

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

**APPEAL NO. 60/ATMCD/2022**

**Sh. Manjeet Singh Kohli  
S/o Late Sardar Uttam Singh Kohli  
R/o House no. H-475, New Rajender Nagar,  
New Delhi – 110060.**

**..... Appellant**

**Vs**

**North Municipal Corporation of Delhi  
(Through its Commissioner) /  
(Office of the Assistant Engineer),  
16<sup>th</sup> Floor, Civic Centre, Dr. S.P.M.  
Minto Road, Delhi – 110002.**

**..... Respondent**

**Date of Filing of Appeal : 03.02.2022  
Date of Order : 21.05.2024**

**ORDER**

1. Vide this order, I shall decide the appeal filed by the appellant against impugned demolition order dated 24.12.2021, passed with respect to property bearing no. H-475, New Rajender Nagar, New Delhi – 110060 for unauthorized construction of entire third floor.
  
2. Sh. Sunil Chaudhary, Ld. counsel for the appellant has contended that appellant was neither served with the show cause notice nor with the demolition order and the whole proceeding were initiated in violation of

principle of natural justice. He further contended that the appellant had gone to USA on 09.11.2021 and he came back to India on 01.01.2022, thus he was not available in India during the period when the property in question was booked and show cause notice was issued and demolition order was passed. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. V.K. Aggarwal, Ld. counsel for the respondent has contended that the third floor of the property in question was booked for unauthorized construction and show cause notice was issued in the name of the appellant, which was served through pasting but as no reply was submitted, 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 record. A perusal of the above shows that property bearing no. H-475, New Rajender Nagar, New Delhi – 110060 for unauthorized construction of entire third floor and show cause notice dated 15.12.2021 was given but as no reply was submitted, demolition order was passed.

5. The plea of the appellant is that the demolition order has been passed without affording any opportunity of being heard as the show cause notice was never served upon the appellant as he was out of country during the period when the show cause notice was issued and demolition order was passed.
6. In support of the above plea, the appellant has placed on record copy of his passport, having stamp of immigration dated 09.11.2021 and coming back on 01.01.2022.
7. A perusal of the record shows that the show cause notice dated 15.12.2021 was issued in the name of appellant, however, no report is there at the reverse of the show cause notice to show that the show cause notice was served or delivered upon the addressee.
8. The respondent though placed photograph of pasting at page no. 10/C of the record to show that the show cause notice was pasted at site on 20.12.2021 and copy of tracking report of speed post at page no. 9/C, which shows that notice came back with the report that “premises was found locked”.
9. The show cause notice, however does not mention how the show cause notice was served. Even signatures of witnesses were not obtained while pasting the show cause notice at site.

10. The Quasi Judicial Authority was within its right to pass an order as per Section 343 of the DMC Act. However, before passing any order, an opportunity of being heard was required to be given, which is a valuable right of the party against whom such proceeding were initiated.
11. The Quasi Judicial Authority did not bother to serve the show cause notice in accordance with law, and passed the demolition order, without affording an opportunity of being heard.
12. The cardinal principal of natural justice is that no one can be condemned without an opportunity of being heard. The Quasi-Judicial Authority was bound to conduct its proceedings in accordance with the principal of natural justice. The justice should not only be done but the same should also appear to have been done.
13. The Hon'ble High Court in *J.T. India Experts Vs UOI and Another 94 (2001) DLT 301 (FB)* has held as under: -

*“These Principles are well settled. The first and foremost principle is what is commonly known as audi-alteram partem rule. It says that none should be condemned unheard. Notice is the first limb of this*

*principle. It must be précised and un-ambiguous. It should apprise the party determinately the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed against the person absentia becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.*

*Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial authority while making an order affecting these rights. These rules are intended to prevent such authority from doing injustice.”*

14. The show cause notice dated 15.12.2021 has not been served in accordance with law. The impugned demolition order dated 24.12.2021 passed without proper service of show cause notice dated 15.12.2021 is

thus not sustainable, as same has been passed in utter violation of principal of natural justice.

15. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned demolition order dated 24.12.2021 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

16. The appellant shall treat this order as a show cause notice and shall appear before the Quasi Judicial Authority on **06.06.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide an opportunity to the appellant to submit his reply and also grant him personal hearing.

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

18. The appellant shall not raise any unauthorized construction in the property in question.

19. 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 21.05.2024**

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