

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

APPEAL NO. 91/ATMCD/2025

- 1. Sh. Govind Ram Gupta**
S/o Sh. Dwarka Dass
- 2. Smt. Rajni Aggarwal**
W/o Sh. Govind Ram Gupta
Both R/o Duplex 18, Oberoi Apartments,
Civil Lines, Delhi-110054.
(Owner of Block 'C' in Property No.9,
Court Road, Civil Lines, Delhi -110054).
- 3. Sh. Anil Gupta**
S/o Sh. Ved Prakash Gupta
R/o 9, Court Road, Civil Lines,
Delhi -110054.
(Owner of Block 'F' in Property No.9,
Court Road, Civil Lines, Delhi -110054).
- 4. Sh. Raghubar Dayal Goyal**
S/o Sh. Ram Roop Goyal
- 5. Smt. Madhu Goyal**
W/o Sh. Raghubar Dayal Goyal
- 6. Sh. Rahul Goyal**
S/o Sh. Raghubar Dayal Goyal
All Residents of
9, Court Road, Civil Lines,
Delhi -110054.
(Owner of Block 'K' in Property
Bearing Mas Court Road, New Delhi
and Basement portion is sealed).
- 7. Sh. Amit Jain**
S/o Sh. Virendra Kumar Jain
9, Court Road, Civil Lines,
Delhi -110054
(Owner of Block 'L' in Property No. 9,
Court Road, Civil Lines, Delhi -110054).
- 8. Mrs. Aruna Aggarwala**
W/o Sh. Hemant Aggarwal
- 9. Sh. Ekagra Aggarwal**
S/o Sh. Hemant Aggarwal

- 10. Sh. Kushagra Aggarwal**
S/o Sh. Hemant Aggarwal
All Residents of Villa No. 2 & 3,
9, Court Road, Civil Lines,
Delhi -110054.
(Owners of Block 'D' in Property No. 9,
Court Road, Civil Lines, Delhi -110054)
- 11. Sh Giriraj Gupta**
S/o Sh. Gauri Shankar Gupta
- 12. Sh. Mukul Gupta**
S/o Sh. Gauri Shankar Gupta
Both Residents of Villa No. 4,
9, Court Road, Civil Lines,
Delhi -110054
(Both owners of Block 'E' in Property No. 9,
Court Road, Civil Lines, Delhi -110054).
- 13. Sh. Surender Sharma**
S/o Sh. Mahender Sharma
Resident of Villa No. 5,
9, Court Road, Civil Lines,
Delhi -110054
(Owner of Block 'G' in Property No. 9,
Court Road, Civil Lines, Delhi -110054)
- 14. Sh. Hemant Sethi**
S/o Sh. Kewal Krishan Sethi
- 15. Mrs. Shaveta Sethi**
W/o Sh. Hemant Sethi
Both Residents of Villa No. 7,
9, Court Road, Civil Lines,
Delhi -110054
(Both owners of Block 'H' in Property No. 9,
Court Road, Civil Lines, Delhi -110054).
- 16. Sh. Arun Jain**
S/o Sh. Raghubir Chand Jain
- 17. Mrs. Alka Jain**
W/o Sh. Arun Jain
Both Residents of Villa No. 8,
9, Court Road, Civil Lines,
Delhi -110054
(Both owners of Block 'G' in Property No. 9,
Court Road, Civil Lines, Delhi -110054). Appellants

Versus

**Municipal Corporation of Delhi.
(Through its Commissioner)
S. P. Mukherjee Civic Centre,
Jawahar Lal Nehru Marg, Minto Road,
New Delhi-110002.**

..... Respondent

Date of Filing of Appeal : 17.02.2025

Date of Judgment : 02.05.2025

JUDGMENT

1. The present appeal has been filed by the appellants impugning the order dated 17.09.2021 passed under Section 338 of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) for revoking the regularization building plan.
2. It is the case of the appellants that the property in question is built up of a plot admeasuring 7525 sq. meters and there are 12 blocks / units (A to L) which have been built upon the said plot. A sanctioned building plan dated 10.08.2015 was initially approved by MCD. He submits that the said units /blocks are owned by different owners. It is stated that the appellants applied for regularization building plan which was approved vide file no.10074034 dated 08.05.2020. It is submitted that the construction in the property was carried out by the appellants in accordance with the regularized building plan.
3. It is submitted that the MCD revoked the said regularized building plan without providing any opportunity of hearing to the appellants. It is submitted that the show cause notice as well as the impugned order show that the same is not addressed to all the owners. He submits that the show cause notice as well as impugned order are addressed to one Mr. Om Prakash Architect and Mr. Sharad Jain and the other owners were deprived of the opportunity to present their case. He submits that to the contrary the MCD in the sealing and demolition proceedings have made all owners party.

4. It is argued that apart from the aspect of non-hearing, the impugned order is non-speaking in nature. It is submitted that the impugned order does not mention the blocks in which the alleged violations are found by the MCD. It does not specify the measurements of the alleged violations. It is submitted that the impugned order records about the site inspection through which the MCD noticed the anomalies. The said site inspection is not on record and it is not mentioned that who was the officer who inspected the site. It is submitted that there is no notice of site inspection on MCD record and file noting does not mention anything about the same. It is argued that the aforesaid order had been passed arbitrarily without any inspection and without providing any opportunity of hearing to the appellants.
5. In respect of the limitation period, it is submitted that the impugned order was not served upon the appellants. The appellants were made party in the demolition and sealing proceedings which was impugned by them before the Tribunal. The appellants were under the impression that their interests are being taken care in the said appeals. But during the course of the hearing upon examining MCD record, the appellants came to know that the impugned order had been passed on their back without hearing them and they filed the present appeal impugning the same.
6. Ld. counsel for MCD submits that the impugned order was passed after following due process of law. He submits that the service was effected upon the Architect Mr. Om Prakash as well as Mr. Sharad Jain through post. However he admits that the impugned order as well as show cause notice is not addressed to all the owners of the property in question and they were not party in proceedings before MCD. He also admits that in other proceedings of demolition and sealing order were passed against all the owners. It is submitted that the appellants misrepresented the MCD and upon finding the violations the regularized sanction plan was

revoked. He further submits that appeal is time barred and no reasonable explanation for condonation of delay is provided by the appellants.

7. I have heard the arguments and perused the record . From the MCD record, it is clear the show cause notice as well as impugned order is addressed to Architect Mr. Om Prakash and Sh. Sharad Jain. The other appellants were neither addressed nor involved in proceedings before the MCD. Appellants have impugned the sealing as well as demolition proceedings wherein they were party before the MCD. During the course of the proceeding in the said appeal, appellants came to know about the present order from the MCD record. It is clear that the service upon the appellants is not free from doubts as they were not heard during the proceeding before the MCD. Accordingly the appellants have been able to make out sufficient cause for condonation of delay and the delay stands condoned.
8. Section 338 of the DMC Act, 1957 mandates that the MCD is required to provide reasonable hearing to the party and pass a detailed speaking order. MCD record shows that the owners / appellants were not heard by the MCD before passing the impugned order. The postal receipts by which the order is communicated are only in respect of Mr. Om Prakash, Architect and Mr. Sharad Jain and the order is not communicated to any other owner. The other owners were not made party in Section 338 proceedings before the MCD. MCD record shows that in the sealing as well as demolition proceedings they have issued the notices and have passed the order in respect of all the owners who are residing in various blocks, but in respect of the present proceedings MCD has chosen not to issue notice to all the owners. It goes to show inconsistency in the proceedings, as MCD in one proceedings is issuing notice to all the owners and in the other proceedings is doing pick and choose. It is patently clear that no hearing was granted to all the owners of the

property and the the impugned order was passed in violation of Section 338 of the DMC Act, 1957 which mandates a reasonable opportunity of hearing to be provided.

9. In addition to aforesaid, a perusal of impugned order shows that the same had been passed after the site inspection. The site inspection report is not on MCD record. The file noting (at page 2/N) mentions about the inspection but does not specify name of the officers, date on which the inspection was done, and the persons / owners who were involved in the said inspection. The aforesaid scenario creates a doubt about the inspection of the premises as there is no inspection report on record. During the course of arguments MCD failed to throw any light upon the same.
10. Apart from aforesaid, it is admitted position that the property in question comprises of 12 blocks which are owned by different individuals. The deviations / violation mentioned in the impugned order does not specify any measurements. It is not clarified whether aforesaid deviations exist in one of the block or in all the blocks. The date / period on which the unauthorized deviations / violations have been carried out is also not specified. It is clear that the order has been passed in ignorance of mandate given by the Hon'ble High Court of Delhi in the case of **Masonic Club Vs. MCD &Anr**, (2001) 91 DLT 149 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.”

11. From the aforesaid, it is clear that while passing the impugned order opportunity of hearing was not provided to all the stakeholder / owners, there is no inspection report and the order does not specify the measurement of deviations and the blocks where such deviations exist. The order is passed in contravention of the mandate given under Section 338 of DMC Act, 1957 and is set aside. The matter is remanded back to the MCD for fresh adjudication.
12. The appellants shall appear before the Quasi Judicial Authority on **16.05.2025 at 2.30 PM**. The Quasi Judicial Authority shall provide an opportunity to appellants to submit reply and also grant them personal hearing.
13. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defenses raised by appellants and shall communicate the said order to appellants. The appellants shall not raise any unauthorized construction in the said property.
14. It is clarified that pendency of appeal number 357/2022 and 318/2022 shall not restrict the domain of MCD to decide the issue of revised /regularization plan which is remanded back for fresh adjudication by this judgment and MCD is at liberty to decide the same as per extant law without being influenced from the observations made in this judgment. The MCD is further at liberty to de-seal the sealed portions (if any) of the property in question for the purposes of obtaining measurements, photographs etc. and for proper adjudication.

15. It is further 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 02.05.2025 (s)**

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