

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

APPEAL NO. 20/ATMCD/2024

Smt. Meena Kumari
W/o Late Sh. Ramesh Chander,
P.No.WZ-5A/1, Plot no.19,
First Floor, Vishnu Garden,
Delhi-110018.

.....Appellants

Vs

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

..... Respondent

Date of Filing of Appeal	:	11.12.2024
Date of Order	:	08.05.2025

JUDGEMENT

1. The present appeal has been filed impugning the demolition order dated 22.12.2023 under Section 343 of DMC Act, 1957 in respect of property bearing no .P.No.WZ-5A/1, Plot No.19, First Floor, Vishnu Garden, New Delhi-110018.

2. It is submitted by Ld. counsel for appellant that demolition order is absolutely inconsistent with show cause notice issued by MCD. He submits that by impugned demolition order, MCD has directed to demolish the mumty above staircase, but there is no mention of said mumty in the show cause notice. He submits that the demolition order has travelled beyond the scope of show cause notice which is not permissible as per law. He further submits that impugned order is highly inconsistent, as on the one hand MCD has alleged that major additions and alterations have been carried out at first floor and on the other hand

it concluded that construction at first floor is carried out prior to the year 2007 (except projections) and therefore, the same is protected from punitive action. He submits that despite concluding that structure is old and protected, MCD has passed demolition order against projections on first floor of property in question. He submits that demolition order is absolutely arbitrary and inconsistent.

3. Ld. Counsel for respondent / MCD submits that demolition order was passed after following due to process of law. He submits that projections as well as mumty are unauthorized constructions which are liable to be demolished.

4. Arguments heard and record perused. Before proceedings further to appreciate controversy in this case it will be prudent to reproduce the relevant extracts of show cause notice dated 16.10.2023 as well as impugned demolition order dated 22.12.2023. The show cause notice dated 16.10.2023 records that the following structure was booked by the MCD.

“unauthorized construction in the shape of major addition & alteration at existing 1st floor with projection on municipal land. (GF old and occupied).”

5. The relevant extracts from the impugned order is reproduced below:

“In the instant matter, subsequent to initiation of action under Section 343 & 344 of DMC Act against Property No. WZ-5A/1, Plot No. 19, Vishnu Garden, New Delhi vide File No. EE(B)-I/UC/WZ/2023/299 dated 16.10.2023 for unauthorized construction in the shape of major addition & alternation at existing First Floor with projection on mpl. Land (Ground Floor old & occupied), a show cause notice under Section 344(1) & 343 of the DMC Act was issued to the owner/building on 16.10.2023.”

“And Whereas, with the view to ascertain the veracity of submissions made by the applicant during hearing, site was inspected by the Jr. Engineer (Bldg.) concerned on 29.11.2023 and he reported that during inspection, the unauthorized construction booked in the shape of

mumty above staircase and projection over the mpl. Land carried out recently at old & exiting First Floor of the property is found existing in the property.

And Whereas, the matter has been examined based on the submissions and documents brought on record and found that the owner has carried out unauthorized construction recently in shape major addition & alteration at already existing First Floor (which is old & occupied) with projection on mpl. Land, without any permission. The documents submitted by the applicant although provides that the construction of First Floor is old and was carried out prior to year 2007 and therefore, same is protected from further punitive action as per the Delhi Special Law, Special Protection Act, but as regard the unauthorized construction recently carried in the shape of mumty above staircase projection over the mpl. Land, she failed to provide relevant document to prove that same are too comes under the protection act. Further, the submission as made by the owner through her reply to the show cause notice, she had shown her willingness to get regularize the property, as per rule. But she did not apply for the same in this office so far. Thus, the booking made by the department is applicable for action as per for DMC Act.

In view of above, I, N.K. Jha, Asstt. Engineer (Bldg.), West Zone, MCD while exercising the power of the Commissioner duly delegated under the Section 343 read with Section 491 of the DMC Act do hereby pass that since the major addition & alteration in the shape of mumty above staircase and projection over the mpl. Land at existing old property at First Floor, has been carried out by the owener recently, therefore, the action initiated agsint Property No. WZ-5A/1, Plot No.19, Vishnu Garden, New Delhi vide File No. EE(B)-I/UNAUTHORIZED CONSTRUCTION/WZ/2023/299 dated 16.10.2023 for unauthorized construction, was based on merit and shall remain in force.

Accordingly, the owner/applicant is hereby directed to demolish/rectify aforesaid unauthorized construction in the shape of mumty above staircase and projection over the mpl. Land within 15 days from receipt of this order. In the event of non-compliance, MCD shall take action in accordance with law and at the risk and cost of the appellant.

The Junior Engineer (Bldg.) concerned is hereby directed to serve upon the owners / occupiers (Stilt to Third Floor) a copy of the Speaking Order through all possible modes.”

6. A perusal of show cause notice as well as demolition order shows that mumty was not in question at the time when MCD has issued show cause notice to appellant. However, despite that the question of mumty was addressed in the demolition order in and it has been directed to be demolished. It is clear that demolition order of MCD has travelled beyond scope of booking which was made by them in the show cause notice.

7. In addition to aforesaid the impugned order suffer from following contradictions:

(a) MCD has booked the property by alleging that there is exist major addition and alteration in the first floor with projection on municipal land.

(b) Thereafter, MCD proceeded further to provide protection to the structure at first floor concluding that it was constructed prior year 2007. It is not understood in case there were major additional and alternations and the status quo as mandated under Section 3 of the Special Provision Act was violated, then how MCD has provided protection to the structure at first floor.

(c) Despite providing protection to the structure at first floor MCD booked the projections. It is not understood in case MCD has provided protection to the structure and had concluded that property was constructed prior to year 2007 and then how MCD can differentiate between portions (on same floor) which need to be demolished and which comes under protection. MCD cannot brew hot and cold at the same time.

8. From the aforesaid analysis, it is clear that the impugned demolition order has passed by MCD absolute inconsistent. On the one hand MCD is alleging major addition and alteration at first floor and breach the status quo and on the other hand MCD has provided

protection to first floor except projections. Similarly, the order has been passed against the mumty which was not in the scope of show cause notice. It is clear that the impugned order has been passed by MCD without proper application of mind and the order is inconsistent, contradictory and does not present a clear picture of status of the affair.

9. In view of the aforesaid, the impugned order dated 22.12.2023 is set aside. The matter remanded back to the MCD for deciding the same afresh. Interim application is also disposed off in view of said observation.

10. Appellant shall appear before the MCD on **15.05.2025 at 02.00 PM**. The MCD shall provide an opportunity to appellant to submit additional reply, if any and also grant them personal hearing.

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 appellants.

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

13. 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 08.05.2025 (R)**

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