

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

APPEAL NO. 750/ATMCD/2024

Smt. Sanjo Rani
W/o Sh. Tarun Kumar,
R/o CD-1F, Second floor,
DDA Flats, Hari Nagar,
New Delhi-110064.

.....Appellants

Vs

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

..... Respondent

Date of Filing of Appeal : 09.09.2024
Date of Order : 13.12.2024

JUDGEMENT

1. The present appeal is filed impugning the demolition order dated 23.08.2024 passed in respect of flat bearing no. 1-F, CD-Block, Second Floor, LIG Flats, Hari Nagar, New Delhi110064.
2. It is submitted by Ld. counsel for appellant that the impugned demolition order has been passed alleging that there is deviations / excess coverage against DDA standard plan and there is unauthorized construction of room and toilet on roof top. He submits that in respect of flat in question that MCD in its order had not clarified measurements of standard building plan as well as measurements of alleged coverage. He submits that impugned demolition order has been passed mechanically without bothering to inspect the site.
3. Ld. counsel for respondent / MCD submits that appellant has made unauthorized construction in the flat and impugned order

has been passed after providing opportunity of hearing and following due process of law.

4. Arguments heard and record perused. A bare perusal of record shows that there are allegations of deviations and excess coverage over and above of the standard building plan. The standard building plan is not part of MCD record and covered area in the standard building plan is not mentioned anywhere. The alleged unauthorized construction and its measurements over and above and standard building plan is also not specified. The nature of deviations / excess coverage and whether they are compoundable or non-compoundable is not specified. The impugned order has been passed completely in ignorance of mandate given by the Hon'ble High Court of Delhi in case of **Masonic Club**, relevant para is reproduced below:

“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.”

5. The impugned order, passed by the Quasi Judicial Authority is thus not sustainable in law and impugned demolition order dated 23.08.2024 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh. Interim application is also disposed off in view of said observation.
6. Appellant shall appear before the Quasi Judicial Authority on **15.01.2025 at 02:30 PM**. The Quasi Judicial Authority shall provide an opportunity to appellant to submit additional reply, if any and also grant them personal hearing.
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.
8. Appellant shall however not raise any unauthorized construction in the property in question without obtaining necessary approval as per law. Appellant shall cooperate officer(s) of MCD in inspection of the flat.
9. However, it is clarified that the observations made in this order shall not be construed as observation on merits of this case.
10. The record of the respondent be send back alongwith copy of this order. Appeal file be consigned to record room after due compliance.

A copy of this order given dasti as prayed for.

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

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

