

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

APPEAL NO. 10/ATMCD/2024

**Sh. Davender Kapoor
S/o Sh. C. L. Kapoor
R/o 309, Upper Ground Floor,
Near lakshmi narayan Mandir,
Ram Nagar, Krishna Nagar,
Delhi -110051**

..... Appellant

Vs

**Municipal Corporation of Delhi
Through its Commissioner
Dr. SPM Civic Centre, Minto Road
New Delhi.**

..... Respondent

Date of Filing of Appeal : 05.01.2024
Date of Judgment : 05.12.2024

JUDGMENT

1. The present appeal has been filed impugning the demolition order dated 26.12.2023 in respect of one of the shop which exist on ground floor of the property bearing no. F-10/35 (Part), Krishna Nagar, Delhi -110051 stated to be owned by the appellant.
2. It is submitted by the Ld. counsel for appellant that they were served with the demolition order on 27.12.2023 and thereafter filed their reply on 29.12.2023 with MCD along with various documents showing that the shop in question existed prior to cut off date of 2007. He submits that the Sale Deed / registered titled documents which are prior to cut off date shows existence of the shop in question at the ground floor. He submits that he has placed on record electricity bills as well as the registration certificate of shops/ commercial shops dated 31.12.2006

which was granted in favour of erstwhile owner of the MCD. He submits that collective reading of the documents show that the shop in question is an old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. He submits that the said documents were not considered by the MCD while passing the impugned order.

3. Ld. counsel for the respondent MCD submits that reply as well as documents were placed on record by the appellant after passing of the impugned order. He submits that the appellant failed to reply to the show cause notice on time and the demolition order was passed after following due process of law.
4. Arguments heard and record perused. It is admitted position that appellant had filed the reply as well as documents before the Quasi Judicial Authority after the impugned demolition order has been passed. The appellant is relying upon the registered title documents, electricity bills, registration of shops / commercial shops with the MCD etc. which prima facie show the existence of shop prior to cut off date. These documents need to be verified and appreciated by the Quasi Judicial Authority to arrive at any conclusion in respect of the shop in question. It is also clear from the record that appellant was not afforded any hearing prior to passing of demolition order which is pre-requisite under Section 343 of the DMC Act, 1957.
5. Accordingly on the basis of the said observations the appeal is allowed and the impugned demolition order dated 05.12.2023 is set aside. The matter is remanded back to the Quasi Judicial Authority to decide the same afresh.
6. Appellant shall appear before the Quasi Judicial Authority on **08.01.2025 at 2.25 p.m.** The Quasi Judicial Authority shall provide an opportunity to appellant to submit 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.

7. 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.
8. Appellant shall however not raise any unauthorized construction in the property in question without necessary permission as per law.
9. 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.
10. 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 05.12.2024 (s)**

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