

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

**APPEAL NO. 415/ATMCD/2022**

**Smt. Rekha Bansal**  
**W/o Late Sh. Satish Kumar Bansal**  
**R/o 3903, Daiwara, Roshan Pura,**  
**Nai Sadak, Delhi - 110006**

..... Appellant

**Vs**

**1. Municipal Corporation of Delhi**  
**(Through its Commissioner)**  
**24<sup>th</sup> Floor, Dr. S.P.M. Civic Centre,**  
**Minto Road, New Delhi – 110002.**

**2. Sh. Jagmohan Meena**  
**Assistant Engineer (Building)**  
**Deptt. –I, City S.P. Zone, MCD,**  
**4<sup>th</sup> Floor, Nigam Bhawan,**  
**Old Hindu College,**  
**Kashmere Gate, Delhi – 110006.**

..... Respondent

**Date of Filing of Appeal           :    21.07.2022**  
**Date of Order                           :    30.04.2024**

**ORDER**

1.           Vide this order, I shall decide the appeal filed against impugned demolition order dated 12.07.2022, passed with respect to third floor and fourth floor of property bearing no. 3903, Daiwara, Roshanpura, Nai Sarak, Delhi – 110006.

2. Sh. V.P. Bhardwaj, Ld. counsel for the appellant has contended that entire construction at third floor and fourth floor was raised much before 07.02.2007, therefore, same was entitled for protection but the Quasi Judicial Authority has not granted any such protection. He further contended that mother in law of the appellant had been paying house-tax for the entire property, consisting of ground floor to fourth floor, which was constructed prior to marriage of appellant but Quasi Judicial Authority has not considered this aspect and passed the demolition order against the third floor and fourth floor of the property in question. He prayed that appeal may be allowed and protection may be granted.

3. Sh. Shantanu Aggarwal, Ld. counsel for the respondent has contended that appellant and other occupants of the property in question raised unauthorized construction from second floor to fourth floor, which was booked and a show cause notice was issued, which was duly served upon the appellant. He further contended that all the occupants including the appellant filed their reply and also attended personal hearing, however, they failed to furnish any proof to show that property in question was constructed on the basis of sanction building plan or that same was constructed prior to 07.02.2007, therefore, demolition order was passed. He prayed that appeal may be dismissed.

4. I have heard Ld. counsel for the appellant, Ld counsel for the respondent, perused the appeal, impugned order as well as the record. Perusal of the above shows that property bearing no. 3903, Daiwara, Roshanpura, Nai Sarak, Delhi – 110006 was booked for unauthorized construction at entire second floor, third floor and fourth floor and a show cause notice dated 04.05.2022 was issued, pursuant to which appellant along with other occupants of the property filed their reply and also attended hearing and thereafter the Quasi Judicial Authority passed the impugned demolition order dated 12.07.2022.
5. The plea of the appellant is that third floor and fourth floor of the property in question was constructed prior to 07.02.2007, therefore, same was entitled for protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 but the Quasi Judicial Authority has not considered this aspect and passed the demolition order dated 12.07.2022, by holding that the property was constructed without any sanction building plan.
6. Though the appellant has not placed on record any proof to show that the property in question was constructed prior to 07.02.2007 but this Court, vide order dated 16.11.2021, directed the respondent to furnish the entire record of house-tax pertaining to property no. 3903, Daiwara,

Roshanpura, Nai Sarak, Delhi, which was submitted by the respondent during the pendency of this appeal.

7. A perusal of the house-tax record shows that the property in question from ground floor to third floor was assessed to house tax and an assessment order dated 01.04.1998 was passed in this regard. The house tax challan dated 25.07.2016 is also there in the record file, showing the property consisting from ground floor to third floor.

8. ***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 1<sup>st</sup> 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 31<sup>st</sup> day of***

*March, 2002 and where construction took place even beyond that date and (upto the 1<sup>st</sup> 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 8<sup>th</sup> day of February, 2007, shall be maintained.*

(3) \*\*\*\*\*

9. 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.

10. The property in question is situated in Nai Sarak, Delhi - 110006, which is situated in the Walled City, thus 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.

11. The house-tax record submitted by the respondent thus clearly establishes that the property upto third floor has been in existence prior to 07.02.2007, therefore, same is entitled for protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
12. The appellant has also claimed that fourth floor was also constructed prior to 07.02.2007. But she has not placed on record any proof to show that the two rooms at the fourth floor of the property in question were existing prior to 07.02.2007 or 17.01.2011.
13. It is relevant to mention that the appellant herself has placed on record copy of relinquishment deed dated 01.08.2019, got executed between husband of appellant and his other family members. As per the said relinquishment deed as well, the property in question was constructed upto third floor only and there is no reference of fourth floor in the said relinquishment deed as well.
14. The aforesaid fact thus clearly proves that the third floor of the property was in existence prior to 07.02.2007, therefore same is entitled for protection. But two rooms at the fourth floor were constructed after

2019, as there is no reference of these two rooms at the fourth floor in the relinquishment deed filed by the appellant, therefore construction existing at the fourth floor of the property in question is not entitled for the protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

15. In view of the above facts and circumstances, the appeal filed by appellant against impugned demolition order dated 12.07.2022 is partly allowed. The impugned demolition order dated 12.07.2022 passed qua third floor of the property bearing no. 3903, Daiwara, Roshanpura, Nai Sarak, Delhi - 110006 is put in abeyance, till the protection granted by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 is not withdrawn.

16. 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.

17. The appeal filed against impugned demolition order dated 12.07.2022 qua fourth floor of property bearing no. 3903, Daiwara, Roshanpura, Nai Sarak, Delhi - 110006 is however dismissed.

18. 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 30.04.2024.**

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