

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

APPEAL NO.173/ATMCD/2025

1. Smt. Kiran Bhagwasiya & Anr.
W/o Sh. Ajit Singh,
R/o 10504, Baghichi Allaudin,
Gali No.4 & 5, Paharganj,
New Delhi-110055.
2. Sh. Ajit Singh,
S/o Late Sh. Ganga Ram,
R/o 10504, Baghichi Allaudin,
Gali No.4 & 5, Paharganj,
New Delhi-110055.

.....Appellants

Vs

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

..... Respondent

Date of Filing of Appeal	:	26.03.2025
Date of Order	:	19.05.2025.

JUDGEMENT

1. The present appeal has been filed by appellant impugning the vacation notice under Section 349 of DMC Act, 1957 dated 21.03.2024 issued by the MCD.
2. Ld. counsel for respondent / MCD has taken a preliminary objection that the present appeal against vacation notice is not maintainable and is time barred.
3. It is submitted that Ld. counsel for appellant that the demolition order dated 21.05.2024 was passed against the property in question and thereafter, MCD had issued a vacation notice dated 21.03.2024. It is submitted that the vacation

notice can be challenged under Section 347B(p) of DMC Act. It is argued that limitation needs to be reckoned from the date of vacation notice and the appeal is within limitation and not time barred.

4. On the other hand, Ld. Counsel for respondent / MCD submits that the appeal against demolition order can be preferred under Section 343 (3) of DMC Act. He submits that vacation notice under Section 349 of DMC Act is issued in furtherance of the demolition order. He submits that occasion for vacation notice arises when the owner / occupier do not comply the demolition order and the property has to be demolished by MCD after getting it vacated. He submits that vacation notice does not provide any cause of action for filing appeal. He submits that appellant has filed copy of demolition order dated 21.05.2024 along with the appeal but despite that demolition order is not challenged. He submits that the appeal is time barred and the limitation period needs to be reckoned from the date of expiry of period specified in demolition order.

5. Arguments heard and record perused. Perusal of demolition order shows that it has been passed after hearing the appellant as well as other owners / occupants in the property in question. After passing of demolition order, MCD issued a vacation notice under Section 349 of DMC Act dated 21.03.2024. Appellant has challenged vacation notice and demolition order is not challenged. Section 343(3) of the DMC Act provides mechanism for filing the appeal against demolition order and not against the vacation notice. Section 347B of DMC Act also does not provide any mechanism for impugning the vacation notice. Section 347B(p) covers the issue related to the planned development and the case of appellant is not covered under the said provision. There is a specific provision for filing appeal against demolition order under Section 343(3) of DMC Act and appellant cannot be permitted to take recourse to Section 347B(p) of DMC Act, which otherwise also is not applicable in the facts and circumstances of the present case. I agree with the contentions made by the Ld. counsel for respondent / MCD that the limitation needs to be reckoned from the date of

expiry of period specified in the demolition order. No application seeking condonation of delay is filed by appellant. No explanation for delay has been tendered. The present appeal against the vacation notice is not maintainable and dismissed.

6. It is clarified that the observations made in this order shall not be construed as observation on merits of this case.

7. It is clarified that appellant is at liberty to seek appropriate remedy in respect of the demolition order subject to law of limitation as well as other extant of law.

8. 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 19.05.2025 (R)**

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