

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

**APPEAL NO. 624/ATMCD/2024**

**M/s Active Dealers Pvt. Ltd.**  
**(Now Known as Shiva Gems Pvt. Ltd.)**  
**Through its Director/ Authorized Representative**  
**Mr. Prateek Sarraf,**  
**Having its Office at:**  
**2 & 3, 1184, Kucha Mahajani,**  
**Chandani Chowk, Delhi -110005**

..... Appellant

**Versus**

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

..... Respondent

<b>Date of Filing of Appeal</b>	<b>:</b>	<b>06.08.2024</b>
<b>Date of Order</b>	<b>:</b>	<b>05.12.2024</b>

**JUDGMENT**

1. The present appeal has been filed impugning the order dated 31.07.2024 rejecting the regularization application of the appellant in respect of the property bearing **Unit No. D, Part of Bunglow No.1, 45, Mall Road, New Delhi**. It is submitted by Ld. Counsel for the appellant that initially the sanction building plan of the property was granted by the MCD and later it was revoked. He submits that after revocation of the sanction building plan, the appellant has preferred to get the property regularized by moving a regularization application with the MCD. He submits that vide order dated 31.07.2024, the regularization application

has been dismissed on the ground of non-compliance of invalid notice dated 24.07.2024. He submits that the said notice was never served upon the appellant. He submits that it has remained unexplained as to why no efforts have been made by the MCD to serve the invalid notice dated 24.07.2024 through personal service. He submits that as invalid notice was not served upon the appellant, therefore, he did not get any opportunity to reply the same.

2. Ld. Counsel for the MCD submits that the rejection of regularization have been done after following due process of law. He submits that the invalid notice was served by way of affixation and the report at Page-68C captures the coordinates. He submits that the appellant failed to submit any reply and, therefore, order was passed after following due process of law.
3. Arguments heard and record perused. It is admitted position of record that after revocation of the sanction building plan the appellant has approached the MCD to regularize the property. A separate demolition order has already been passed in respect of the property in question. In such circumstances, decision on regularization becomes crucial and has its impact on the decision of the demolition order also. The higher courts in the catena of judgments held that the demolition should be resorted as a last recourse and a proper opportunity be provided to the owner of the house to get the same regularized. Reference in this regard can be made to decisions in the case titled as **Smt. Radha Langri & Anr. Vs. The Commissioner, Municipal Corporation Ujjain, District Ujjain, MP** Writ Petition No. 744 of 2023 decided by the Hon'ble High Court of Madhya Pradesh vide order dated 01.02.2024; **Nagda Municipality, Nagda Vs. ITC Ltd.** W.A. No. 457 of 2006 dt. 27.02.2007, AIR 2007 Madhya Pradesh 142.

4. Perusal of the MCD records shows that during the adjudication of the regularization application by the Quasi Judicial Authority invalid notice dated 24.07.2024 was issued providing three days time to reply the same. The said notice was served by way of affixation. Though affixation mentions the coordinate but no public witnesses have been joined in the proceedings.
5. Section 444 (d) of the DMC Act, 1957 provides methodology service of notice, it mandates that resort of affixation need to be made in those cases where the person addressed cannot be found. MCD record is absolutely silent as to the attempt which has been made for personal service of the invalid notice upon the appellant. The personal service of the notice become crucial in the present circumstances especially when MCD providing only three working days to the appellant to submit reply. The record is absolutely silent in this regard. The file noting 1/N starts from 31.07.2024 i.e. after the invalid notice dated 24.07.2024 was already issued and there is no office noting which records the status of issuance of said invalid notice and its service.
6. The record is silent about who was the person who met at the spot and refused to receive the process thereby constraining the department to resort to the methodology of service by way of affixation. No explanation has been tendered for not choosing the mode of Registered Post also.
7. In these circumstances, it is clear that service of invalid notice dated 24.07.2024 is not free from doubt and the regularization application has been rejected without affording an opportunity to the appellant to tender reply to the same.
8. In view of the aforesaid findings, order dated 31.07.2024 rejecting regulation application is set aside and the matter is remanded

back to the Quasi Judicial Authority to decide the same afresh and pass speaking order.

9. Appellants shall appear before the Quasi Judicial Authority on **23.12.2024 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.

10. 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.

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

12. 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.

13. 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.**

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