

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

**APPEAL NO. 413/ATMCD/2024**

- 1. Sh. Ranjeet Malik**  
**S/o Sh. Hari Singh Malik**  
**R/o Flat 6503, C-6, Vasant Kunj,**  
**New Delhi-110070**
- 2. Smt. Poonam Malik**  
**W/o Sh. Ranjeet Malik**  
**R/o Flat 6503, C-6, Vasant Kunj,**  
**New Delhi-110070**

**..... Appellants**

**Versus**

**Municipal Corporation of Delhi**  
**(Through its Commissioner)**  
**E-1 Block, 17<sup>th</sup> Floor,**  
**Dr. Shyama Prasad Mukherjee Civil Centre,**  
**Jawaharlal Nehru Marg,**  
**New Delhi-110002.**

**..... Respondent**

**Date of Filing of Appeal:      04.06.2024**

**Date of Judgment                      :      21.05.2025**

**JUDGMENT**

1.            The present appeal has been filed by the appellants impugning the demolition order dated 12.04.2024 passed by the MCD under Section 343 of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) in respect of the unauthorized construction in the shape of excess coverage / deviations against sanctioned building plan in DDA Flats, Ground Floor bearing property no. C-6/6503, Vasant Kunj, New Delhi-110070.
2.            Ld. Counsel for appellants submits that first proviso of Section 343 of DMC Act, 1957 mandates that opportunity of hearing needs to be provided to the owner / occupier before passing of demolition order. He

submits that MCD issued a show cause notice dated 01.04.2024 which was duly replied by the appellants on 18.04.2024. He submits that thereafter appellants did not receive any hearing notice from the MCD and the demolition order was passed without providing any opportunity of hearing. He submits that the demolition order did not appreciate the pleas which have been taken by the appellants in their reply. It is argued that the demolition order does not whisper anything about the receipt of the reply also.

3. It is submitted that Writ Petition 5072 of 2024 was filed by one Ms. Pooja Kumari before the Hon'ble High Court of Delhi and during the course of the proceedings in the said Writ Petition, MCD filed a status report on 15.05.2024 and the appellants came to know about the demolition order passed by the MCD in this case. It is submitted that appellants on 16.05.2024 wrote a letter to the MCD to supply copy of demolition order and requested that the proceedings for demolition be stayed. He submits that when MCD gave deaf ears to the said request and appellants filed W. P. (C) 7710 of 2024 before the Hon'ble High Court of Delhi and only after the directions issued by the Hon'ble High Court of Delhi vide order dated 27.05.2024 the demolition order was supplied to the appellants.
4. It is further argued that the MCD record shows that the demolition order has been passed on the pretext of excess coverage / deviations against the sanctioned building plan in DDA Flat. It is submitted that the sanctioned building plan is not part of the MCD record. It is submitted that no measurements and nature of deviations have been specified in the demolition order as mandated by the Hon'ble High Court of Delhi in the case of **Masonic Club Vs. MCD & Anr**, (2001) 91 DLT 149.

5. Ld. Counsel for MCD submits that W. P. (C) 5072 of 2024 was disposed of by the Hon'ble High Court of Delhi vide order dated 30.04.2025 with liberty to the appellants to seek remedy before this Tribunal. He confirms that in W. P. (C) 7710 of 2024 Hon'ble High Court of Delhi issued directions for supply of demolition order. He confirms that there is no embargo on the jurisdiction of this Tribunal to adjudicate this appeal.
6. Ld. Counsel for MCD further submits that the demolition order was initially sent through the post but the postal article remained unserved. He submits that thereafter demolition order was affixed at the site and the photographs are available at page 126/C of the MCD record. He submits that demolition order had been passed after following due process of law.
7. I have heard the arguments and perused the record. In the present case, service of show cause notice was not in dispute as the same was duly replied vide letter dated 18.04.2024. The said reply is at page 113/C of the MCD record. The dispute in the present case revolves around the service of demolition order. The postal tracking report available at page 127/C of the MCD record shows that postal article was unserved and was returned to the sender. Thereafter, MCD resorted for affixation. The original photographs of affixation are not on MCD record. Affixations proceedings are not witnessed by any public witness. The time stamp and the geographical coordinates are also not available in the photographs of affixation. After becoming aware about the demolition order, the appellants wrote a letter dated 16.05.2024 to the MCD to supply copy of demolition order which also substantiate the fact of non-service upon the appellants. It is a matter of record that only after directions of the Hon'ble High Court of Delhi in W. P. (C) 7710 of 2024 the demolition order was supplied to the appellants. From the facts and

circumstances, it is clear that the service of demolition order is not free from doubts. Further no notice of hearing is available in the MCD record which also confirms that no personal hearing was granted to the appellants before passing of the order.

8. The impugned order is passed against the excess coverage / deviations against the sanctioned building plan in DDA Flats. The sanctioned building plan is not part of the MCD record. The measurements and nature of deviations is also not mentioned. The appellants in their reply dated 18.04.2024 have also taken an objection regarding non-mentioning of the measurements and nature of deviations, but despite that the MCD did not bother to mention the same in the order. It is clear that the order had been passed by the MCD in ignorance of the directions issued by the Hon'ble High Court of Delhi in the case of **Masonic Club Vs. MCD &Anr**, (Supra), 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 is 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.”

9. The appellants had submitted a detailed reply dated 18.04.2024 before the MCD. The said reply is available at page 113/C in the MCD

record. The impugned demolition order does not mention anything about the receipt of the said reply and had been passed in a cyclostyle format. The impugned order does not mention and appreciate the pleas which have been taken by the appellants in their reply. It is clear that the impugned order is non-speaking and is passed in ignorance of directions issued by the Hon'ble Delhi High Court in case titled as **JaspalSingh Jolly Vs. Municipal Corpn. of Delhi**, (2005) 125 DLT 592 held that:

“13. ....Noting the decisions of the Supreme Court as *Erusia Equipment & Chemicals Ltd. v. State of West Bengal*, (1975) 1 SCC 70 : AIR 1975 SC 266 (at p. 269); 106 (2003) DLT 573, *Mekaster Trading Corportion v. Union of India*; and (1990) 4 SCC 594, *S.N. Mukherjee v. Union of India*, I had held that the aforesaid decision established the legal proposition that orders which are subject to judicial review must be in compliance with the principles of natural justice, namely (a) proper hearing, (b) decision by an unbiased mind; (c) taking into consideration all relevant factors and excluding the irrelevant factors; and (d) reasons to be recorded.

14. Needless to state, reasons enable the superior Court to effectively exercise supervisory jurisdiction. Additionally, when reasons are stated, the person affected knows the mind against him. A decision may be right, but not sound. Such a decision leaves a grievance in the mind of the person affected that he was not told why the decision was taken.

15. Form or scope of reasons cannot be judicially laid down in a strait-jacket. The extent and nature of the reasons depend upon each case. What is essential is that the order must state the elements which had led to the decision. The order much reflects the process of the mind. The reasons must show that the decision maker successfully came to grips with the contentions advanced. Reasons are links between material on which conclusions are based and the decision. Conclusions are not reasons.”

10. In view of the above facts and circumstances, the impugned order dated 12.04.2024 is set aside. The matter is remanded back to the Quasi Judicial Authority of MCD for deciding the same afresh.
11. The appellants shall appear before the Quasi Judicial Authority of MCD on **04.06.2025 at 12.30 PM**. The Quasi Judicial Authority shall provide an opportunity to the appellants to submit reply and also grant them personal hearing.

12. 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 the appellants. The appellants shall however not raise any unauthorized construction in the said property.
13. 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 21.05.2025 (s)**

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