

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

APPEAL NO. 767/ATMCD/2024

**Sh. Amit Kaushik
S/o Sh. Laxmi Narain Kaushik,
R/o B/5, House No.241, Sector 3
Rohini, North West,
Delhi-110053.**

..... Appellant

Vs

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

..... Respondent

Date of Filing of Appeal : 10.09.2024
Date of Order : 20.09.2024

ORDER

1. The present appeal has been filed by the appellant impugning the demolition order dated 11.07.2024 passed under Section 343 of the DMC Act, 1957 in respect of property bearing no.9122-23, Gali Zameer Wali, Nawab Ganj, Delhi-6.
2. Ld. Counsel for the appellant submits that the demolition order and the show cause notice was never served upon the appellant. He submits that a bare perusal of the aforesaid documents shows that they have issued to owner/builder and the name of the appellant is not mentioned in the said document. He submits that the receiving on the show cause notice as well as demolition order does not bear any receiving from the appellant and the respondent department needs to explain as to who is the person who has received the said documents. Ld. counsel submits that as the appellant has not been given an opportunity to participate in the proceedings before the Quasi Judicial Authority, the mandate given in first proviso of Section 343 of the DMC Act is not complied with.

3. On the other hand Ld. counsel for respondent submits that the show cause notice dated 11.07.2024 was sent by speed post the delivery report of the same is on page 5/C of the record showing the item as delivered. During the course of arguments, Ld. counsel for respondent states that there is no official noting on the record clarifying the relationship or the detail of person who has given receiving of the show cause notice as well as demolition order in the record of MCD.
4. Arguments heard. Record perused. A bare perusal of the show cause notice and demolition order shows that they are not addressed to the appellant. In the address the floor number is also not mentioned. The name of the addressee in speed post is owner/builder and the name of the individual or appellant was not mentioned there. No clarification has been tendered in respect of the details of the person who has received the show cause notice and demolition order and his connection with the appellant. There is no endorsement/noting in respect of service of show cause notice as well as demolition order in the record of the respondent.
5. In view of the aforesaid circumstances it is clear that the service of notice as well as the demolition order is eclipsed and not free from doubt. The appellant has not been given any opportunity of hearing as per Section 343 of the DMC Act.
6. 1 Accordingly, the impugned order dated 11.07.2024 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
7. Appellant shall appear before the Quasi Judicial Authority on **16.10.2024 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.
8. 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 expeditiously.
9. Appellant shall however not raise any unauthorized construction in the property in question without obtaining necessary approval as per law.

10. 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 20.09.2024 (J)**

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