

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

**APPEAL NO. 690/ATMCD/2024**

**Elite Services  
Through Mr. Yashpal Malik  
Registered Address at  
R/o B-219, First Floor,  
Vasant Kunj,  
New Delhi-110070**

..... Appellant

**Vs**

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

..... Respondent

**Date of Filing of Appeal                   :       29.08.2024**  
**Date of Order                                   :       12.09.2024**

**ORDER**

1.           The present appeal has been filed by the appellant impugning the show cause notice dated 25.06.2024 and demolition order dated 08.07.2024 passed in respect of property bearing No.A-41, Khasra No.1795, Vasant Kunj Enclave, New Delhi.
2.           It is argued by Ld. counsel for appellant that show cause notice was never served upon the appellant and no opportunity of personal hearing has been granted by the respondent. He submits that a bare perusal of show cause notice shows that it is not addressed to any individual and is addressed to "owner/builder". He submits that the appellant came to know about the proceedings after the demolition action was carried out by the respondent department and thereafter the present appeal was preferred before this Tribunal.
3.           On the other hand, it is argued by Ld. counsel for respondent that the show cause notice as well as demolition order was served upon the appellant by way of affixation. He submits that demolition action has already been

carried out in respect of the property in question and the appellant is aware about the proceedings.

4. I have heard the arguments and perused the record. Page 18 of the respondent record shows that the show cause notice has been addressed to owner/building and is not addressed to any individual. The postal receipt also does not mention the name of any individual and the name of the addressee is mentioned as "owner". The photographs of the affixation on page 16 are unclear and are also not attested by any public witnesses.
5. Similar is the scenario of service in respect of the demolition order dated 08.07.2024. For the purposes of carrying out of demolition action in respect of the property in question such a status of affairs cannot tantamount to notice as envisaged in the first proviso of Section 343 (1) of the DMC Act 1957.
6. The Hon'ble Delhi High Court in case titled "**Mahender Singh Vs MCD**", reported as **1988 (34) DLT 118** has held that:002D

"5. These sections came up for consideration in *Krishan Gopal v. Municipal Corporation of Delhi*, ILR (1972) 1 Del 272. It was held by D.K. Kapur, J. that it is the person concerned with the erection who has to be served and that person is the person at whose instance the erection or work has been commenced, and if such a person cannot be identified then every person at whose instance the work or erection may have been commenced has got to be served, and this necessarily includes the owners of the building. It is not the case of the Municipal Corporation of Delhi that the officials of the Corporation could not have found out the names of the owners of the buildings from their own record before sending a show cause notice. Even in the proceedings recorded by the Zonal Engineer, it is not mentioned that new construction was not being done at the instance of the owners of the building, so in law it was required that the show cause notice ought to have been issued in the name of the owners of the building. Moreover, the demolition order has been made in the name of the petitioners who are the owners of the building and a show cause notice also in law should have

been served in the name of the owners of the building. This is a mandatory requirement of law that no demolition order should be made against a person unless and until a show cause notice has been served on that very person.

6. However, counsel for the respondent has vehemently argued that no prejudice has been caused to the petitioners for want of service of show cause notice in their names inasmuch as it was one of the petitioners who had actually received the show cause notice although it was issued in the name of his father, Sh. Khem Chand and it was one of the petitioners who participated in the proceedings before the Zonal Engineer and so, the show cause notice is a valid one. I am afraid that this contention cannot be accepted. The service of the show cause notice on the person concerned before passing the demolition order is mandatory. There is no question of any prejudice being caused or being caused or not being caused when a mandatory provision has not been complied with. In case the Zonal Engineer was of the view that it was Khem Chand who had erected the unauthorised construction, then the demolition order should have been passed against Khem Chand, but that is not the position here. The demolition order admittedly had been passed against the petitioners and not against Khem Chand. So, the law required that before passing the demolition order against the petitioners show cause notice ought to have been issued in their names and served on them. As it has not been done, it must be held that the whole proceedings regarding passing of the demolition order are illegal and on this ground alone the impugned demolition order and the appellate order are liable to be set aside.”

7. The above legal proposition makes it absolutely clear that show cause notice for initiating proceedings against the property of appellant should have been issued in the names of appellant and not by mere mentioning owner / occupier / builder.

8. The Hon'ble High Court in **J.T. India Experts Vs UOI and Another 94 (2001) DLT 301 (FB)** has held as under: -

“5. The adherence to principle of natural justice as recognised by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties. 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 precise and unambiguous. It should appraise the party determinatively 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 in 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.

6. 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 those rights. These rules are intended to prevent such authority from doing injustice.”

9. The impugned demolition order dated 08.07.2024 passed by the Quasi-Judicial Authority is thus not sustainable in law, as same has been passed in utter violation of principal of natural justice.
10. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 08.07.2024 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
11. The appellant shall treat this order as show cause notice. The appellant shall appear before the Quasi Judicial Authority on 18.10.2024. The Quasi Judicial Authority shall provide an opportunity to appellant to submit reply / additional reply (in case reply already filed) and also grant him personal hearing.

12. 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.
13. The appellant shall however not raise any unauthorized construction in the said property without necessary permission as prescribed by law.
14. The file 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 12.09.2024 (j)**

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