

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

APPEAL NO. 452/ATMCD/2023

**Smt. Seema
W/o Sh. Jage Ram
R/o Village Durina,
Silani Pana Keso (263),
Silani, Jhajjar, Haryana-124103**

..... Appellant

Versus

**Municipal Corporation of Delhi
(Through its Commissioner)
Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi.**

..... Respondent

Date of Filing of Appeal : 24.07.2023
Date of Order : 29.08.2024

ORDER

1. The present appeal has been filed impugning the order dated 28.06.2023 filed by the respondent / MCD under Section 338 of the DMC Act 1957 revoking the sanction building plan in respect of the property bearing No. F-2/2, Land Area Measuring 333.33 situated in the Revenue Estate of Village Basai Darapur, Delhi State, Delhi Colony known as Mansarover Garden, Block-F, New Delhi.
2. It is the case of the appellant that she is the absolute owner of the aforesaid property and applied for a sanction of building plan to conduct

construction. It is stated that the building plan was sanctioned vide sanction letter dated 11.02.2020. Thereafter, the appellant received Show Cause Notice dated 26.05.2023 under Section 338 of the DMC Act alleging suppression / misrepresentation of facts in obtaining the sanction plan. The appellant approached the office of the respondent seeking some time to submit a reply but in the meanwhile, the revocation order dated 28.06.2023 was passed without giving any opportunity of personal hearing.

3. In the Status Report dated 31.07.2023, it is stated that building plan was sanctioned on the basis of documents uploaded by the Architect wherein it was mentioned that property comes within the lay out plan of Mansarover Garden, Ring Road but later on it was revealed that the property does not find mention in the lay out plan and the sanction building plan was cancelled / revoked as it was obtained on misrepresentation.

4. It is argued by Ld. counsel for the appellant that no personal hearing was granted by the respondent department before revocation of the said sanction plan. It is submitted that the appellant has already applied to the Municipal Corporation for including the property in question in the sanction plan and have paid charges in that regard. But the Quasi Judicial Authority proceeded further to revoke the sanction plan without bothering to check the status of the application of the appellant as

well as without providing any hearing. The appellant has also placed on record letter dated 12.07.2013 written by S R Town Planner-II to Joint Director (Bld.) requesting to expedite the application of appellant for incorporation of plot in the lay out plan.

5. I have heard the arguments and perused the record. It is the admitted position on record that the appellant has initially applied for sanction plan which was granted vide sanction letter dated 11.02.2020. Pursuant to the said sanction letter appellant started construction on the property in question. Thereafter, the respondent department initiated the process of revocation of sanction on the ground of misrepresentation / suppression of facts and the sanction plan was revoked vide order dated 28.06.2003. The said impugned order records that no reply has been submitted by the appellant. On the other hand, the appellant has stated that he visited the office of respondent department on various occasions but not afforded opportunity of hearing.

6. At this stage, it will be relevant to refer to the directions issued by Hon'ble Delhi High Court of Delhi in case titled "***Jaspal Singh Jolly Vs Municipal Corporation of Delhi***", reported as 125 (2005) DLT 592, wherein it was held that:-

"Noting the decision of the Supreme Court as Erusia Equipments & Chemical Ltd. Vs State of West Bengal, (1975) 1 SCC 70: AIR 1975 SC 266 (at P. 269); 106 (2003) DLT 573, Mekaster Trading Corporation Vs Union of India; and (1990) 4 SCC 594, S.N. Mukherjee Vs Union of India, I had held that the aforesaid decision established the legal proposition that orders which are subject to judicial review

must be in compliance with the principle of natural justice, namely (a) proper hearing, (b) decision by an unbiased mind; (c) taking into consideration all the relevant factors and excluding the irrelevant factors; and (d) reasons to be recorded.

Needless to state, reasons enable the superior Court to effectively exercise supervisory jurisdiction. Additionally, when reasons are stated, the persons affected knows the mind against him. A decision may be right, but not sound. Such a decision leaves a grievance in the mind of the person affected that he was not told why the decision was taken.”

7. In these circumstances, it is essential to ensure that proper opportunity of hearing, submit reply and documents needs to be provided to the appellant before adjudicating the sanction plan under Section 338 of the DMC Act. Moreover, the impugned order is also silent in respect of the application made by the appellant for inclusion of property in question in the lay out plan.
8. In view of the above observations, the appeal filed by appellant is allowed. The impugned order dated 28.06.2023 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
9. Appellant shall appear before the Quasi Judicial Authority on **17.09.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide an opportunity to appellant to submit additional reply, if any and also grant them personal hearing.
10. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defenses raised by

appellant and shall communicate the said order to appellant. All the proceedings shall be completed by the Quasi Judicial Authority within a period of two months from the date of commencement of hearing.

11. Appellant shall however not raise any unauthorized construction in the property in question.
12. It is clarified that the observations made while passing of this order by this Court, shall not tantamount to the expression on the merits of this case.
13. The record of the respondent be send back alongwith copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court
Today i.e. on 29.08.2024**

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