

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

APPEAL NO. 1064/ATMCD/2024

1. Smt. Gunjan Deepak
W/o Sh. Nirmal Kumar Deepak,
H.No.121, Upper Ground Floor,
Shiv Puri, Village Khureji Khas,
Illaqah Shahdara, Delhi-110051.
2. Smt. Preeti Jain
W/o Shri Nitin Jain,
H.No.121, First Floor,
Shiv Puri, Village Khureji Khas,
Illaqah Shahdara, Delhi-110051.
3. Sh. Krishan Gopal Sharma
S/o Sh. Ram Krishan Sharma,
H.No.121, Upper Ground Floor,
Shiv Puri, Village Khureji Khas,
Illaqah Shahdara, Delhi-110051.

.....Appellants

Vs

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

..... Respondent

Date of Filing of Appeal	:	09.12.2024
Date of Order	:	21.05.2025

JUDGEMENT

1. The present appeal has been filed by appellant impugning the demolition order dated 15.07.2024 passed in respect of unauthorized construction in the shape of ground floor, first floor, second floor, third floor

and fourth floor in the property bearing no.121, Shiv Puri, Jagatpuri, Delhi-110051.

2. It is submitted by Ld. counsel for appellant that property in question is owned by different owners. She submits that upper ground floor is owned by Ms. Gunjan Deepak and first floor is owned by Ms. Preeti Jain and second floor & third floor are owned by Mr. Krishan Gopal Sharma. She submits that the registered sale deeds of respective owners are filed along with appeal. She submits that none of the owners were given opportunity of hearing by MCD. She submits that MCD record shows that the show cause notice as well as demolition order are not addressed to the owners. She submits that Mr. Gaurav Gupta, Mr. Nitin Jain and Ms. Mamta Sharma are family members and not the owner and it is settled legal position that issuance of show cause notice against the family members is not sufficient to initiate proceedings against the owners of the property in question. In addition to the aforesaid, she further submits that the show cause notice as well as demolition order was never served on the owners as well as family members and the demolition order is passed in violation of principle of natural justice without providing any hearing. Ld. counsel for appellant has disputed the relationship of appellant with Mr. Sahil who is stated to be recipient of postal article.

3. Ld. Counsel for respondent / MCD submits that the demolition order was passed after following due process of law. He submits that Mr. Gaurav Gupta, Mr. Nitin Jain and Ms. Mamta Sharma are family members of appellants. He submits that the postal tracking report shows the service of demolition order upon Mr. Sahil. He submits that appellant has failed to appear before the MCD and submit any reply and therefore, the order was passed as per law.

4. Arguments heard and record perused. It is the case of appellant that show cause notice was issued in the name of family members and the proceedings were not initiated against the owners of the property. It is settled law that the proceeding need to be initiated against the owner and reference can be made to decision in the case titled as “**Mahender Singh Vs MCD**”, reported as 1988 (34) DLT 118” held that:-

5. These sections came up for consideration in *Krishan Gopal v. Municipal Corporation of Delhi*, ILR (1972) 1 Del 272. It was held by D.K. Kapur, J. that it is the person concerned with the erection who has to be served and that person is the person at whose instance the erection or work has been commenced, and if such a person cannot be identified then every person at whose instance the work or erection may have been commenced has got to be served, and this necessarily includes the owners of the building. It is not the case of the Municipal Corporation of Delhi that the officials of the Corporation could not have found out the names of the owners of the buildings from their own record before sending a show cause notice. Even in the proceedings recorded by the zonal Engineer, it is not mentioned that new construction was not being done at the instance of the owners of the building, so in law it was required that the show cause notice ought to have been issued in the name of the owners of the building. Moreover, the demolition order has been made in the name of the petitioners who are the owners of the building and a show cause notice also in law should have been served in the name of the owners of the building. This is a mandatory requirement of law that no demolition order should be made against a person unless and until a show cause notice has been served on that very person.....

6. However, counsel for the respondent has vehemently argued that no prejudice has been caused to the petitioners for want of service of show cause notice in their names inasmuch as it was one of the petitioners who had actually received the show cause

notice although it was issued in the name of his father, Sh. Khem Chand and it was one of the petitioners who participated in the proceedings before the Zonal Engineer and so, the show cause notice is a valid one. I am afraid that this contention cannot be accepted. The service of the show cause notice on the person concerned before passing the demolition order is mandatory. There is no question of any prejudice being caused or being caused or not being caused when a mandatory provision has not been complied with. In case the Zonal Engineer was of the view that it was Khem Chand who had erected the unauthorised construction, then the demolition order should have been passed against Khem Chand, but that is not the position here. The demolition order admittedly had been passed against the petitioners and not against Khem Chand. So, the law required that before passing the demolition order against the petitioners show cause notice ought to have been issued in their names and served on them. As it has not been done, it must be held that the whole proceedings regarding passing of the demolition order are illegal and on this ground alone the impugned demolition order and the appellate order are liable to be set aside.

5. The above legal proposition makes it absolutely clear that show cause notice for initiating proceedings against the property of appellant should have been issued in the names of appellant/owners. I found merits in submissions made by Ld. counsel for appellant. Appellant has placed on record registered sale deeds showing details of owners and MCD should have initiated proceedings against owners of property in question.

6. MCD record shows that the show cause notice and demolition order were sent through post and delivered in the name of Mr. Sahil and appellant has disputed any relationship with Mr. Sahil. MCD record is silent about the service of impugned order by way of affixation or other modes as prescribed under Section 444 of DMC Act, 1957. Under these

circumstances, the service of show cause notice and demolition order is not free from doubt.

7. Appellant has placed on record the electricity bills, property tax record, title documents etc. and submits that their property is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment, 2011. The said documents need to be verified and appreciated by the MCD on merits before reaching any conclusion.

8. In view of the aforesaid, the impugned order dated 15.07.2024 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 observation.

9. Appellant shall appear before the MCD on **04.06.2025 at 02.00 PM**. The MCD shall provide an opportunity to appellant to submit additional reply, if any and also grant them personal hearing.

10. 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 within six months from 04.06.2025.

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

12. 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 21.05.2025 (R)**

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