

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

APPEAL NO. 517/ATMCD/2024

**Smt. Kamlesh,
W/o Late Sh. Bhavar Singh,
R/o B-60, Sita Puri, Part-2,
Dabri, New Delhi-110045.**

..... Appellant

Vs

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

..... Respondent

Date of Filing of Appeal : 18.07.2024
Date of Order : 17.09.2024

ORDER

1. Vide this order I shall decide the interim application for stay as well as appeal filed by the appellant. In present appeal the appellant impugned the demolition order in respect of property bearing no. B-60, Sita Puri, Part-2, Dabri, New Delhi-110045.
2. It is argued by Ld. Counsel for the appellant that appellant has purchased this property on 15.01.2018. She submits that no show cause notice as well as demolition order was served upon the appellant and appellant was not given any hearing by the quasi judicial authority. She submits that the demolition order has been passed in violation of provision of 343(1) of DMC Act, which mandates the hearing need to be provided before passing of demolition order.

3. On the other hand Ld. counsel for respondent submits that the show cause notice as well as demolition order were served upon the appellant by way of affixation. Appellant failed to turn up and join the proceedings before the quasi judicial authority and the order was passed. She submits that after passing of the said order appellant also gave representation dated 09.07.2024 which is part of their record.
4. I have heard the arguments heard and perused the record. The show cause notice at page 36/C of the record of MCD shows that it was served by way of affixation and but the record also shows that public witnesses were not involved while affixation of notice at the spot. Similar is the position respect of demolition order. Apart from that owner of property is stated to be Smt. Kamlesh and the show cause notice was issued in the name of Bheem and not in the name of owner.
5. The right to be heard is one of the fundamental principles of natural justice, which is to be followed by all the Administrative Authorities and Quasi Judicial Authorities. The basic fundamental principle of natural justice is that the person against whom an order is passed must know as to why and on what basis said order has been passed. The order must be a speaking one, giving reasons for reaching to the conclusion and must not be cryptic in nature.

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”

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.”

6. The impugned order, passed by the Quasi Judicial Authority is thus not sustainable in law as same has been passed without properly appreciated the documents filed by the appellant.
7. In view of the above observations, the impugned order is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh. Interim application is also disposed off in view of said observation.
8. Appellant shall appear before the Quasi Judicial Authority on **09.10.2024 at 03.00 PM**. The Quasi Judicial Authority shall provide an opportunity to appellant to submit additional reply, if any and also grant them personal hearing.
9. 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 appellants. All the proceedings shall be completed by the Quasi Judicial Authority within a

period of two months from the date of commencement of hearing.

10. Appellant shall however not raise any unauthorized construction in the property in question without obtaining necessary approval as per law.
11. However, it is clarified that the observations made in this order shall not be construed as observation on merits of this case.
12. The record of the respondent be send back alongwith copy of this order. Appeal file be consigned to record room after due compliance.
13. A copy of this order given dasti as prayed for.

**Announced in the open Court
today i.e. on 17.09.2024 (rk)**

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