

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

APPEAL NO. 614/ATMCD/2023

Mst. Rita Khan

W/o Sh. Anil Kumar Khan

R/o Flat / Unit No. 05, Private No. 1-C,

2nd Floor, Khasra No. 675 Min.

Extended Abadi (Lal Dora),

Village Devli, Tehsil Saket,

M. B. Road, New Delhi.

..... Appellant

Versus

Municipal Corporation of Delhi

(Through its Commissioner)

Civic Centre, JLN Marg, Minto Road,

New Delhi -110002

..... Respondent

Date of Filing of Appeal : 18.09.2023

Date of judgment : 20.03.2025

JUDGMENT

1. The present appeal has been filed by the appellant impugning the demolition order dated 21.03.2017 as well as 19.01.2018 passed under Section 343 of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) in respect of property bearing Flat / Unit No. 05, Private No. 1-C, 2nd Floor, Khasra No. 675 Min. Extended Abadi (Lal Dora), Village Devli, Tehsil Saket, M. B. Road, New Delhi.
2. On the aspect of limitation, it is submitted by Ld. counsel for the appellant that proceedings were initiated by the MCD against the builder namely Sh. Bhagwat Sharma. The appellant is bona fide purchaser who came to know about the present proceedings only after receiving

vacation notice dated 06.02.2023. Appeals bearing nos. 479/23, 480/23, 481/23, 482/23, 483/23, 484/23, 485/23, 486/23, 491/23, 492/23, 493/23 were filed before this Tribunal, which were withdrawn on 14.08.2023. During the course of the said appeal the MCD filed its record. The appellant herein came to know about passing of the impugned order. It is stated that as appellant was not aware about the proceedings being bonafide purchaser and acted immediately upon receipt of information and action is not delayed. On the other hand, Ld. counsel for the MCD submits that the appeal filed by the appellant suffer from delay.

3. Arguments heard and record perused. The title documents filed by the appellant on record shows that one Ms. Mamta Sharma and Ms. Kritika Sharma were the original owners of the property in question. The proceedings were not initiated against them and have been initiated against Sh. Bhagwat Sharma who is stated to be the builder. The appellant is stated to be a bonafide purchaser and has filed the present appeal immediately after receipt of the vacation notice. At this juncture, appellant is able to show sufficient cause for condonation of delay. The application is allowed and the delay is condoned.

4. It is argued by Ld. Counsel for the appellant that appellant is bona fide purchaser of the property in question. It is submitted that appellant had purchased the property through registered Sale Deed and at the time of registration of the property the concerned Sub Registrar did not make any objection. It is argued that regarding booking of the property in question MCD had written to the Sub Registrar Mehrauli, whereas the jurisdiction for registration of the property lies before the Sub Registrar Hauz Khas. It is argued that due to negligence on the part of the MCD officials, the Sub Registrar concerned was not aware about the sealing and demolition order passed against the property in question.

Appellant being gullible purchaser landed up by buying the same after getting the Sale Deed registered.

5. It is further submitted by Ld. counsel for the appellant that earlier proceedings were initiated by MCD against Sh. Bhagwat Sharma who is stated to be the builder. It is argued that as per Sale Deed, the property was originally owned by Ms. Mamta Sharma and Ms. Kritika Sharma who were not made party by the MCD. It is submitted that owners of the property in question were not given any opportunity of hearing by MCD. It is argued that appellant being bona fide purchaser of the property in question have vested rights in property and needs to be given personal hearing before any coercive action is taken against the property.
6. On the other hand, Ld. counsel for MCD submits that the order was passed after due process of law. He submits that building was constructed at the instance of Sh. Bhagwat Sharma, therefore, the impugned order was passed against him. He submits that MCD carried out demolition as well as sealing action in the property and therefore the appellant cannot claim ignorance about the proceedings.
7. I have heard the arguments and perused the record. The title documents filed by the appellant shows that property in question was initially owned by Ms. Mamta Sharma and Ms. Kritika Sharma and show cause notice was issued to Sh. Bhagwat Sharma and not to the actual owners. It is the case of the MCD that Sh. Bhagwat Sharma did not participate in the proceedings and orders were passed.
8. Appellant purchased the property in question after getting their Sale Deed registered. MCD record shows that intimation regarding passing of the demolition order was sent to the Sub Registrar Mehrauli. The MCD in their status report dated 15.02.2024 admitted that they are

not aware about the territorial jurisdiction of Sub Registrar under whose jurisdiction the properties lies. Thereafter in the status report dated 30.04.2024 MCD clarified that the territorial jurisdiction in respect of the property in question falls before the Sub Registrar Hauz Khas. From the status report filed by the MCD it is clear that due to ignorance on the part of the MCD officials no intimation could be sent to the Sub Registrar, Hauz Khas who had registered the Sale Deed of the property in question in favour of appellant.

9. Appellant is bona fide subsequent purchaser of the property in question. Neither predecessor in interest nor appellant was provided any opportunity of hearing. Section 343 of DMC Act, 1957 mandates that a personal hearing needs to be provided to the owner before passing any order. Similarly, the personal hearing in the matters under section 345A of DMC Act for sealing order is also indispensable. The Hon'ble High Court of Delhi in **W.P.(C) 2816/2011 titled Parveen Ahuja Vs MCD and Ors** vide judgment dated 05.07.2011 has directed that natural justice must be read into Section 345-A of the DMC Act and it is clear that in the absence of any personal hearing rules of Natural Justice have not been complied with.
10. The impugned order dated 21.03.2017 as well as 19.01.2018 passed by the MCD is thus not sustainable in law, as same have been passed in violation of principal of natural justice. From the materials placed on record, it is clear that the appellant was not granted any opportunity of hearing by the MCD while passing the impugned order.
11. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned order dated 21.03.2017 as well as 19.01.2018 are set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

12. The appellant shall appear before the Quasi Judicial Authority on **03.04.2025 at 2.00 PM**. The MCD shall provide an opportunity of hearing to appellant to submit reply and also grant her personal hearing.
13. The MCD 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.
14. The appellant shall however not raise any unauthorized construction in the said property without necessary approval as per law and shall not create any third party rights.
15. It is clarified that the observations made while passing of this judgment by this Tribunal shall not tantamount to the expression on the merits of this case.
16. 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 20.03.2025 (s)**

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