

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

APPEAL NO. 23/ATMCD/2023

**Smt. Rukmani Devi
W/o Sh. Jagdish Prasad
R/o B- 148, Tigri Extension,
New Delhi – 110062.**

.....Appellant

Vs

**Municipal Corporation of Delhi
(Through its Commissioner)
17th Floor, SPM, Civic Centre,
Minto Road, New Delhi – 110002.**

.....Respondent

Date of Filing of Appeal : 19.01.2023
Date of Order : 27.05.2024

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 05.03.2019 / 15.03.2019, passed with respect to second floor and third floor of property bearing no. B-148, Tigri Extension, New Delhi – 110062.

2. Sh. Varun Bala, Ld. counsel for the appellant has contended that the appellant was never served with the show cause notice or the demolition order and the demolition order has been passed in violation of principle of natural justice as no opportunity of being heard was provided

to the appellant before passing the impugned demolition order. He further contended that the demolition order has not been passed in the name of the appellant, who is the owner / occupier of the property in question. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Ms. Praveen Sharma, Ld. counsel for the respondent has contended that unauthorized construction of second floor and third floor was raised in the property in question, which was booked and show cause notice was issued but as no reply was submitted, demolition order was passed. She 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. B-148, Tigri Extension, New Delhi – 110062 was booked for unauthorized construction of second floor and third floor and show cause notice dated 18.02.2019 was served through pasting but as no reply was submitted, demolition order dated 05.03.2019 / 15.03.2019 was passed.

5. A perusal of the record shows that the second floor and third floor of the property in question was booked for unauthorized

construction and show cause notice was given by mentioning owner / builder, without specifying any name.

6. The appellant has placed on record notarized documents i.e. agreement to sell etc., to show that she is the owner of the property in question. Besides this, appellant has also placed on record the electricity bill installed in the property in question, which shows that the appellant was at least the occupant of the property in question, if not the owner at the time when the property in question was booked and show cause notice was issued. The show cause notice thus should have been issued in the name of the appellant, and not by mere mentioning owner / builder.

7. The Hon'ble Delhi High Court in case titled "***Mahender Singh Vs MCD***", reported as 1988 (34) DLT 118 has held that:-

"The law required that before passing the demolition order in the name of petitioner show cause notice ought to have been issued in his name and served upon him.....as it has not been done, it must be held that the whole proceedings regarding passing of the demolition order are illegal and liable to be set aside.....MCD can serve fresh show cause notice....then after following necessary procedure can pass necessary orders"

8. The above legal proposition makes it absolutely clear that show cause notice for initiating proceedings against the property of the appellant should have been issued in the name of appellant and not by mere mentioning owner / builder.
9. The appellant has further taken a plea that she was never served with the show cause notice.
10. A perusal of the record shows that the show cause notice dated 18.02.2019, issued by mentioning owner / builder, is shown to have been served through pasting, photograph of pasting is also available at page no. 6/C of the record. However, from the said photograph, it cannot be ascertained that when and where the said show cause notice was pasted. Moreover, while pasting the said show cause notice, signatures of two independent witnesses were not obtained by the Quasi Judicial Authority to ensure that the show cause notice was in fact pasted at site.
11. The Quasi Judicial Authority has not made any endeavor to serve the show cause notice personally upon the appellant or to serve the same in accordance with law.
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 impugned demolition order dated 05.03.2019 / 15.03.2019 has thus been passed by the Quasi-Judicial Authority in violation of principal of natural justice, therefore, same is not sustainable in law.
15. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned demolition order dated 05.03.2019 / 15.03.2019 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 reply and also grant her 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 appellant. All the proceedings shall be completed by the Quasi Judicial Authority within a period of 2 months from the date of hearing.

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

19. The record of the respondent, if any, be returned along with copy of this order. Appeal file be consigned to Record Room.

**Announced in the open Court,
Today i.e. on 27.05.2024**

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