

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

APPEAL NO. 805/ATMCD/2023

Sh. Rajender Pal Chauhan
S/o Sh. Mange Ram
R/o H. No. 378, Khasra No. 68/1,
Village Bhorgarh, Narela, Delhi -110040
Appellant

.....

Versus

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

..... **Respondent**

Date of Filing of Appeal : 15.12.2023
Date of Order : 05.09.2024

ORDER

1. The present appeal has been filed impugning the demolition order dated 03.11.2023 passed under Section 343 of the DMC Act, 1957.
2. It is submitted by Ld. Counsel for the appellant that the said order has been passed contrary to the directions issued by this Tribunal vide order dated 08.08.2023 in Appeal No. 704/ATMCD/2017. It is stated in the appeal that the property in question falls within Lal Dora Abadi old construction protected under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. The appellant submitted that he has placed on record electricity bill which were not

considered by the Quasi Judicial Authority. It is submitted that the impugned order has been passed on the basis of photographs which were discarded by this Tribunal on the basis of report of Sh. V. K. Montu, DLO as same belonged to some other property.

3. On the contrary, Ld. Counsel for the respondent has argued that the impugned order has been passed after giving due hearing to the appellant and appreciating the documents and pleas which were raised before the Quasi Judicial Authority.
4. I have heard arguments and perused the record. It would be relevant to re-produce the impugned order to appreciate the issue involved.

AND WHEREAS, the appellant in his reply submitted that the property comprises ground floor and first floor is constructed before 2002 and submitted copy of electricity bill of CA No. 60002374035 and 60013726603 showing energization date as 06/08/2002 and 01/08/2011 respectively The appellant contended that the construction is older than the year 2002, hence it is protected under "The National Capital Territory of Delhi Laws(Special Provisions Act)".

AND WHEREAS, the reply submitted by the appellant and all the documents available in the record were analyzed. The electricity bill of CA No. 60002374035 does not have any property/house no. mentioned on it. So, it is not substantiated that the bill CA No. 60002374035 pertains to the property in question. The copy of bill of CA No. 60002374035 dated 28/09/2016 also shows that there was no consumption of electricity as the bill shows zero change in metre readings. As per photos available in record and report of JE(B) of dated 23/02/2017, it is also clear that the property has been re- constructed.

5. A bare perusal of the aforesaid findings in the impugned order shows that the Quasi Judicial Authority has relied upon the photographs

which were discarded by this Tribunal in its order dated 08.08.2023 on the basis of report dated 28.10.2021 given by Sh. V. K. Montu, DLO and Sh. S. P. Dabas, AE (B) who confirmed that the photographs in question belonged to some other property. It is not clarified in the impugned order dated 03.11.2023 whether the photographs which have been relied upon are such discarded photographs or some other photographs.

6. The impugned order also shows that the electricity bills pertaining to CA No. 60013726603 is not appreciated by Quasi Judicial Authority. Bill CA No.60002374035 has been discarded and the ground that it does not mention property number on it and there is no consumption of electricity as the bill shows zero change in the metre reading.
7. The appellant has placed on record copy of bills at page 42/A and 43 of the appeal in respect of meter bearing CA No.60002374035 and 60013726603. The said bills were also placed before the Quasi Judicial Authority. The Quasi Judicial Authority has given finding in respect of Bill CA No.60002374035 and no finding has been given in respect of Bill CA No. 60013726603.
8. A perusal of electricity bill CA No. 60013726603 shows that it pertains to the first floor of the property in question having energization date as 01.08.2011 which shows Poll / Pillar no. 522-30/3/1/1. The bill CA No.60002374035 pertains to the same village but does not bear the

address of the property on it. It shows the energization date as 06.08.2002. Though this bill does not bear property number but it has same poll / pillar number as stated in CA No. 60013726603 which is installed in property in question. The Quasi Judicial Authority has failed to verify the said bill from the electricity service provider before reaching conclusion in the impugned order.

9. From the impugned order it is clear that photographs which were discarded vide order dated 08.08.2023 by the Tribunal have been considered by the Quasi Judicial Authority to appreciate the issue. Admittedly, the said photographs does not belonging to property in question. In case the photographs relied upon are some other photographs, the same is not clarified in the impugned order. The bill bearing CA No.60013726603 is not appreciated in the impugned order. No steps have been taken to verify the bill CA No.60002374035 and the fact that it is installed at some poll / pillar number is also ignored.
10. Accordingly, in view of the above observations, the appeal filed by appellant is allowed. The impugned demolition order dated 03.11.2023 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
11. Appellants shall appear before the Quasi Judicial Authority on **17.09.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide an

opportunity to appellants to submit additional reply, if any and also grant them personal hearing.

12. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defenses raised by appellants 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.
13. Appellants shall however not raise any unauthorized construction in the property in question.
14. 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.
15. 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 05.09.2024**

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