

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

APPEAL NO. 852/ATMCD/2018

Smt. Ellachi Devi
W/o Late Sh. Sh. Ram Nath Kansal
R/o B-1903, 2nd Floor,
Shashtri Nagar,
Delhi-110052

..... Appellant

Vs

North Delhi Municipal Corporation of Delhi
Through its Commissioner
17th Floor, Civic Centre,
New Delhi.

..... Respondent

Date of Filing of Appeal : 22.11.2018
Date of Order : 29.11.2024

JUDGMENT

1. The present appeal has been filed impugning the revocation of the sanctioned building plan in respect of property bearing no. B-1903, 2nd floor, Shashtri Nagar, Delhi-110052.
2. It is submitted by the Ld. counsel for appellant that appellant has obtained a sanctioned building plan vide I.D. No.10045338 for the property in question on 08.06.2018. She received a notice from MCD to show cause why the sanctioned building plan be not revoked. He submitted that in reply to the said notice appellant submitted her reply dated 13.06.2018 (page-34 of the appeal). He submits that thereafter no speaking order was passed, no hearing was granted and in violation of Section 338 of the DMC Act the sanctioned building plan has been revoked. He has also relied upon the judgment passed by the Hon'ble High Court of Delhi passed in the case of Suraj Bhan Chauhan Vs South Delhi Municipal Corporation W.P.(C) 6613/2021 decided on 20.07.2021.
3. Ld. counsel for the respondent submits that MCD has filed status report dated 28.08.2024. He submits that the sanction plan was applied under the 'Saral Scheme'. He submits that as per Saral Scheme any mis-representation or fraudulent statement by the owner/builder leads to automatic cancellation of sanctioned building

plan. He submits that as there was mis-representation made in respect of the shops which exist at the ground floor of the property and there was ownership dispute, therefore, the sanctioned building plan in question has been automatically cancelled.

4. Arguments heard. Record perused. The Hon'ble High Court of Delhi in the matter Suraj Bhan Chauhan (Supra) dealt with issue of revocation of sanctioned building plan which was sanctioned under Saral Scheme and issued the following directions.

“However, the impugned order records that no reply to the show cause notice has been received which clearly established that the reply given by the petitioner has not been taken into account at the time of passing the impugned order. Accordingly there is ex facie breach of the principles of natural justice as mandated by Section 338 of the DMC Act. On this count alone, order dated 22.06.2021 cannot be sustained.”

5. From the mandate given by the Hon'ble High Court of Delhi in the case of Suraj Bhan Chauhan (Supra) It is patently clear that the provisions of Section 338 of the DMC Act are clearly applicable on the Saral Scheme also. Section 338 of the DMC Act mandates that the order for revocation of the sanctioned building plan needs to be in writing and should contain the reasons for such revocation. It also mandates that a reasonable opportunity of hearing also needs to be afforded to the person affected. Admittedly, in the present case no order u/s 338 of the DMC Act has been passed by the competent authority assigning any reason as to why the sanctioned building plan has been cancelled. Though, I find force in the submissions made by the Ld. counsel for MCD that the appellant in a reply dated 13.06.2018 has admitted about the shops at the ground floor but still the requirement of law, that a hearing needs to be provided and a speaking order needs to be passed, has not been complied by the competent authority in the present matter.
6. Accordingly, in view of the aforesaid circumstances, the revocation of sanctioned building plan as informed vide status report dated 28.08.2024 filed by the MCD is set aside. MCD is directed to adjudicate the matter afresh after giving appellant opportunity of hearing and pass a speaking order in the matter.
7. 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.
8. 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 completed by the Quasi Judicial Authority within three months from 04.12.2024.

9. Appellant shall however not raise any unauthorized construction in the property in question without necessary permission as per law. The appellant shall cooperate in inspection of property for the purpose of ascertaining measurements.

10. 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(J)

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