

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

APPEAL NO. 224/ATMCD/2023

Sh. Jagdish Saini
S/o Late Sh. Daya Ram
R/o 40, Bhogal Lane,
Bhogal, New Delhi - 110014.

..... Appellant

Vs

1. Municipal Corporation of Delhi
(Through its Commissioner)
17th Floor, Civic Centre,
Minto Road, Delhi – 110001.

2. Assistant Engineer (Building)
Delhi Central Zone,
Jal Vihar, Lajpat Nagar,
Delhi – 110024.

..... Respondent

Date of Filing of Appeal : 24.04.2023
Date of Order : 16.05.2024

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 21.12.2022, passed against unauthorized construction from basement to third floor of property bearing no. 40 (Part), Bhogal Lane, Bhogal, New Delhi – 110014.

2. Ms. Divita Dutta, Ld. counsel for the appellant has contended that the property in question was constructed much before 01.06.2014,

therefore, same was entitled for protection under the Special Act. She further contended that after receiving the show cause notice, appellant submitted his reply stating all these facts and also filed the electricity bill etc. to show that the construction was existing prior to 01.06.2014 but the Quasi Judicial Authority has not considered the said reply and passed the impugned demolition order. She prayed that appeal may be allowed and protection may be granted.

3. Sh. Ravi Ranjan, Ld. counsel for the respondent has contended that the appellant was duly served with the show cause notice to which reply was filed, which was found unsatisfactory, due to which 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, and perused the appeal, impugned order as well as the record. Perusal of the above shows that property bearing no. property bearing no. 40 (Part), Bhogal Lane, Bhogal, New Delhi – 110014 was booked for unauthorized construction from basement to third floor and show cause notice dated 09.12.2022 was served upon the appellant, pursuant to which appellant filed his reply, but same was found unsatisfactory, due to which impugned demolition order dated 21.12.2022 was passed.

5. The plea of the appellant is that the property in question consisting of basement to third floor was existing much prior to 01.06.2014 and therefore same was entitled for protection.
6. The respondent though booked the property in question for unauthorized construction from basement to third floor but has not adduced any material on record to show that the property in question was constructed at the time when same was booked.
7. The appellant has placed on record copy of electricity bill in the name of Sh. Mukesh Saini and Sh. Dharmender Saini, both sons of appellant as well as Smt. Shashi Bala Saini, daughter in law of the appellant. These electricity bills are pertaining to electricity connections installed in the property in question, which have been duly verified by the respondent vide status report dated 09.06.2023.
8. A perusal of these electricity bills show that the electricity connection at the first floor was energized on 16.10.2003 and at the second floor on 29.09.2001. There is another electricity bill with respect to third floor of the property in question, which is having date of energization 17.01.2016 i.e. after 01.06.2014.

9. The appellant has placed on record copy of telephone bill installed at the third floor of the property in question. The said telephone bill has also been verified by the respondent, vide status report dated 29.02.2024.
10. The said telephone bill is dated 08.08.2002, which was installed at the third floor of the property in question. Meaning thereby that the third floor of the property in question was in existence at the time when the said telephone connection was installed in the property in question.
11. The documents i.e. electricity bills and telephone bill produced by the appellant clearly establish that the property consisting of basement to third floor was in existence prior to 01.06.2014.
12. The respondent has not adduced any proof to show that the pre-existing construction was demolished and a new construction was raised after 01.06.2014, to make the appellant disentitled for the protection under the Special Act.
13. The Quasi Judicial Authority though received the reply and documents submitted by the appellant but has not considered the same and has passed the demolition order by simply mentioning

that the reply submitted by the appellant was found not satisfactory.

14. The above documents submitted by the appellant clearly establish that the property in question, constructed from basement to third floor, was existing prior to 01.06.2014. .

15. *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) *****

16. A perusal of Section 3 (2) (i) to (iv) shows that no action can be taken for demolition of unauthorized construction or removal of encroachment in respect of unauthorized colonies, village abadi area (including urban villages) which existed on 31.03.2002 and where construction took place even beyond that date i.e. upto 01.06.2014.

17. A perusal of the said provision thus shows that construction raised upto 01.06.2014 in unauthorized colony, village abadi including urban villages which were in existence as on 31.03.2002, are protected.

18. The property in question is situated in Bhogal, New Delhi, which is a village abadi, therefore any construction existing in the same prior to 01.06.2014 is protected under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

19. The Quasi Judicial Authority should have considered all these aspects and should have granted protection to the appellant under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011 but he has failed to do so.
20. In view of the above facts and circumstances, I am of the considered view that basement to third floor of the property bearing no. 40 (Part), Bhogal Lane, Bhogal, New Delhi – 110014 have been in existence prior to 01.06.2014, therefore, same are entitled for protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act 2011. Accordingly, the appeal filed by the appellant is allowed. The Impugned demolition order dated 21.12.2022 is put in abeyance, till the protection granted by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 is not withdrawn.
21. 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.
22. The appellant shall not raise any unauthorized construction in the said property.

23. 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 16.05.2024**

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