

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

**APPEAL NO. 04/ATMCD/2024**

**Smt. Sheela Devi**  
**W/o Late Sh. Ram Kishan**  
**R/o Khasra No. 31/12,**  
**Part – II, Bharat Vihar,**  
**C-Block, Village & Post Office Kakrola,**  
**New Delhi.**

**.....Appellant**

**Vs**

**1. Municipal Corporation of Delhi**  
**(Through its Commissioner)**  
**Building Head Quarters,**  
**17<sup>th</sup> Floor, Civic Centre, Minto Road,**  
**New Delhi – 110002.**

**2. Deputy Commissioner**  
**MCD Najafgarh Zone Office,**  
**New Delhi – 110045.**

**.....Respondents**

**Date of Filing of Appeal           :       02.01.2024**  
**Date of Order                           :       30.05.2024**

**ORDER**

1.           Vide this order, I shall decide the appeal filed against impugned demolition order dated 24.08.2023, passed with respect to property bearing Khasra No. 31/12 Part – II, Bharat Vihar, C Block, Village & Post Office Kakrola, New Delhi for unauthorized construction in the shape of entire ground floor and first floor.

2. Sh. Ajit Singh, Ld. counsel for the appellant has contended that the property in question was owned by the husband of the appellant, who died and after his demise, all the LRs left by him, executed a registered Relinquishment Deed dated 29.06.2010, thereby relinquished their share in favor of the appellant, thus, appellant became the owner of the property in question by way of said Relinquishment Deed. He further contended that the show cause notice was not issued in the name of the appellant, who is the owner of the property in question but was issued in the name of her son Sh. Mahesh, who was neither the owner of the property in question nor he was residing with the appellant. He further contended that son of the appellant, after receiving the said show cause notice, gave his reply to the Deputy Commissioner, mentioning all these facts but the said reply was not considered by the Quasi Judicial Authority while passing the demolition order. He further contended that the impugned demolition order has been passed in violation of the principle of natural justice. He prayed that appeal may be allowed, impugned demolition order may be set aside and appellant may be granted a hearing.

3. Per contra, Sh. Atul Kumar, Ld. counsel for the respondent has contended that the show cause notice date 11.08.2023 was issued qua the unauthorized construction of entire ground floor and first floor of the property in question, which was duly served upon Sh. Mahesh, who is the

son of the appellant but he failed to submit any reply, therefore, demolition order was passed. He further contended that part demolition has already taken place in the property in question. 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 Khasra no. 31/12, Part – II, Bharat Vihar, C Block, Village & Post Office Kakrola, New Delhi was booked for unauthorized construction of entire ground floor and first floor and show cause notice dated 11.08.2023 was issued in the name of Sh. Mahesh, who is the son of the appellant, which was pasted at site and also sent through speed post but as no reply was submitted, demolition order dated 24.08.2023 was passed.

5. The plea of the appellant is that she is the owner of the property in question but no show cause notice was issued in her name. In support of the said plea, appellant has placed on record copy of registered Relinquishment Deed dated 29.06.2010, which shows that the LRs left by the original Bhumidar Late Sh. Ram Kishan, relinquished their share in favor of the appellant and thereby appellant became the owner of the property in question on 29.06.2010.

6. The property in question was booked for unauthorized construction and show cause notice was issued on 11.08.2023. On the day, when the show cause notice dated 11.08.2023 was issued, the appellant was the owner of the property in question. But the show cause notice was not issued in her name and same was issued in the name of Sh. Mahesh, son of the appellant.
7. The said show cause notice was received by Sh. Mahesh on 17.08.2023, who also filed his reply to the said show cause notice, addressed to SHO PS Dwarka (North), copy of which was also sent to the Deputy Commissioner, which was received in the office of the Deputy Commissioner on 18.08.2023.
8. The reply to the show cause notice was required to be filed not before the Deputy Commissioner but before the concerned authority, who had issued the show cause notice, therefore, the reply submitted by Sh. Mahesh was rightly not considered as same was not received in the office of the concerned official
9. The fact remains that the show cause notice was issued and served upon Sh. Mahesh, who is not the owner of the property in question. The appellant is the owner of the property in question,

therefore, the show cause notice should have been issued in the name of the appellant and not in the name of her son.

10. 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"*

11. 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 in the name of any other person, who has nothing to do with the subject property.

12. The aforesaid fact thus clearly shows that the demolition order dated 24.08.2023 has been passed in violation of principle of natural

justice as no show cause notice was given to the appellant, who is the owner of the property in question, therefore, same is not sustainable in law.

13. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned demolition order dated 24.08.2023 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

14. The appellant shall treat this order as a show cause notice and shall appear before the Quasi Judicial Authority on **10.06.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide an opportunity to the appellant to submit her reply and also grant her personal hearing.

15. 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.

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

17. 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 30.05.2024**

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