

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

APPEAL NO.391/ATMCD/2024

Sh. Mohammad Mufizuddin,
S/o Sh. Abdur Razzaque,
R/o H.No.613 A, 3rd floor,
Flat Right Side, Block-H,
Jaitpur Extn., Badarpur,
New Delhi- 110044.

.....Appellants

Vs

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

..... Respondent

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|---------------------------------|----------|-------------------|
| Date of Filing of Appeal | : | 28.05.2024 |
| Date of Order | : | 21.03.2025 |

JUDGEMENT

1. The present appeal has been filed by appellant impugning the demolition order dated 19.10.2022 under Section 343 of DMC Act, 1957 passed in respect of property bearing no.H-613-A, Gali no.1, Khasra no.851 Khadda Colony, Part-II, Jaitpur, New Delhi.

2. It is submitted by Ld. counsel for appellant that no hearing was provided to appellant by MCD. He submits that MCD record shows that no service record is available and affixation proceedings are not witnessed by any public person. He further submits that show cause notice is addressed to Mr. Rishi, who is not connected and not known to appellant.

3. On the other hand, Ld. Counsel for respondent / MCD submits that Mr. Rishi was the person / builder at whose instance the construction was carried out. It is submitted that the show cause notice as well as demolition order was served by way of affixation and the order has been passed by following due process of law.

4. Arguments heard and record perused. Perusal of record shows that the show cause notice as well as demolition order are addressed to Mr. Rishi. MCD record is silent about the status of Mr. Rishi and how he is connected with the appellant. The show cause notice is stated to be served by way of affixation. Original photographs of affixation are not placed on record. Affixation proceedings are not witnessed by any public person. It does not mention what efforts were made by MCD to conduct the service in person owner / occupier as per Section 344 of DMC Act before resorting to affixation. Under these circumstances, the service of show cause notice and demolition order is not free from doubt. The application seeking condonation of delay is allowed in view of aforesaid reasons. It is clear that the demolition order has been passed in violation of Section 343 of DMC Act, 1957 which mandates that opportunity of hearing is necessary before passing the demolition order.

5. In view of the aforesaid, the impugned order dated 19.10.2022 is set aside. The matter is remanded back to the MCD for deciding the same afresh. Interim application is also disposed off in view of said the observation.

6. Appellant shall appear before the MCD on **04.04.2025 at 02.00 PM**. The MCD shall provide an opportunity to appellant to submit additional reply, if any and also grant them personal hearing.

7. 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 appellants.

8. However, it is clarified that the observations made in this order shall not be construed as observation on merits of this case.

9. Appellant shall however not raise any unauthorized construction in the said property and shall not create any third party rights without necessary permission as prescribed by law.

10. The record 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 21.03.2025 (R)**

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