has been in existence prior to 01.06.2014, therefore, same was entitled for protection under the Special Act, but the Quasi Judicial Authority has not considered the said aspect and passed the impugned demolition order wrongly. He prayed that appeal may be allowed and order may be set aside.

6. Sh. Ashutosh Gupta, Ld. Counsel for the respondent has contended that the property of the appellants was booked for unauthorized construction in the shape of basement, ground floor, first floor, second floor, third floor and fourth floor of low height and tin shed at fifth floor and a show cause notice dated 28.12.2017 was served upon appellants, pursuant to which they submitted their reply dated 01.01.2018. He further contended that from the documents submitted by the appellants, along with their reply, it could not be ascertained, whether the entire construction came up prior to 01.06.2014, that is why the demolition order was passed. He further contended that the property in question is not entitled for the protection under the Special Act as the property was being used for capturing inmates by way of installation of various metal doors and structure / floor of such low height that one has

to crawl and the preamble of the Special Protection Act does not intend to give protection to such structure, where, the structure is neither being used for residential, commercial or for any other purpose recognized in the law, therefore, the property was not entitled for protection under the Special Act. He further contended that the appeals filed by appellants are not maintainable as appellants are not the owners of the property in question, therefore, they have no locus standi to file the present appeal. He prayed that appeal may be dismissed.

7. I have heard Ld. counsel for appellants, 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. A-346-349, 351-352, Vijay Vihar, Phase – I, Delhi was booked for unauthorized construction in the shape of basement, ground floor, first floor, second floor, third floor and fourth floor of low height and tin shed at fifth floor and show cause notice dated 28.12.2017 was served upon appellants, pursuant to which appellants submitted their reply dated 01.01.2018 thereby sought two week's time for filing a detailed reply, however, a detailed reply to the said show cause notice was submitted by the appellants along with documents on the same day. After receiving the

replies and documents submitted by the appellant, the Quasi Judicial Authority passed the impugned demolition order dated 08.01.2018.

8. Initially, present appeals being appeal(s) no. 36/18 & 69/18 were dismissed with cost by the Ld. Predecessor of this Court vide common order dated 13.02.2018, holding that the appeals are not maintainable as appellants have no locus standi to file these appeals.

9. The appellants challenged the said order before the Ld. District & Sessions Judge, North-West District, Rohini Courts, Delhi by filing an appeal being appeal no. 04/18. The Ld. District & Sessions Judge, vide order dated 07.07.2018, allowed the said appeal, thereby remanded back the matter to the Tribunal with the directions to dispose off the appeals filed by appellants on merits in accordance with law.

10. The plea of the appellants is that the structure in question has been in existence much prior to 01.06.2014, therefore, same was entitled for the protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, but the Quasi Judicial Authority has neither granted sufficient time to the appellants to file a detailed reply nor considered the documents placed before it by the

appellants, which shows that the structure in question was raised much before 01.06.2014.

11. The respondent booked the property in question for unauthorized construction and a show cause notice dated 28.12.2017 was issued. Pursuant to the show cause notice, the occupants of said building submitted their reply on 01.01.2018 along with various documents in the form of registered GPA, copy of passbook, ration card, police verification form, electricity bills and water bills etc. and claimed that major portion of the building was completed by the year 1998 and second floor mezzanine, third floor and third floor mezzanine (fourth floor of low height) along with tin shaded terrace was constructed till year 2010 by mutual co-operation of spiritual followers and Brahma Kumaris of Adhyatmik Vishwa Vidyalaya, who contributed in building both financially and physically.

12. After receiving the said reply, the Quasi Judicial Authority passed the demolition order dated 08.01.2018, holding that from the documents, it cannot be made out that construction of entire structure came up prior to 01.06.2014, which is the stipulated cut-off date with respect to an unauthorized colony, as per the provision of the National



Capital Territory of Delhi Laws (Special Provision) Second Amendment Act 2011, as amended in 2014 and 2017.

13. The Quasi Judicial Authority has observed that the documents produced by appellants do not establish that the entire structure was raised prior to 01.06.2014.

14. The appellants have placed on record copy of gas connection at the address of third floor of the property in question. Even an electricity connection was installed at the right hand side and left hand side portion of the third floor of the property in question, which was applied on 18.02.2014 and the electricity connection, was installed on 14.07.2014. Meaning thereby that the construction in question, at least upto third floor was in existence prior to 01.06.2014, when electricity connection was applied.

15. The Quasi Judicial Authority however has not considered any of these documents so relied upon by appellants and has simply mentioned in the demolition order that appellants could not adduce any proof to show that the entire structure was in existence prior to 01.06.2014.

16. Ld. Counsel for the respondent has contended that appeals filed by appellants is not maintainable as they are not the owner of the property

in question. He further contended that in terms of the observation made by the Hon'ble High Court in "Rajesh Kumar Sharma Vs Government of NCT of Delhi & Anr.", W.P.(C) no. 9397/2017, date of decision 12.02.2018, the Tribunal is required to examine the title of the appellants in appeals, which are brought before it under Section 347B of the Delhi Municipal Corporation Act, 1957. On that basis, Ld. Counsel of respondent contended that the appeal itself is not maintainable.

17. The said contention of Ld. Counsel of respondent is not sustainable. The appellants have not claimed themselves as owners of the property in question and have filed their appeal being the occupants of the property in question.

18. Initially appeals filed by the appellants were dismissed by the Ld. Predecessor of this Court vide common order dated 13.02.2018, holding that the appellants have no locus standi to file the present appeal. The said order was assailed before the Court of Ld. Principal District & Sessions Judge in an appeal and the Ld. Principal District & Sessions Judge, vide order dated 07.07.2018, set aside the order dated 13.02.2018 and remanded the matter back to the Tribunal for disposal of the appeal on merits in accordance with law.

19. This Tribunal is thus required to decide these appeals in view of the directions given by the Ld. Principal District & Sessions Judge, vide order dated 07.07.2018.

20. Ld. Counsel for the respondent has further contended that the property in question is not entitled for the protection under the Special Act as same was being used for capturing inmates by way of installation of various metal doors and structure / floor of such low height and the preamble of the Special Protection Act does not intend to give protection to such structure, where, the structure is neither being used for residential, commercial or for any other purpose recognized in the law, therefore, same is not entitled for protection under the Special Act.

21. The said contention of Ld. Counsel of respondent is however not sustainable. The Quasi Judicial Authority has not denied the protection to appellants on the ground that the structure in question is not entitled for the protection as same has not been used for residential, commercial or any other purpose but has passed the demolition order on the ground that the appellant could not produce any document to establish that the entire structure came up prior to 01.06.2014.

22. The appellants have adduced various documents on record to show that the structure in the property in question, at least upto the third floor was in existence prior to 01.06.2014. These documents were also adduced by appellants before the Quasi Judicial Authority but the Quasi Judicial Authority has not considered those documents and passed the impugned demolition order ignoring those documents.

23. The Quasi Judicial Authority was required to examine the documents submitted by appellants along with their reply and was required to give a finding as to which portion of the property was existing prior to 01.06.2014 and which portion was raised subsequently. The Quasi Judicial Authority however has not considered these aspects, therefore, the demolition order dated 08.01.2018 is not sustainable.

24. In view of the above facts and circumstances, the appeal filed by the appellants is allowed. The impugned demolition order dated 08.01.2018 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

25. The appellants shall appear before the Quasi Judicial Authority on **06.05.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide

an opportunity to the appellants to submit an additional reply, if any and also grant them personal hearing.

26. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defences raised by the appellants and shall communicate the said order to the appellants. All the proceedings shall be completed by the Quasi Judicial Authority within a period of 2 months from the date of hearing.

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

28. The record of the respondent be send back along with 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**