

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

APPEAL NO. 941/ATMCD/2024

- 1. Ms. Bharti Goyal
W/o Sh. Pankaj Goyal
R/O B-28, Swasthya Vihar,
Laxmi Nagar, Delhi -110092**
- 2. Ms. Indira Goyal
W/o Late Sh. Mukesh Goyal
R/O B-28, Swasthya Vihar,
Laxmi Nagar, Delhi -110092**
- 3. Sh. Pankaj Goyal
W/o Late Sh. Mukesh Goyal
R/O B-28, Swasthya Vihar,
Laxmi Nagar, Delhi -110092**
- 4. Sh. Vishal Kapoor
S/o Sh. Ashok Kapoor
House No. 8/A, Devpuri Railway Road,
Meerut, Uttar Pradesh-250002**
- 5. Sh. Vikas Kapoor
S/o Sh. Ashok Kapoor
House No. 8/A, Devpuri Railway Road,
Meerut, Uttar Pradesh-250002**
- 6. Sh. Manoj Kumar Seth,
S/o Sh. Bhagauti Prasad Seth
R/o Flat No. 2401, Florentia Tower-2,
Mahagun Mirabella, Sector-79, Noida,
Gautam Budh Nagar, Uttar Pradesh -201301**
- 7. Ms. Sadhna Rani,
W/o Sh. Sanjeev Kumar Aggarwal
R/o B-326, Swasthya Vihar,
Delhi -110092**

**8. Ms. Sangeeta Aggarwal
W/o Sh. Vishnu Kumar Aggarwal
R/o 2C/15, New Rohtak Road,
Liberty Cinema, Karol Bagh,
New Delhi -110005**

..... Appellants

Versus

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

..... Respondent

**Date of Filing of Appeal : 23.10.2024
Date of Order : 12.11.2024**

ORDER

1. The present appeal has been filed impugning the demolition order dated 19.03.2024 passed under Section 343 of the DMC Act, 1957 and in respect of the property i.e. ground floor to third floor bearing No. 1169-A, Kucha Mahajani Chandni Chowk, Delhi -110006.
2. It is submitted by Ld. Counsel for the appellant that Show Cause Notice was not served on all the owners of the property in question. He submits that the Show Cause Notice is not addressed to any individual and merely mentions the name of the addressee as 'owner / occupier'. He submits that the property in question has a sanctioned building plan as well as regularization plan and the details of the respective owners are available with the MCD but despite that the Show Cause Notice as well as Demolition Order is not passed in respect of the all respective owners of the property.
3. It is submitted by Ld. Counsel for the appellant that during the course of the proceedings before the Quasi Judicial Authority, only

appellant no. 7 Ms. Sadhna Rani has appeared. He submits that in her reply Ms. Sadhna Rani categorically stated that her reply is only confined in respect of the second floor of the property but despite that the MCD/ respondent did not bothered to join the other owners in the proceedings and the hearing notices (from Page Nos. 15/C to 17/C) of the MCD record are only addressed to appellant no. 7 Ms. Sadhna Rani and not to other owners of the property.

4. It is further submitted by Ld. Counsel for the appellant that though the other owners did not get any opportunity to participate in the proceedings before the Quasi Judicial Authority, Ms. Sadhna Rani in her reply dated 09.10.2023 took an objection that the nature of deviation / excess coverage is not specified but despite that Quasi Judicial Authority failed to specify what is excess deviation / coverage area in respect of which the impugned order has been passed.
5. It is submitted by Ld. Counsel for the appellant that in the impugned order, it is alleged that the property no. 1169 & 1169-A have been amalgamated. It is submitted that though the appellant disputed the allegation of amalgamation but impugned order fails to clarify what action has been taken against the property no. 1169 in case the amalgamation has been alleged. It is argued that MCD cannot pick and choose and take action only against the part of the amalgamated property.
6. On the other hand, Ld. Counsel for the respondent submits that the Show Cause Notice was served by way of affixation at the premises and the said fact is also admitted by the appellant no. 7 in her reply before the MCD. It is submitted that the demolition order has been communicated by way of Speed Post and the Postal receipt is filed on record. He submits that the demolition order has been passed after following due process of law. He submits that as per report of the JE,

there were deviations and unauthorized construction in the property which have been booked by the MCD.

7. I have heard the arguments and perused the record. Perusal of the record shows that Show Cause Notice (at page 7C of MCD record) is addressed to the owner / occupier and not addressed to any individual. It is admitted position that there exist sanctioned building plan as well as regularization plan of the property and the names of the respective owners of the property are available with the MCD. Despite that Show Cause Notice was not addressed to the individual owners. Appellant no. 7 Ms. Sadhna Rani had appeared in the proceedings and filed her reply dated 09.10.2023. The said reply categorically stated that she is the owner of second floor and her reply is only confined to second floor. Despite that the hearing of notices (from page nos. 15/C to 17/C) were only issued to appellant no. 7 and not to other owners of the property. The demolition order is also addressed to appellant no. 7 Ms. Sadhna Rani and not to other owners.
8. In these circumstances, it cannot be said that service of other owners of the property is free from doubt and it is clear that they are not provided an opportunity to present their case before the Quasi Judicial Authority.
9. Appellant no. 7 Ms. Sadhna Rani in her reply dated 09.10.2023 (at 14/C) categorically stated that the deviations / excess coverage are not specified. Despite such objections the measurement / extent of deviation is not specified in the impugned order. The impugned order record the report of the JE dated 13.03.2024 along with photograph and rough sketch (at P-17/C to 23/C of the MCD record). Rough sketch merely mentions about the area and the lay out of various floors but did not specify the deviations / unauthorized construction and their extent in comparison to the sanctioned /regularized building plan. It is clear that

the order passed by the Quasi Judicial Authority in respect of the alleged deviations / excess coverage is vague and does not clearly specify the area and the portion of property which Quasi Judicial Authority proposes to demolish by way of impugned order. Reference in this regard can be made to decision passed by the Hon'ble High Court of Delhi in the case of **Masonic Club vs MCD &Anr**, (2001) 91 DLT 149, wherein the Hon'ble High court of Delhi held that:

“Aggrieved by the order of sealing, this petition has been filed by the petitioner. It has been contended that no show cause was given to the petitioner before sealing the property. It has also been contended that no notice was served upon the petitioner after 15.9.2000 when according to the record of the respondent, which has been perused by me, the alleged unauthorised construction was booked. The method and manner in which the original notice dated 25.10.2000 is prepared by the respondent, create doubt about the genuineness of the same. Even the same has not been properly served on the petitioner. In any event of the matter, I have perused the notice in question. No specific mention has been made in the notice as to which portion of the property in question is unauthorised, as to what is the approximate or alleged date of construction, the area of unauthorised construction. Notice dated 21.9.2000 is no notice in the eye of law. As the premises of the petitioner is sealed without giving any opportunity to the petitioner, I direct Mr. Rajesh Mishra, Zonal Engineer (Building) and Mr. S.M.R. Zaidi, Junior Engineer (Building), Who are present in Court, to de-seal the property of the petitioner forthwith. However, respondents will be at liberty to give notice of any unauthorised construction in the premises in question to the petitioner in accordance with law.”

10. In the impugned order, it is stated that property no. 1169 & property no. 1169A is amalgamated. The impugned order is absolutely silent in respect of the fate of property no. 1169-A and it is clear that the Quasi Judicial Authority has done pick and choose while passing the impugned order.

11. In view of the aforesaid it is clear that the Quasi Judicial Authority needs to adjudicate the matter afresh in the light of the aforesaid observations. Accordingly, the impugned demolition order dated 19.03.2024 is set aside and the matter is remanded back to the Quasi Judicial Authority to decide the same afresh.
12. Appellants shall appear before the Quasi Judicial Authority on **25.11.2024 at 2.00 p.m.** The Quasi Judicial Authority shall provide an opportunity to appellants to submit additional reply and documents and also grant them personal hearing. The appellants are 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.
13. The Quasi Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defences raised by the 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 first hearing.
14. Appellants shall however not raise any unauthorized construction in the property in question without necessary permission as per law. The appellants shall co-operate in inspection of property for purposes of measurements.
15. 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.
16. 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 12.11.2024 (s)**

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