

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

**APPEAL NO. 255/ATMCD/2019**

- 1. Smt. Shanti Luthra (Since Deceased)**  
**W/o Sh. Krishan Lal Luthra,**  
**R/o 12/399, Sunder Vihar,**  
**Paschim Vihar,**  
**New Delhi – 110087.**

**Through her Legal Heirs:-**

- i) Sh. Krishan Lal Luthra (Husband)**  
**S/o Late Sh. Hari Chand Luthra**  
**R/o 12/399, Sunder Vihar,**  
**Paschim Vihar,**  
**New Delhi – 110087.**
- ii) Sh. Rajesh Luthra (Son)**  
**S/o Sh. Krishan Lal Luthra**  
**R/o 12/414, Sunder Vihar,**  
**Paschim Vihar,**  
**New Delhi – 110087.**
- iii) Sh. Deepak Luthra (Son)**  
**S/o Sh. Krishan Lal Luthra**  
**R/o 12/414, Sunder Vihar,**  
**Paschim Vihar,**  
**New Delhi – 110087.**  
**Presently residing at:-**  
**Flat no. 1001, Brahma Suncity,**  
**Wadgaon, Sheri, Block C-3, Pune.**
- 2. Sh. Yashwant Khera**  
**S/o Late Sh. Moti Ram Khera,**  
**R/o J-119, Reserve Bank Enclave,**  
**Paschim Vihar, New Delhi – 110063.**
- 3. Sh. Parmod Mittal**  
**S/o Sh. Ram Roop Mittal,**

**R/o 344, Bhera Enclave,  
Paschim Vihar,  
New Delhi – 110087**

**..... Appellants**

**Vs**

**North Delhi Municipal Corporation  
(Through its Commissioner)  
17<sup>th</sup> Floor, Civic Centre,  
Minto Road, New Delhi.**

**..... Respondent**

**Date of Filing of Appeal : 29.04.2019  
Date of Order : 09.05.2024**

### **ORDER**

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 14.03.2019, passed with respect to property bearing no. 12/402, Sunder Vihar, Paschim Vihar, New Delhi, which was booked for deviation against sanction building plan dated 07.05.1996 form basement to second floor and unauthorized construction at third floor.
2. Sh. Anil Sethi, Ld. counsel of appellants no. 1 and 2 has contended that the property in question was constructed on the basis of sanction building plan in the year 1996. He further contended that the respondent has not specified as to what are the deviations existing in the property in question, which are against the sanction building plan. He further contended that the demolition order passed by the Quasi Judicial

Authority is not in consonance with the law. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Ms. Nandita Abrol, Ld. counsel of appellant no. 3 has contended that appellant no. 3 had purchased the second floor of the property in question with roof rights, by virtue of a registered sale deed, which was constructed as per the sanction building plan. She prayed that appeal may be allowed and impugned demolition order may be set aside.

4. Sh. Dharamvir Gupta, Ld. counsel for the respondent has contended that there were deviations in the property in question, which was booked and show cause notice dated 28.01.2019 was issued, which was served upon all the owners of the property in question, who filed their respective replies and also attended personal hearing and thereafter the Quasi Judicial Authority passed the demolition order. He further contended that third floor of the property in question is completely unauthorized as same was not constructed as per the sanction building plan and no proof has been furnished by appellants to show that said floor was constructed prior to 07.02.2007. He prayed that appeal may be dismissed.

5. I have heard Ld. counsels for appellants, Ld counsel for the respondent and perused the appeal, impugned order and record. Perusal of

the above shows that property bearing no. 12/402, Sunder Vihar, Paschim Vihar, New Delhi was booked for deviation against sanction building plan dated 07.05.1996 from basement to second floor and unauthorized construction at third floor and show cause notice dated 28.01.2019 was issued, which was served upon all the owners of the property in question, who filed their respective replies and also attended personal hearing and thereafter the Quasi Judicial Authority passed the demolition order dated 14.03.2019.

6. The property of the appellant was booked for deviation / excess coverage against the sanction building plan from basement to second floor and unauthorized construction of third floor.
7. The sanction building plan was dated 07.05.1996, if any deviation / excess coverage was existing in the property in question from basement to second floor, then same must have been raised prior to 07.02.2007.
8. Moreover, respondent has not specified what deviation / excess coverage are existing in the property in question from basement to second floor, which are against the sanction building plan dated 07.05.1996.
9. The booking from ground floor to second floor, without specifying the deviation, which are against the sanction building plan, is

thus not in consonance with the law. Moreover, property in question from basement to second floor was constructed much prior to 07.02.2007, therefore, deviation, if any, existing in the basement to second floor of the property in question, which are against the sanction building plan are protected under the Special Act.

10. The property in question was also booked for unauthorized construction of third floor, which was not constructed as per the sanction building plan as the sanction building plan was obtained only for constructing the property from basement to second floor.

11. The appellant no. 3 had purchased the second floor of the property in question with roof rights by virtue of registered sale deed dated 14.10.2016. Meaning thereby, that on the day when the property in question was purchased, there was no third floor in the property in question and same was constructed after purchasing second floor of the property in question in the year 2016, that too without any sanction building plan.

12. The construction at third floor of the property in question has been raised after 07.02.2007, without any sanction building plan, therefore same is not entitled for any protection under the Special Act.

13. In view of the above facts and circumstances, the appeal filed by the appellant is partly allowed. The impugned demolition order dated 14.03.2019 passed with respect to basement to second floor of the property bearing no. 12/402, Sunder Vihar, Paschim Vihar, New Delhi, 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 appellant.
14. The appeal filed against demolition order dated 14.03.2019 with respect to the third floor of the property bearing no. 12/402, Sunder Vihar, Paschim Vihar, New Delhi is however dismissed.
15. The appellant shall not raise any unauthorized construction in the property in question.
16. 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 09.05.2024.**

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