

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

APPEAL NO. 1044/ATMCD/2024

**Sh. Dhruv Kumar Gupta
S/o Lte Jadunandan Prasad,
R/o between house No.I-38 and 40,
opposite to I-70B, Gali No.33,
Rajapuri, Najafgarh Delhi.**

..... Appellant

Vs

**Municipal Corporation of Delhi
(Through its Commissioner)
Civic Centre,
S.P. Mukherjee Marg,
Minto Road, New Delhi.**

..... Respondent

Date of Filing of Appeal : 28.11.2024
Date of Order : 13.12.2024

JUDGMENT

1. By way of present appeal, the appellant has impugned the demolition order dated 09.01.2024 in respect of the property bearing no. between house No.I-38 and 40, opposite to I-70B, Gali No.33, Rajapuri, Najafgarh Delhi.

2. It is submitted by the Ld. counsel for the appellant that show cause notice was not served upon appellant and he was not provided any opportunity of hearing. He submits that after passing of the sealing order appellant gave a representation on 11.03.2024 stating that he has only carried out repairs and the said representation is not considered by the MCD.

3. Ld. counsel for respondent submits that show cause notice of sealing was served by way of affixation. The appellant failed to appear and the impugned order was passed after following the due process of law.

4. Arguments heard. Record perused. Perusal of the record shows that the show cause notice dated 27.12.2023 initially attempted to be served by way of post. The tracking report (page 6 of MCD record) shows that article returned with the report "Item Returned insufficient address". Thereafter the show cause notice is stated to have been served by way of affixation. No public witness cited at the time of affixation of notice. There is no explanation on record as to what efforts were made by the MCD officials to serve the show cause notice in person upon appellant as mandated in Section 444 of the DMC Act. From the record of MCD it is clear that the service of show cause notice is not free from doubt and the sealing order has been passed without providing any hearing to the appellant.

5. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned sealing order dated is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

6. The appellant shall treat this order as show cause notice. The appellant shall appear before the Quasi Judicial Authority on **15.01.2025 at 02.00 PM**. The Quasi Judicial Authority shall provide an opportunity to appellant to submit reply and also grant him personal hearing. The Quasi Judicial Authority shall decide the matter expeditiously.

7. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defenses raised by appellant and shall communicate the said order to appellant. The

appellant shall however not raise any unauthorized construction in the said property.

8. The file of the respondent be send back along with copy of this order. Appeal file be consigned to record room after due compliance.

Copy of the order be given dasti.

**Announced in the open Court
today i.e. on 13.12.2024 (J)**

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