

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

APPEAL NO. 44/ATMCD/22

**Shri Ravinder Kumar Kalra
S/o Sh. Shiv Dayal
R/o G-24/5A, F/F, Rajouri Garden,
Tagore Garden, Delhi -110027**

..... Appellant

Vs

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

**2. Mr. Gaurav
Assistant Engineer (B),
West Zone, SDMC.**

..... Respondents

**Date of Filing of Appeal : 02.02.2022
Date of Judgment : 29.11.2024**

JUDGMENT

1. The present appeal is filed against the impugned order of demolition dated 23.11.2021 passed in respect of third floor of the property bearing no. F-25, WZ-372, Tihar Village, New Delhi. Ld. counsel for appellant submits that neither the show cause notice nor the demolition order has ever served upon them and they have not been provided any opportunity of hearing by the Quasi Judicial Authority. He submits that the demolition order is passed in contravention of the mandate given in Section 343 of the DMC Act, 1957 and liable to be set aside.
2. Ld. counsel for the respondent MCD submits that the demolition order was passed after following due process of law and show cause notice as well as demolition order was sent through post and were served through affixation.
3. Arguments heard. Record perused. The show cause notice dated 11.11.2021 in respect of the third floor at page 21/C of the record of the MCD, it records an endorsement that notice has been served through speed post

and the speed post receipt is pasted at page 20/C. This receipt shows that show cause notice was sent vide booking no. ED839963599. Page 11/C of the record is the postal envelope through which the said notice was sent. The said endorsement on record shows "incomplete address without name". It is not understood that in case the postal envelope has received 'unserved' on record, then how the MCD officials have given an endorsement at page 20/C of show cause notice stating that the 'notice has been served through speed post'. It is patently clear that the said endorsement is contradictory to the MCD record itself. In respect of the affixation (at page 19/C) the original photographs are placed on record, the date of affixation is not clear, and no joining of public witnesses is ensured while affixation was done. In these circumstances, the service through affixation is also not free from doubt.

4. It is mandate of law that the owner / occupier needs to be provided a hearing before passing of the demolition order and in the present case such mandate has not been complied with and therefore, the demolition order is set aside and the matter is remanded back to the Quasi Judicial Authority to decide the same afresh.
5. Appellant shall appear before the Quasi Judicial Authority on **04.12.2024 at 2.00 p.m.** The Quasi Judicial Authority shall provide an opportunity to appellant to submit additional reply and documents and also grant her personal hearing. The appellant is directed to place on record all relevant documents pertaining to the property in question before the Quasi Judicial Authority and no further opportunity will be granted.
6. The Quasi Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defences raised by the appellant and shall communicate the said order to appellant. All the proceedings shall be complete by the Quasi Judicial Authority within six months from 04.12.2024.
7. Appellant shall however not raise any unauthorized construction in the property in question without necessary permission as per law. The appellant shall co-operate in inspection of property for the purpose of ascertaining measurements.
8. 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.

Record of the respondent, if any, be returned along with copy of this order and appeal file be consigned to record room.

**Announced in the open Court
Today i.e. on 29.11.2024 (s)**

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