

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

APPEAL NO.666/ATMCD/2024

Smt. Babita Jain,
W/o Sh. Anuj Jain,
R/o B-151, Gujranwala Town-I,
Delhi -110009.

.....Appellants

Vs

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

..... Respondent

Date of Filing of Appeal : 21.08.2024.
Date of Judgement : 21.11.2024

JUDGEMENT

1. In present appeal the appellant has impugned the demolition order dated 01.08.2024 in respect of property bearing no. 2269, H.C.Sen Marg, Chandi Chowk, Delhi-110006.
2. It is the case of appellant that the demolition order as well as show cause notice were not addressed to them and merely mentioned addressee as owner / occupier / builder. The service of the show cause notice as well as demolition order is disputed. It is stated that order has been passed without providing opportunity of hearing to appellant.
3. On the other hand, it is submitted by Ld. counsel for respondent / MCD that the show cause notice as well as demolition order were served upon the appellant by way of affixation. He submits that there is no merit in the appeal filed by the appellant as in the sale deed itself it is stated that there was no

construction above the first floor in the June, 2006. He submits that admission in this regard is also made by appellant in appeal.

4. Arguments heard and record perused. A perusal of MCD record shows that show cause notice and demolition order were attempted to serve upon appellant through postal mode but the postal envelop received back unserved with the endorsement incomplete address. Thereafter, show cause notice and demolition order are stated to be served by way of affixation. No public witnesses have been involved in affixation process. Under these circumstances, the service of show cause notice as well demolition order cannot be said free from doubts. Section 343 of DMC Act, 1957 mandates that hearing needs to be provided to the owner /occupier and in the present case no hearing was granted to the appellant.
5. Any observation on documents filed by appellant at this juncture will be premature because such documents need to be appreciated by the quasi judicial authority on merits.
6. The show cause notice and demolition order are not served on appellant and appellant is not provided hearing as per Section 343 of DMC Act, 1957. The impugned order passed by the Quasi Judicial Authority is thus not sustainable in law and impugned demolition order dated 01.08.2024 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.
7. Appellant shall appear before the Quasi Judicial Authority on 27.11.2024 at 03.00 PM. The Quasi Judicial Authority shall

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

Announced in the open Court
today i.e. on 21.11.2024 (rk)

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