

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

**APPEAL NO. 147/ATMCD/2025**

**Sh. Jagdish Lal,  
S/o Late Karam Chand,  
R/o Front side of E-50,  
Tagore Garden Extension,  
New Delhi-110027**

**..... Appellant**

**Vs**

**Municipal Corporation of Delhi  
(Through its Commissioner)  
17<sup>th</sup> Floor, Civic Centre,  
Minto Road, New Delhi-110002**

**..... Respondent**

<b>Date of Filing of Appeal</b>	<b>:</b>	<b>17.03.2025</b>
<b>Date of judgment</b>	<b>:</b>	<b>08.05.2025</b>

**JUDGMENT**

1. The present appeal has been filed by the appellant impugning the demolition order dated 11.12.2023 passed under Section 343-344 of the DMC Act by MCD in respect of unauthorized construction in the shape of ground floor and raising of brick wall (half portion) front side and UC in the shape of ground floor to third floor with projection on Mpl. Land (half portion) back side in property No.E-50, Tagore Garden Extension, New Delhi.
2. It is the case of the appellant that the plot in question is comprising of 80 sq.yds. and the front portion i.e. 40 sq.yds. is owned by the appellant and back portion comprising of 40 sq.yds. is in possession of the intervener Mr. Rajesh Kumar.

3. It is submitted by the Ld. counsel for appellant that Section 343 of the DMC Act mandates that personal hearing needs to be provided before passing the demolition order. She submits that in present case neither the personal hearing was provided nor the demolition order was supplied to the appellant Mr. Jagdish Lal. She submits that the show cause notice is addressed to O/B/Occupier and not to any individual. She submits that the MCD record also shows that the personal notice was issued to Mr. Rajesh Kumar who is occupier of back portion and not to the appellant who is owner and occupier of front portion. She submits that MCD passed the order against the front portion as well as back portion by only hearing the version and pleas of Mr. Rajesh Kumar (back portion) and did not provide any opportunity of hearing to the appellant. She submits that appellant never got any opportunity to place on record the documentary evidence before the MCD to show that the structure is old and protected.
4. Ld. counsel for MCD opposes the submissions. He submits that the show cause notice as well as demolition order were served by way of affixation. He submits that appellant Mr. Jagdish Lal failed to appear before the MCD and the impugned order was passed after following due process of law. He submits that structure has been constructed without any sanctioned building plan and the appellant in his pleadings has admitted that a new construction has been erected after demolishing the old structure and therefore, in view of the clear admission by the appellant the appeal is liable to be dismissed.
5. Ld. counsel for intervener submits that the appellant in present appeal as well as in the pleadings of civil suit No.1345/23 had made admission regarding the erection of new structure. He submits that the appellant failed to appear despite sufficient opportunity of hearing provided by the MCD and he cannot take the plea of non service at this juncture.

6. I have heard the arguments and perused the record. The impugned order dated 11.12.2023 is passed in respect of front portion as well as back portion of the property in question. In respect of back portion the case was represented before the MCD by Mr. Rajesh Kumar /Intervener. The impugned order records that in respect of front portion neither any reply was received nor any documents were filed. A perusal of MCD record shows that the show cause notice is not addressed to any individual including the appellant. MCD record contains hearing notices but the said hearing notices are only addressed to Mr. Rajesh Kumar /intervener and no notice had been issued to Mr. Jagdish Lal against the alleged construction in front portion. It is clear from the MCD record that no opportunity of personal hearing was granted to Mr. Jagdish Lal at the time of passing of impugned demolition order and the order in respect of Mr. Jagdish Lal has been passed non-compliance of principal of natural justice and non-compliance of Section 343 of the DMC Act. Apart from aforesaid the service of demolition order is also clouded in the present matter. MCD record is silent as to what efforts were made to effect service by other modes as prescribed in Section 444 of DMC Act. Original photographs of affixation are not filed on record. The affixation proceedings are not witnessed by any public witnesses. The photograph do not clarify whether the affixation was carried out in front or back portion of the property.
7. In these circumstances, it is patently clear from the MCD record that neither any hearing was provided to the appellant nor the demolition order was served upon him.
8. Ld. counsel for MCD as well as intervener has relied upon the admission which are stated to be made by the appellant in the pleadings before this Tribunal as well as before civil forum. The said documents/pleadings need to be appreciated by the MCD on merits while adjudicating the case

and before coming to any logical conclusion. The demolition order shall appreciate all the pleas and the contentions which have been raised by a party and shall show application of mind by the Quasi Judicial Authority to the facts of the case as well as documentary evidence involved (**Jaspal Singh Jolly Vs. MCD 125 (2005) DLT 592**).

9. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 11.12.2023 is set aside. The matter is remanded back to the MCD for deciding the same afresh.
10. The appellant shall appear before the MCD on **15.05.2025 at 02.00 PM**. The MCD shall provide an opportunity to appellant to submit reply and also grant him personal hearing.
11. 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. The MCD shall decide the matter within a period of two months from 15.05.2025. The appellant shall not raise any unauthorized construction in the said property.
12. The file of the respondent be returned 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 08.05.2025 (J)**

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