

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

APPEAL NO. 1013/ATMCD/24

**Komal. D Kripalani,
W/o Sh. Dalip D Kripalani,
R/o Flat No.1121, Pocket-A, Sector-A,
Vasant Kunj, New Delhi,**

..... Appellant

Vs

**Municipal Corporation of Delhi
Through its Commissioner,
17th Floor, Civic Centre,
Minto Road, New Delhi-110001**

..... Respondent

Date of Filing of Appeal : 18.11.2024
Date of Order : 18.12.2024

JUDGMENT

1. The present appeal is filed against the impugned order of demolition dated 13.06.2024 passed in respect of property of the appellant bearing flat No.1121, Sector-A, Pocket-A, Vasant Kunj, New Delhi.
2. Ld. counsel for appellant submits that they did not received the show cause notice as well as demolition order. He submits that the MCD record shows that the demolition order does not mention the nature and measurement of the alleged deviations/excess coverage. He submits that the demolition order has been passed without providing opportunity of hearing and in violation of Section 343 of the DMC Act.
3. Ld. counsel for respondent submits that a show cause notice and demolition order were served upon the appellant through affixation and the impugned order has been passed after following the due process of law.
4. Arguments heard. Record perused. Show cause notice and demolition order are stated to be served by way of affixation. No public persons are involved in the affixation process. The name of person who refused to receive the notice is also not specified. In these circumstances, the

service of show cause notice and impugned order of demolition is not free from doubts.

5. In addition to aforesaid, the demolition order alleges unauthorized construction in the shape of deviations/ excess coverage in comparison to standard plan of the DDA. The standard plan of DDA is not on record. The measurement as per the standard plan of DDA are not specified. The nature and measurement of deviations/excess coverage over and above DDA standard plan is also not specified. The impugned order is ambiguous and does not precisely specify what is the nature and measurement of unauthorized construction which is proposed to be demolished by way of the impugned order. It is clear that the impugned order has been passed in ignorance of the law lays down 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 in 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.”

6. In view of the aforesaid submissions, it is clear that the impugned order does not specify the nature, extent and measurement of deviations in comparison to the standard building plan. The service of show cause notice and demolition order is not free from doubt. No hearing is provided to appellant. Accordingly the impugned demolition order dated 27.09.2024 is set aside and the matter is remanded back to the Quasi Judicial Authority to decide the same afresh.
7. Appellant shall appear before the Quasi Judicial Authority on 15.01.2025 at 2.00 p.m. The Quasi Judicial Authority shall provide an opportunity to appellant to submit reply and documents and also grant her 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.
8. 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. The Quasi Judicial Authority shall decide the matter expeditiously.
9. Appellant shall however not raise any unauthorized construction in the property in question without necessary permission as per law. The appellant shall co-operate in inspection of property for the purpose of ascertaining measurements.
10. 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.

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 18.12.2024**

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