

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

APPEAL NO. 326/ATMCD/2018

**Sh. Kapil Dua
S/o Late Sh. B.B. Dua,
R/o 22-A, Janyug Apartments,
Sector – 14, Rohini, Delhi**

.....Appellant

Vs

**1. North Delhi Municipal Corporation
(Through its Commissioner)
Dr. S.P.M. Civic Centre,
J.L. Nehru Marg,
New Delhi.**

**2. Deputy Commissioner
North Delhi Municipal Corporation
City S.P. Zone,
Delhi.**

.....Respondents

Date of Filing of Appeal : 18.05.2018
Date of Order : 24.05.2024.

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 28.03.2018, passed with respect to shop at plot no. 47, Shivaji Road, Sadar Bazar, Delhi for unauthorized construction in the shape of removal of staircase and merging of space of staircase in the said shop.

2. Sh. Vikash Kumar, Ld. counsel for the appellant has contended that the property in question was booked for existence of staircase and removal of said staircase and merging the space of staircase in the shop in question and a show cause notice was issued, which was duly replied by the appellant but same was not considered by the Quasi Judicial Authority while passing the previous demolition order, therefore, appellant had preferred an appeal being appeal no. 608/16, which was allowed vide order dated 06.12.2017 and the matter was remanded back with the directions to the Quasi Judicial Authority to conduct a local enquiry to ascertain whether the portion shown in red colour in the show cause notice belong to the appellant or not and for passing fresh speaking order. He further contended that the Quasi Judicial Authority though observed that there is no material on record to conclude that staircase was existing but it has passed the demolition order on the ground that the appellant has erected a partition wall in shop A and door space has been merged partly in shop B, for which no show cause notice was issued. He further contended that the Quasi Judicial Authority has passed the impugned demolition order against the law, therefore, same is not sustainable. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. Ashutosh Gupta, Ld. counsel for the respondent has contended that the previous appeal filed by the appellant was remanded back by the Ld. Predecessor of this Court and thereafter due hearing was given to the appellant. He further contended that a civil suit was filed by one Sh. Virender Kumar Singhal, who entered into an agreement to sell with respect to first floor of the property in question. He further contended that if there was no staircase existing in the property in question, then how come said person entered into agreement to sell qua first floor of the property in question? He further contended that the existence of staircase was shown by Sh. Virender Kumar Singhal in the site plan filed by him along with the plaint in the said civil suit. He further contended that Ld. counsel of the appellant undertook to reconstruct the staircase on 15.02.2024 which shows that same was there. 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 and record. Perusal of the above shows that shop at plot no. 47, Shivaji Road, Sadar Bazar, Delhi was booked for removal of staircase and merging of space of staircase in the said shop and a show cause notice dated 16.01.2015 was issued, which was served upon the appellant, who submitted his hand-

written reply and after receiving the same, Quasi Judicial Authority passed the demolition order dated 24.05.2016.

5. The Quasi Judicial Authority, while passing the order did not consider the said reply, therefore, the appellant filed an appeal against the said order being appeal no. 608/2018, which was allowed by the Ld. Predecessor of this Court vide order dated 06.12.2017, thereby directed the concerned Deputy Commissioner to decide the matter afresh after conducting local enquiry to ascertain whether the portion shown in red color in the show cause notice belong to the appellant or not and further provide opportunity to appellant to submit additional reply, if any and also grant him personal hearing and after concluding the hearing, fresh speaking order was to be passed.

6. No doubt that the Ld. Predecessor of this Court vide order dated 06.12.2017, directed the concerned Deputy Commissioner to conduct a local enquiry whether the portion shown in red color in the show cause notice belong to the appellant or not? However, with respect, it is mentioned that same was never an issue between the parties. The appellant had not claimed that shop no. 47 does not belong to him. The plea of the appellant was that no staircase was there in his shop, therefore,

the complaint, on the basis of which, show cause notice was issued, does not pertain to his shop.

7. The Quasi Judicial Authority was required to adjudicate upon whether the show cause notice was issued correctly or not? And whether the appellant had removed the existing staircase and merged the space of the said staircase into his shop or not?
8. The Quasi Judicial Authority passed the demolition order dated 28.03.2018. However, at the first page of said order, the date has been mentioned as 13.04.2018. Ld. counsel for the respondent could not give any plausible explanation why date at the first page of demolition order is mentioned as 13.04.2018?
9. A perusal of the speaking order dated 28.03.2018 clearly shows that the Quasi Judicial Authority has held after examining the material that “on the basis of current site visit and photos available on record, prima facie opinion can be on the basis of documents made available, no conclusion about the staircase can be made. However, it is clear from the perusal of photographs that rolling shutter of shop was shifted and iron gate was removed, therefore, there has been a change in the structure of shops A & B.”

10. The Quasi Judicial Authority has thus observed that there is no material available on record to reach to the conclusion that there existed any staircase in the shop in question, or that the staircase was removed and the space of staircase was merged by the appellant in his shop. However, after observing the same, the Quasi Judicial Authority went ahead deciding something, for which no show cause notice was issued to the appellant.
11. The present booking was with regard to removal of staircase and merging of space of staircase in shop no. 47. If the Quasi Judicial Authority had reached to the conclusion during hearing that the appellant has changed the rolling shutter of the shop and iron-gate was removed, then the Quasi Judicial Authority was required to give a fresh show cause notice to the appellant in this regard.
12. The Quasi Judicial Authority, however could not have passed the demolition order with respect to the unauthorized construction for which no show cause notice was given to the appellant.
13. Ld. counsel of the respondent has contended that Ld. counsel of the appellant himself has stated before the Court on 15.02.2024 that they would reconstruct the staircase.

14. No doubt that Ld. counsel of the appellant stated before the Court that he would reconstruct the staircase. However, merely on that ground, it cannot be held that staircase was existing in the shop in question. The respondent has not discharged its onus to prove that the staircase was existing in the shop in question, which was removed by the appellant.

15. The Quasi Judicial Authority itself stated in the impugned order that there is no material available on record to reach to the conclusion that there existed any staircase in the shop in question.

16. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned demolition order dated 28.03.2018 is set aside.

17. The Quasi Judicial Authority is however at liberty to issue fresh show cause notice to the appellant, if appellant has shifted the rolling shutter and removed the iron gate, if same comes within the definition of unauthorized construction as per the law.

18. The Record of the respondent be returned back along with copy of this order and appeal file be consigned to Record Room after due compliance.

**Announced in the open Court,
Today i.e. on 24.05.2024**

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