

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

**APPEAL NO. 866/ATMCD/2024**

**Ms. Gurpreet Kaur Arora**  
**W/o Sh. Inderpal Singh Arora**  
**Resident of BH-6, West Shalimar Bagh,**  
**Delhi -110088**

**..... Appellant**

**Versus**

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

**..... Respondent**

**Date of Filing of Appeal           :     30.09.2024**  
**Date of Order                           :     25.11.2024**

**JUDGMENT**

1.           The present appeal has been filed impugning the demolition order 24.09.2024 in respect of the first floor of the property bearing no. C-289, Defence Colony, New Delhi -110024. In the present case, the interim protection was granted in respect of property in question vide order 30.09.2024. The matter was fixed for arguments on interim application as well as on appeal on 11.12.2024. On 14.11.2024, the respondent MCD moved an application under Section 151 CPC seeking early hearing in the matter and vacation of stay. Arguments on the point of aforesaid application as well as appeal were heard from both the parties at length.
2.           It is the case of the appellant that she had purchased the property i.e. first floor vide Sale Deed dated 22.02.2024. The property was

mutated in the name of the appellant on 24.02.2024 and the mutation letter is (at P-75) of the appeal. It is stated that appellant intended to carry out repairs in her house and sent a letter dated 01.05.2024 to the MCD seeking permission to carry out repairs. It is stated during the course of repairs the appellant extended front wall of property by 1.57 meters. The consultant informed that for extension of wall, prior sanction of MCD is required. Appellant removed the said wall and was in process of erecting it in its original position. It is stated that appellant also applied for the sanction on 07.09.2024 and the same is (at P-96) of the appeal. It is stated that steel girders have been erected in the driveway for the purpose of constructing Pergola which is permitted as per the building bye laws.

3. It is submitted by Ld. counsel for the appellant that the a bare perusal of the show cause notice and demolition order shows that they are not addressed to the appellant who is the owner of the first floor. He submits that in para no. 4.2 of reply dated 14.09.2024 submitted by Mr. Inderpal Singh Arora, it is categorically informed by him that he is not the owner of the first floor but despite that the MCD did not bother to give an opportunity of hearing to the appellant.
4. It is submitted that appellant was only carrying out repairs works which is permissible under building bye laws under due intimation to the MCD. The extended wall is already demolished. The construction of Pergola falls within the permitted category. He submits that the aforesaid orders have been passed without giving any opportunity of hearing and liable to be set aside.
5. In respect of application seeking vacation of stay, it is submitted by Ld. Counsel for appellant that no affidavit of second floor of owner is filed along with the application. He submits that application does not clarify the day of inspection on which such photographs have been taken.

He submits that in the absence of aforesaid, the photographs as well as averments made in the application cannot be said to be credible and free from doubts.

6. Ld. Counsel for the appellant submits that they have also applied for regularization and in this regard relied upon the judgment in the case titled as *Syed Muzaffar Ali and Ors Vs. Municipal Corporation of Delhi* in SLP (C) No. 1411 and 1420 of 1992 decided on 30.11.1992 by Hon'ble Supreme Court of India and submits that the proceeding further with demolition action especially when the regularization application is pending is in violation of directions issued by the Hon'ble Apex Court.
7. Ld. counsel for the respondent MCD submits that the show cause notice as well demolition order was issued on the husband of the appellant Mr. Inderpal Singh Arora. He submits that appellant in the appeal as well as reply dated 14.09.2024 filed before the MCD had admitted about the unauthorized extension of wall by 1.57 meters. He submits that the subsequent application for sanctioned of building plan also confirm the fact that appellant was making unauthorized construction. He submits that the appellant has misguided the Court by stating that the application for sanction plan was moved on 07.09.2024. He submits that the said application was moved on 16.09.2024 as an afterthought action after issuance of show cause notice on 11.09.2024. He submits that unauthorized construction has led to cracks on the second floor and has compromised the safety of the whole building and, therefore, the interim protection needs to be vacated and appeal needs to be dismissed.
8. I have heard the arguments and perused the record. A perusal of show cause notice as well as demolition order show that the same has been addressed to Sh. Inderpal Singh Arora and not to the appellant Ms. Gurpreet Kaur Arora. It is argued by Ld. Counsel for the respondent that

Mr. Inderpal Singh Arora and Ms. Gurpreet Kaur Arora are husband and wife and service of notice upon husband suffices the mandate of law especially under the circumstances when the relationships are not strained. I do not concur with the submissions made by Ld counsel for the respondent in this regard especially in view of the fact that in para no., 4.2 of reply dated 14.09.2024 Mr. Inderpal Singh Arora has categorically stated that he is not the owner of first floor and the same is owned by the appellant Ms. Gurpreet Kaur Arora. Appellant has placed on record MCD record which shows that property i.e first floor stand mutated in favour of appellant Ms. Gurpreet Kaur Arora vide mutation letter dated 24.02.2024. The show cause notice in present case is issued on 11.09.2024 after mutation in the record of the MCD. It is not understood when the record of the owner has already been mutated in the records of the MCD, then what stopped the MCD from initiating proceedings against the registered owner. MCD failed to wake up from its slumber despite the categorical objection and information tendered in para 4.2 of reply dated 14.09.2024. In these circumstances, it is categorically clear that the Quasi Judicial Authority had failed to comply the mandate of Section 343 of the DMC Act, 1957 and the registered owner of first floor is neither addressed nor given any hearing in the proceedings.

9. The demolition order shows that property in question was booked for unauthorized construction. It also records that no sanction building plan shown at the site. During the course of arguments, it is submitted by Ld. Counsel for MCD that the building has a sanctioned building plan. In case there was a sanctioned building plan of the property, then it is not understood why the Quasi Judicial Authority while booking the property has not given the details of the deviations as compared to the sanctioned building plan. Merely because the sanction building plan was not shown to the MCD officials at the site, it does not take away the responsibility of

the MCD officials to check their own records and point out the deviations which have been carried out in the property in comparison to the sanctioned building plan. Such comparison is essential to understand the nature of deviation as well as to ascertain whether deviation / unauthorized construction falls within compoundable or non-compoundable limits. In the impugned order neither the MCD bothered to clarify the status of sanctioned building plan nor it bothered to compare the deviation / unauthorized construction with the same. The defect in this regard goes to the root of the matter and needs to be appreciated by the Quasi Judicial Authority.

10. It is the case of the appellant that they were carrying out repairs in the property in question as permitted by building bye laws and have sent letter dated 01.05.2024 to the MCD (at page 76 of the appeal). In the appeal, it is stated that during the course of the repairs, the appellant extended the front wall by 1.57 meters and later on when the consultant informed that the sanction is required from the MCD, the said wall was removed and appellant applied for grant of sanction vide letter dated 07.09.2024. It is also stated in the appeal that the repair and the construction work was carried within the permissible FAR limits. The impugned order is bereft of any reasoning in this regard. It does not distinguish the nature of work which falls within the ambit of repairs and the unauthorized construction. It is also silent regarding the removal of the front wall by the appellant. It does not clarify about measurement of additions / alternation in the existing structure. It is silent regarding the sanction plan of the building. It also does not appreciate anything about the sanction plan application dated 07.09.2024 filed by the appellant. In these circumstances, it is clear that the impugned order suffers from lack of reasoning and appreciation of aforesaid factors, and is not a speaking order. The impugned order has been passed in a stereotyped format

without providing any reasons to support the booking of property and appreciating the pleas of owner/ occupier.

11. In view of the aforesaid direction, it is clear that the impugned order is passed without providing opportunity of hearing to the appellant and is bereft of any reasoning as discussed above and the matter needs to be remanded back to the Quasi Judicial Authority to decide the matter afresh.
12. So far as application seeking vacation of stay is concerned, the respondent MCD have not clarified the source of the photographs. The affidavit of second floor owner is also not filed along with the application. It is also not clarified when the inspection was made to obtain the photographs which have been filed along with the application. As the matter is being remanded back and the impugned order has been set aside, therefore, the application seeking vacation of stay become infructuous and is disposed off accordingly.
13. Accordingly, in the interest of justice, it would be prudent at this juncture that the Quasi Judicial Authority shall adjudicate the matter afresh and pass a speaking order after considering all the pleas as well as documents filed by the appellant in support of his contention. Accordingly the impugned demolition order dated 24.09.2024 is set aside and the matter is remanded back to the Quasi Judicial Authority to decide the same afresh and pass speaking order.
14. Appellants shall appear before the Quasi Judicial Authority on **29.11.2024 at 2.30 p.m.** The Quasi Judicial Authority shall provide an opportunity to appellant to submit additional reply and documents and also grant him 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.

15. 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.

16. Appellant shall however not raise any impermissible construction in the property in question without necessary permission as per law.

17. It is clarified that the observations made while passing of this order by this Tribunal shall not tantamount to the expression on the merits of this case.

18. 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 25.11.2024 (s)**

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

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