

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

APPEAL NO. 438/ATMCD/2024

1. Sh. Mahesh Kumar Mittal
S/o Ram Dhari,
R/o RZ-686 Z/12B, Raj Nagar,
Palam Colony, Gali No.1,
Palam Village Delhi-110045.

2. Sh. Ajit Parshad Jain
S/o Sh. M.L. Jain,
R/o First Floor,
Nehru Road, Arjun Nagar
Kotla Mubarakpur, Lodhi Road,
New Delhi-110003.

..... Appellants

Vs

Municipal Corporation of Delhi
(Through its Commissioner)
SPM Civic Centre,
Near Minto Road,
New Delhi.

..... Respondent

Date of Filing of Appeal : 12.06.2024
Date of Order : 16.12.2024

JUDGMENT

1. By way of present appeal, the appellant has impugned the demolition order dated 05.06.2023 in respect of the property bearing Khasra No.33/7/1 and 33/7/2, Palam Village, New Delhi.

2. In respect of application seeking condonation of delay, it is submitted by Ld. counsel for appellant that they were not served with the copy of show cause notice as well as demolition order and on 05.06.2023 when demolition action was carried out by the MCD they came to know

about the proceedings. Thereafter they approach the Hon'ble High Court of Delhi and also applied for regularization of the property. During the course of proceedings before Hon'ble High Court the copy of show cause notice was provided to the appellants. Copy of sealing order and demolition order were not supplied. Thereafter the present appeal was filed on 12.06.2024. It is submitted that the delay in filing of appeal is due to non service of demolition order. Ld. counsel for respondent MCD opposes the application.

3. It is further submitted by Ld. counsel for the appellants that no personal hearing in compliance of the Section 343 of the DMC Act was provided to the appellants and the impugned order has been passed in violation mandate provided u/s 343 (1) of the MCD Act.

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

5. Perusal of MCD record shows that the Show cause notice was attempted to be served through post. The tracking report (at page No.50 of MCD record) shows that the postal article received back unserved with the remarks "No such person in the address". At page 51 of the MCD record there is endorsement on the back site of the show cause notice that it was pasted at site. No photographs of affixation have been placed on record. On 12.12.2024, MCD clarified that the photographs of affixation proceedings is not available. Similarly, the demolition order was also sent through post which was also received back unserved as per the tracking report at page No.46 of the record. Thereafter it is stated to have been served by way of affixation but the photographs are not on file. It is clear that appellant was not provided any opportunity of hearing in the matter and the service of show cause notice as well as demolition order is not free from doubt. 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 appellants as

mandated in Section 444 of the DMC Act. From the record of MCD it is clear that the service of show cause notice as well as demolition order is not free from doubt and the demolition order has been passed without providing any hearing to the appellant.

6. In view of the above facts and circumstances, the application seeking condonation of delay as well as appeal filed by appellants is allowed. The impugned demolition order dated is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

7. The appellant shall treat this order as show cause notice. The appellant shall appear before the Quasi Judicial Authority on **17.01.2025 at 02.00 PM**. The Quasi Judicial Authority shall provide an opportunity to appellants to submit reply and also grant him personal hearing. The Quasi Judicial Authority shall decide the matter expeditiously.

8. 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 appellants. The appellants shall however not raise any unauthorized construction in the said property.

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

**Announced in the open Court
today i.e. on 16.12.2024 (J)**

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