

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

**APPEAL NO. 373/ATMCD/2017**

**Sh. Shankar Sharma  
S/o Late Shreekrishan Bhagwan Sharma  
590, Gali Balmukand, Kucha Pati Ram,  
Bazar Sita Ram, Delhi – 110006.**

**..... Appellant**

**Vs**

**North Delhi Municipal Corporation  
Civic Centre, Minto Road,  
New Delhi – 110002  
(Through its Commissioner)**

**..... Respondent**

**Date of Filing of Appeal(s) : 23.05.2017  
Date of Order : 06.05.2024**

.....  
**APPEAL NO. 176/ATMCD/2018**

**Sh. Shankar Sharma  
S/o Late Shreekrishan Bhagwan Sharma  
590, Gali Balmukand, Kucha Pati Ram,  
Bazar Sita Ram, Delhi – 110006.**

**..... Appellant**

**Vs**

**North Delhi Municipal Corporation  
Civic Centre, Minto Road,  
New Delhi – 110002  
(Through its Commissioner)**

**..... Respondent**

**Date of Filing of Appeal(s) : 06.03.2018  
Date of Order : 06.05.2024**

**APPEAL NO. 17/ATMCD/2024**

**Sh. Shankar Sharma  
S/o Late Shreekrishan Bhagwan Sharma  
590, Gali Balmukand, Kucha Pati Ram,  
Bazar Sita Ram, Delhi – 110006.**

**..... Appellant**

**Vs**

**1. Municipal Corporation of Delhi  
Civic Centre, Minto Road,  
New Delhi – 110002  
(Through its Commissioner)**

**2. Heritage Conservation Committee  
Core-VIA, India Habitat Centre,  
Lodhi Road, New Delhi – 110003.**

**..... Respondent**

**Date of Filing of Appeal(s) : 10.01.2024  
Date of Order : 06.05.2024**

**ORDER**

1. Vide this common order, I shall decide three separate appeals i.e. appeals bearing no. 373/17, 176/18 & 17/2024, filed by appellant Sh. Shankar Sharma, against impugned orders of rejection of regularization dated 11.05.2017, 23.02.2018 & 29.12.2023. The brief facts necessitated in filing of these appeals are given as under:-

2. The appellant has averred that he is the owner of built up property bearing no. 590 (New) Kucha Pati Ram, Bazar Sita Ram, Delhi – 110006, comprising of ground floor, first floor, second floor and third floor, which

is his ancestral property. He further averred that his great great grandfather Pt. Pyare Lal S/o Late Balmukand, transferred the property in question in favor of his father Sh. Shree Krishan Bhagwan Sharma by virtue of a Gift Deed dated 05.06.1935, after which Sh. Shree Krishan Bhagwan Sharma carried out additions and alterations in the property in question.

3. The appellant has further averred that his father Sh. Shree Krishan Bhagwan Sharma expired on 23.09.2012, leaving behind his LRs i.e. five sons including the appellant and four daughters. He further averred that all the other LRs of Sh. Shree Krishan Bhagwan Sharma relinquished their share in favor of the appellant vide separate relinquishment deeds and as such appellant became the absolute owner of the property in question.

4. The appellant has further averred that property in question being very old was in a very dilapidated condition and required immediate extensive repairs, therefore, appellant approached respondent no.1 / MCD and filed an application dated 19.09.2016, with the request to inspect the property in question and grant permission to carry out necessary repairs / renovation, accordingly, after due inspection, respondent no. 1 / MCD, vide permission letter dated 26.09.2016, granted permission to carry out repairs in the property in question as per Clause 6.4.1 of the Unified

Building Bye-Laws and thereafter necessary repairs / renovation work were carried out in the property in question.

5. The appellant has further averred that during that period, some officials of respondent no. 1 visited the property in question to inspect the same and advised him to get the property regularized to avoid any inconvenience at the later stage and accordingly, he applied for regularization of construction existing at site vide regularization application dated 02.12.2016.

6. The appellant has further averred that after that he received a show cause notice dated 05.12.2016 for unauthorized construction of back portion of the property in question, pursuant to which, he submitted his detailed reply, stating therein that repairs were carried out after obtaining prior permission from the MCD, granted vide permission letter dated 26.09.2016 and also apprised that the regularization application filed by him is also pending consideration, however, respondent no. 1 passed the demolition order dated 15.05.2017, with the observation that the regularization application dated 02.12.2016 was already rejected vide order dated 11.05.2017 . Being aggrieved from the rejection order dated 11.05.2017, appeal bearing no. 373/17 was preferred.

7. The appellant has further averred that during the pendency of the above appeal, respondent no. 1 re-opened the application for regularization and on 01.12.2017, during the hearing, respondent no. 1 filed a status report, mentioning that the regularization file has been sent to the Town Planning Department for obtaining comments regarding right of way, sub-division, layout plan etc. in order to consider the regularization file.
8. The application for regularization was again rejected vide order dated 23.02.2018, after obtaining the comment from the Town Planning Department.
9. The appellant has further averred that thereafter he filed an online application with the Heritage Conservation Committee vide ID no. 10046936 dated 26.02.2018 and also submitted a detailed representation with respondent no. 2 / Heritage Conservation Committee, seeking permission for regularization / compounding of the construction.
10. The appellant has further averred that on 31.08.2022, respondent no. 2 / Heritage Conservation Committee filed a status report, stating therein that respondent no. 1 / MCD has to consider the regularization application and respondent no. 2 has no authority to regularize the

structure, pursuant to which the Tribunal directed respondent no. 1 / MCD to decide the application for regularization as per BBL and MPD-2021 and not by merely mentioning that the property is mentioned in the heritage list.

11. The appellant has further averred that to his utter shock and surprise, he received copy of order dated 29.12.2023, whereby his application for regularization was also rejected on the ground of non-compliance of I/N dated 07.04.2023.

12. Sh. Dalip Rastogi, Ld. Counsel for the appellant has contended that the property in question can be regularized if same is falling within the Building Bye-Laws, even if no permission was obtained prior to carrying out repairs / addition / alterations. He further contended that appellant was not aware that his property was a Heritage Property and the moment he came to know about the same, he filed a proposal for seeking permission with the MCD for taking approval from the Heritage Conservation Committee. He further contended that the appellant is ready to bring the construction of the property back as it was existing, prior to its renovation. He prayed that appeal may be allowed and impugned orders may be set aside.

13. Sh. Ashutosh Gupta, Ld. Counsel for the respondent has contended that it is an admitted case that the appellant has demolished the earlier heritage structure without any permission from the Heritage Conservation Committee and re-constructed the entire building unauthorisedly. He further contended that as per Clause 1.4 of Annexure II of the Unified Building Bye-Laws, before making any addition / alteration in a heritage building, it was mandatory to obtain permission from the Heritage Conservation Committee, which was not obtained, therefore, the application for regularization cannot be considered. He prayed that appeal may be dismissed.

14. Ms. Srishti Aggarwal, Ld. Proxy Counsel for the Heritage Conservation Committee has contended that the appellant has deliberately damaged the heritage building by demolishing the previous structure and reconstructing the same, therefore, no permission for regularization can be accorded and even penalty as per Clause 1.4 of Annexure II of the Unified Building Bye-Laws is required to be levied. She further contended that the Heritage Conservation Committee can consider the proposal for reconstruction / renovation before any demolition is carried out in the heritage building, however, once the heritage structure has already been demolished and reconstructed, the Heritage Conservation Committee would not be able to consider any such proposal for

regularization under the Unified Building Bye Laws. She prayed that appeal may be dismissed.

15. I have heard Ld counsel for the appellant, Ld counsel for respondents and perused the appeal, impugned orders as well as the record produced by respondent.

16. The appellant has claimed himself as owner of the property in question. He carried out repair / renovation of the property in question, i.e. a heritage property of Grade – III, situated in Kucha Pati Ram, Bazaar Sita Ram, Delhi – 110006.

17. The case of the appellant is that he carried out renovation / repair work in the property in question, after getting permission for such repair from the MCD, and thereafter applied for regularization of the same, which was rejected vide order dated 11.05.2017 on various grounds.

18. The appellant assailed the said order by filing an appeal being appeal no. 373/17. During the pendency of said appeal, the application for regularization was re-opened and was again rejected vide order dated 23.02.2018 after obtaining comment from Town Planning Department on the ground that the property is included in the list of heritage sites, so notified by the competent authority.



19. The appellant preferred another appeal being appeal no. 176/18 against the said order. During the pendency of both these appeals, the appellant filed another application for regularization, which was also rejected vide order dated 29.12.2023 on the ground that property is a notified heritage site, so notified by the Heritage Conservation Committee.
20. After rejection of first application of regularization, the appellant filed a writ petition being W.P. (C) no. 3072/18 before the Hon'ble High Court, in which Heritage Conservation Committee was also impleaded as respondent no. 2.
21. The Heritage Conservation Committee filed a counter affidavit in the said writ petition. Para(s) 6 to 10 of the said counter affidavit are relevant, which are reproduced as under:-

*“6. I state that clause 1.12 of Annexure II to the Bye-Laws provides for grading of listed heritage sites and structures into three categories namely Grade I, Grade II and Grade III. Clause 1.12 provides for changes to be made in listed Grade III heritage structures however, any change has to be in harmony and should not detract from the existing heritage building / precinct. Any development permission for changes in Grade III listed heritage structure has to be given on the advice of the committee. Clause 1.12 of Annexure*

*- II to the Bye-Laws clearly states that nothing would be deemed to confer a right on the owner / occupier of the listed heritage site / plot to demolish or reconstruct or make alterations to his heritage structure if in the opinion of the Committee such alteration / demolition / reconstruction is undesirable.*

*7. Clause 1.3 (i) of Annexure II to the Bye Laws restricts development / re-development, engineering operations, additions / alterations, repairs, renovation or demolition of any part of listed heritage structure / building except with the prior permission the local body (North DMC, Respondent no. 1 in this case). Before granting any permission, the local body shall consult the committee and act in accordance with the advice of the Committee. Relevant part of Clause 1.3 of Annexure II to the Bye Laws is as follows:*

*1.3 Restriction on Development / Re-development / Repairs etc.*

*(i) No development or re-development or engineering operation or additions / alterations, repairs, renovations including painting of the building, replacement of special features or plastering or demolition of any part thereof of the said listed buildings or listed precincts or listed natural feature areas shall be allowed except with the prior permission of the Commissioner, MCD, Vice Chairman, DDA / Chairman NDMC. Before granting such permission, the agency concerned shall consult the Heritage Conservation Committee to be appointed by the Government and shall act in accordance with the advice*

*of the Heritage Conservation Committee.*

*(ii) Provided that, before granting any permission for demolition or major alteration / additions to listed buildings (or buildings within listed streets or precincts, or construction at any listed natural feature areas, objections and suggestions from the public shall be invited and shall be considered by the Heritage Conservation Committee).*

***8. Clause 1.4 of Annexure II to the Bye-Laws penalizes unauthorized development under provisions regarding unauthorized development. If the heritage structure is damaged, destroyed or pulled down without permission from the local body, no permission to construct any new building shall be granted. This in addition to any penal action provided under the concerned Act. Clause 1.4 of Annexure II to the Bye-Laws is as follows:***

***“1.4 Penalties: Violation of the regulations shall be punishable under the provisions regarding unauthorized development. In case of proved deliberate neglect of and / or damage to Heritage Buildings and Heritage Precincts, or if the building is allowed to be damaged or destroyed due to neglect or any other reason, in addition to penal action provided under the concerned Act, no permission to construct any new building shall be granted on the site if a Heritage Building or building in a Heritage Precinct is damaged or pulled down without appropriate permission from Commissioner, MCD / Vice Chairman DDA / Chairman NDMC.***

*It shall be open to the Heritage Conservation Committee to consider a request for rebuilding / reconstruction of a Heritage Building that was unauthorized demolished or damaged, provided that the total build-up area in all floors put together in the original Heritage Building in the same form and style in addition to other controls that may be specified.”*

*9. It is respectfully stated that on 27.02.2018, the committee received a proposal (filed online through the website of the committee) with respect to Building no. 590, Kucha Pati Ram, Sita Ram Bazaar, Delhi – 110006 from respondent no. 1. Copy of the proposal filed with the Committee is annexed herewith and marked as “Annexure R-2/1”.*

*10. The Committee considered the proposal sent by respondent no. 1 at its meeting held on 06.03.2018. The Committee after scrutinizing the proposal observed that respondent no. 1 had not given its comments in respect of existing and proposed building. The Committee decided to send the proposal to respondent no. 1 for resubmission after complying with its observations. The decision of the answering respondent was communicated to respondent no. 1 by letter dated 07.03.2018. Copy of letter dated 07.03.2018 is annexed herewith and marked as “Annexure R-2/2”.*

22. The appellant also submitted a proposal with respect to the heritage notified property bearing no. 590, Gali Pati Ram, Bazaar Sita Ram, Delhi – 110006 on 05.01.2018. In the entire proposal submitted by the appellant, there was no reference as to whether the appellant had changed

the heritage structure of the building or not? Or whether he carried out any repair / renovation in the heritage notified property without due permission of Heritage Conservation Committee.

23. It is an undisputed fact that the property in question is one of the heritage properties of Grade – III, mentioned at serial no. 376 of the heritage list. It is also not in dispute that appellant repaired / renovated the property in question in the year 2016 without seeking any prior permission from the Heritage Conservation Committee, which is required as per Annexure – II of the Building Bye-Laws.

24. The photograph of the pre-existing structure and the existing structure filed the appellant himself in his appeal, clearly depict that the appellant has made substantial structural changes in the heritage structure of the building and damaged the heritage structure of the building by carrying out repair / renovation work without any permission from the Heritage Conservation Committee.

25. Ld. Counsel for the appellant has contended that as per Clause 1.12 of Annexure II of the Unified Building Bye-Laws, the appellant was

permitted to carry out internal changes, which included extensions and additional building in the same plot or compound.

26. No doubt that appellant can be allowed to carry out internal changes in the heritage building as per Sub-Clause (C) of Clause 1.12 of Annexure II of the Unified Building Bye-Laws. However, Sub-Clause (D) of the said Clause prescribes the procedure, how such internal changes can be made. As per Clause D, any such development permission for changes would be given on the advice of the Heritage Conservation Committee.

27. Meaning thereby that before carrying out any changes in a heritage building, the person concerned, needs to seek permission for that purpose from the Heritage Conservation Committee and the Heritage Conservation Committee can examine the same, keeping in view the aesthetic value of the property and allow such development in consonance with the rules and only thereafter any renovation / internal changes in a heritage building can take place.

28. The appellant however renovated the property in question, which is a heritage building, without obtaining any such permission from the Heritage Conservation Committee and thereby damaged the heritage character of the building.

29. The respondent no. 1 / MCD has filed a status report dated 24.09.2018, the relevant portion of the said status report is as under:-

*“In the above mentioned property, owner of the property after demolition of old structure has raised new construction, thus the entire heritage structure which was strictly required to be preserved has been demolished. It is pertinent to mention here that the owner has procured the permission for repair by concealing the fact that the subject property is a notified heritage site for which permission is required from Heritage Conservation Committee (HCC). Under the garb of the repair, he has demolished the old construction and carried out new construction.”*

30. The Member Secretary, Heritage Conservation Committee also filed a status report on 16.04.2024, which is reproduced as under:-

*“The Hon’ble ATMCD by its order of 01.02.2024 directed the Heritage Conservation Committee to file status report in the above matter. The present status report has been prepared and is being submitted pursuant to the Hon’ble ATMCD’s said order.*

*1. It is stated that while the Heritage Conservation Committee has no role for consideration of a proposal with respect to regularization of a structure under the Master Plan. Clause 1.4 of Annexure-II of the Unified Building Bye Laws for Delhi, 2016 (UBBL) state the following:*

*“1.4 Penalties: Violation of the regulations shall be punishable under the provisions regarding unauthorized development. In case of proved deliberate neglect of and / or damage to Heritage Building*

*and Heritage precincts, or if the building is allowed to be damaged or destroyed due to neglect or any other reason, in addition to penal action provided under the concerned Act, no permission to construct any new building shall be granted on the site if a Heritage Building or Building in a Heritage Precinct is damaged or pulled down without appropriate permission from Commissioner, MCD / Vice Chairman DDA / Chairman NDMC.*

*It shall be open to the Heritage Conservation Committee to consider a request for re-building / reconstruction of a Heritage Building that was unauthorizedly demolished or damaged, provided that the total built-up area in all floors put together in the original Heritage Building in the same form and style in addition to other controls that may be specified..."*

*2. It is stated that the scenario contemplated under the second part of Clause 1.4 of Annexure-II of UBBL is when a proposal is sent before initiation of re-building / re-construction has already been completed, Heritage Conservation Committee will not be able to consider such a proposal under the UBBL.*

*The above status report is presented for consideration by the Hon'ble ATMCD."*

31. The property in question was a notified heritage building, therefore, no renovation / re-construction was permissible without seeking prior permission from the Heritage Conservation Committee.

32. The appellant in the garb of seeking repair of his property, sought permission from respondent no. 1 / MCD to carry out necessary repairs



and under that garb, re-constructed the property in question, as mentioned by respondent no. 1 / MCD in various status reports filed by them. While seeking permission for repair of the property from respondent no. 1 / MCD, the appellant did not disclose that the property in question was a notified heritage property.

33. Ld. Counsel of the appellant has contended that the appellant was not aware that his property was a notified heritage property and even respondent no. 1 / MCD was not aware about that, that is why, there was no reference of the property being a heritage building in the impugned order, vide which the first application for regularization was rejected.

34. It is an admitted case that the property in question is one of the Grade – III Heritage Property, mentioned in the list issued by the government. The plea of the appellant that he was not aware whether the property was a heritage building or not, cannot be accepted.

35. The appellant was required to know this fact that his property was a heritage property, and he was not required to get the permission for carrying out repairs simplicitor, without disclosing the fact that he was seeking permission to repair qua a property, which was a heritage building.

36. The property in question thus cannot be regularized as renovation / repair / re-construction of the property in question was done by the appellant in violation of Clause 1.4 and Clause 1.12 (D) of Annexure – II of the Unified Building Bye-Laws.

37. A proposal of re-building / re-construction / renovation of a heritage building can be examined and approved by respondent no. 2 / Heritage Conservation Committee, if any such proposal was sent by the appellant before reconstruction / renovation. However, appellant submitted the proposal for regularization of the property in question after carrying out reconstruction / renovation of the property in question, which was against the norms.

38. In view of the above facts and circumstances, I am of the considered view that the Quasi Judicial Authority has rightly rejected the applications for regularization as the appellant has violated Clause 1.4 and Clause 1.12 (D) of Annexure II of the Unified Building Bye-Laws by carrying out renovation / reconstruction of a Heritage Building without any prior permission. Accordingly, the appeals filed by appellant are dismissed.

39. Record of respondent no.1 / MCD 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 06.05.2024**

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