

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

APPEAL NO. 653/ATMCD/2023

Ms. Reena

D/o Late Sh. Govind Singh Pawar

R/o DDA Janta Flat No. 249,

2nd Floor, Sunrise Apartments,

Pocket 6, Nasirpur, Sector 1-A,

Dwarka, New Delhi - 110045

..... Appellant

Vs

Municipal Corporation of Delhi

18th Floor, S.P. Mukherjee Civic Centre,

Jawahar Lal Nehru Marg,

New Delhi - 110002

(Through its Commissioner)

..... Respondent

Date of Filing of Appeal : 05.10.2023

Date of Order : 05.06.2024

ORDER

1. Vide this order, I shall decide the appeal filed by the appellant against impugned demolition order dated 27.01.2023, passed with respect to Flat no. 249, Sunrise Apartment, DDA Janta Flat, Pocket – 6, Nasirpur, Sector 1A, Dwarka, New Delhi.

2. Ms. Parul Aggarwal, Ld. counsel for the appellant has contended that neither the show cause notice nor the demolition order were ever served upon the appellant. She further contended that nothing has been

mentioned either in the show cause notice or in the demolition order that what excess coverage / deviations are existing in the flat of the appellant, which are against the standard plan of the DDA. She further contended that during the pendency of this appeal, respondent filed status report, in which they have stated that the standard plan was not available with them, at the time when the property was booked but now they have got copy of the standard plan. She further submits that the show cause notice and the demolition order are contrary to the law laid down by the Hon'ble High Court in "*Masonic Club Vs MCD & Ors*", *C.W.P. No. 6674 / 2000 and C.M. No. 10226 of 2000, date of decision 01.11.2000*, therefore the show cause notice is required to be quashed. She prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. Parmesh Bali, Ld. counsel for the respondent has contended that there were excess coverage / deviation existing in the flat of the appellant, which was over and above the standard plan of the DDA, due to which show cause notice was issued to the owner / occupier, which was sent through speed post and was also pasted at site, but as no reply was received, demolition order was passed. He further submits that the respondent has filed status report on 20.03.2024, giving details of the excess coverage / deviation existing in the flat of the appellant, which

were against the standard plan of the DDA. 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 record. A perusal of the above shows that Flat no. 249, Sunrise Apartment, DDA Janta Flat, Pocket – 6, Nasirpur, Sector 1A, Dwarka, New Delhi was booked for unauthorized construction in the shape of deviation / excess coverage against the standard plan of DDA and show cause notice dated 16.01.2023 was served through pasting and was also sent through speed post but as no reply was received, the demolition order dated 27.01.2023 was passed.

5. The respondent booked the flat in question for deviation / excess coverage against the standard plan of DDA and show cause notice dated 16.01.2023 was issued in the name of owner / occupier, which was pasted at site but no photograph of pasting is available in the record nor signatures of two witnesses were obtained at the time of pasting the said show cause notice, which is necessary as per the law.

6. The show cause notice was also sent through speed post but as per the tracking report annexed at page no. 26/C of the record, the said speed

post received back to the MCD. The said fact thus shows that the show cause notice was not served upon the appellant as per the law.

7. 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.
8. 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.”

9. The show cause notice dated 16.01.2023 has thus not been served in accordance with law. The impugned demolition order dated 27.01.2023 passed without proper service of show cause notice dated 16.01.2023 is thus not sustainable, as same has been passed in utter violation of principal of natural justice.
10. It is relevant to mention that the show cause notice dated 16.01.2023 was issued in the name of owner / occupier, without specifying the name of the owner / occupier of the flat in question.
11. The appellant has placed on record copy of sale deed dated 17.11.2022, vide which she had purchased the flat in question. The appellant was thus the owner of the flat in question, on the day when the

show cause notice dated 16.01.2023 was issued. Despite the same, the show cause notice was not issued in the name of the appellant but was issued by mere mentioning owner / occupier

12. 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"

13. 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 / occupier.

14. A perusal of the record further shows that the flat in question was booked for deviation / excess coverage against the standard plan of the

DDA, without specifying those deviations, excess coverage. Similarly, the demolition order has also been passed against the flat in question for deviation / excess coverage against the standard plan of DDA. However, no detail of excess coverage / deviation has been given either in the show cause notice or in the demolition order, which are against the standard plan of the DDA.

15. The respondent filed a status report dated 28.03.2024, in which it is stated that standard plan of the flat was not available with the respondent at the time of booking, therefore, detail of existence of excess coverage / deviation, existing in the flat of the appellant, could not be mentioned at the time of booking on 16.01.2023. It is also mentioned in the status report that now they got the standard plan and have details of excess coverage / deviation, which is mentioned in para 3 of the status report.

16. The flat in question was booked for deviation against standard plan of DDA without giving any detail of these deviations. The show cause notice should have been issued by giving details of these deviations / excess coverage, existing in the flat in question, which were against the standard plan of the DDA. The respondent however were not having the standard plan with them at the time when the show cause notice was issued, therefore, detail of excess coverage / deviation were not mentioned either in the show cause notice or in the demolition order.

17. The *Hon'ble Delhi High Court in case titled "Masonic Club Vs MCD & Ors" (Supra)*, has held that:-

"The method and manner in which the original notice dated 25.10.2000 is prepared by the respondent create doubt about the genuineness of the same. Even the same has not been properly served on the petitioner. In any event of the matter. I have perused the notice in question. No specific mention has been made in the notice as to which portion of the property in question is unauthorized, as to what is the approximate or alleged date of construction, the area of unauthorized construction. Notice dated 21.09.2000 is no notice in the eyes of law."

18. The above law laid down by the Hon'ble Delhi High Court shows that the show cause notice issued to appellant without giving details of deviations / excess coverage existing at site is no notice in the eyes of law. The demolition order passed pursuant to such show cause notice is also not sustainable.

19. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 27.01.2023, which has been passed pursuant to the show cause notice dated 16.01.2023 is set aside. The respondent is however at liberty to issue

fresh show cause notices to the appellant, if there exist any deviation / excess coverage, after highlighting those deviations / excess coverage, in accordance with law.

20. The appellant shall not raise any unauthorized construction in the flat in question.

21. 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 05.06.2024**

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