

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

APPEAL NO. 794/ATMCD/2024

1. Smt. Shalini Arora
W/o Sh. Chandan Arora
Available at : 1/777, Nicholson Road,
Kashmere Gate, Delhi -110006

2. Smt. Suman Arora
W/o Sh. Rajesh Arora
Available at : 1/777, Nicholson Road,
Kashmere Gate, Delhi -110006

..... Appellants

Versus

Municipal Corporation of Delhi
(Through its Commissioner)
17th Floor, Civic Centre, Minto Road,
New Delhi-110002.

..... Respondent

Date of Filing of Appeal: 17.09.2024

Date of Judgment : 27.05.2025

JUDGMENT

1. The present appeal has been filed by the appellants impugning the order dated 02.02.2024 under Section 344 (2) of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) to stop the unauthorized construction and seized the construction material tools etc. in respect of property bearing no. 1/777, Nicholson Road, Kashmere Gate, Delhi -110006.
2. It is submitted by Ld. Counsel for the appellants that demotion order dated 30.10.2023 was passed in respect of unauthorized construction at the ground and the first floor vide File No. 167/UC/74/B-II/CSPZ/2023 Dated 17.10.2023. Therefore, another demotion order

dated 29.12.2023 was passed in respect of unauthorized construction at the ground and first, second and third floor vide File No. 202/UC/74/B-II/CSPZ/2023 Dated 29.12.2023 in continuance of previous demotion order.

3. It is the case of the appellants that after issuance of the aforesaid demolition orders, order under Section 344 (2) of the DMC Act, 1957 to stop the work was passed by the MCD. Neither the show cause notice nor the impugned demotion orders were served upon the appellants.
4. It is submitted that demolition orders are the genesis which led to the passing of the impugned work stop order. It is submitted that while passing demolition order also no opportunity of hearing was provided to the appellants as mandated in first proviso of Section 343 of DMC Act, 1957. He submits that MCD record shows that the show cause notice and demotion orders are addressed to “owner / occupier “ and not addressed to any individual. It is argued that the appellants came to know about the present proceeding only when MCD filed status report dated 13.05.2024 in W. P. (C) 4890/2024 before the Hon’ble High Court of Delhi.
5. It is argued that the appellants have carried out the construction in furtherance of the sanctioned building plan dated 26.04.2022 approved vide online ID No. 10100978. It is submitted that the impugned order is passed in absolute ignorance of sanctioned building plan. It is submitted that no reference whatsoever is made regarding the sanctioned building plan in the impugned order and the order is arbitrary and is passed in ignorance of facts.
6. Ld. Counsel for the MCD submits that the impugned order was passed after following due process of law. He submits that the sanctioned building plan is already revoked vide order dated 11.06.2024 and the structure has become unauthorized.

7. I have heard the arguments and perused the record. MCD record in File No. 167/UC/74/B-II/CSPZ/2023 dated 17.10.2023 of demolition proceedings shows that no service report in respect of the work stop is available on record. It further shows that the show cause notice dated 17.10.2023 was sent to the “owner / occupier”. A reply dated 01.10.2023 was filed by the appellants which is at page 77/C of the appeal. In the reply the appellants have taken a categorical stand that they have a sanctioned building plan. The said reply is not mentioned anywhere in the demolition order. The demolition order does not mention anything about sanctioned building plan and do not appreciate the plea taken by the appellants in their reply.
8. MCD record in File No. 202/UC/74/B-II/CSPZ/2023 Dated 29.12.2023 i.e. for demolition order dated 29.12.2023 also do not mention anything about the sanctioned building plan and demolition order had been passed in ignorance of the same.
9. It is admitted position that on the date of passing of impugned order, the sanctioned building plan was subsisting and was not revoked by the MCD. The said sanctioned building plan is revoked vide order dated 11.06.2024. MCD was bound to appreciate and pass the impugned order in the light of the sanctioned building plan which was unfortunately not done despite a categorical reply submitted by the appellants in File No. 167/UC/74/B-II/CSPZ/2023 Dated 17.10.2023. Neither in the demolition order proceedings nor while passing the impugned work stop order, MCD has considered the factum of subsisting sanctioned building plan. It is clear that the impugned order had also been passed in complete ignorance of the sanctioned building plan.
10. In view of the above facts and circumstances, the impugned work stop order dated 02.02.2024 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 **10.06.2025 at 12.30 PM**. The Quasi Judicial Authority shall provide an opportunity to 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 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 27.05.2025 (s)**

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