

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

APPEAL NO. 784/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: 13.09.2024

Date of Judgment : 27.05.2025

JUDGMENT

1. The present appeal has been filed by the appellants impugning the demolition orders dated 30.10.2023 and 29.12.2023 passed by the MCD under Section 343 of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) in respect of property bearing no. 1/777, Nicholson Road, Kashmere Gate, Delhi -110006.
2. The demotion order dated 30.10.2023 was passed in respect of unauthorized construction at the ground and first floor vide File No. 167/UC/74/B-II/CSPZ/2023 Dated 17.10.2023.
3. The demotion order dated 29.12.2023 was passed in respect of unauthorized construction at the ground, 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.

4. It is the case of the appellants that neither the show cause notice nor the demotion orders were served upon the appellants. It is submitted that 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 of 2024 before the Hon’ble High Court of Delhi.
5. It is argued that the appellants had 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 demolition 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 demotion orders and the construction is arbitrary termed as unauthorized.
6. Ld. Counsel for the MCD submits that the impugned demotion orders were passed after following due process of law. He submits that the sanction 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 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 had 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 pleas taken by the appellants in their reply.

8. MCD record in File No. 202/UC/74/B-II/CSPZ/2023 Dated 29.12.2023 shows that the demolition order is stated to have been served by way of affixation. The demolition order is addressed to the “owner / builder’ and the affixation cannot be said to be free from doubts. MCD record is silent as what efforts were made to serve the demotion order by post. It is also silent regarding name of the person who refused to receive the order. In these circumstances the service is not free from doubt. The demolition order dated 29.12.2023 also did not mention anything about the sanctioned building plan and is passed in ignorance of the same.
9. It is admitted position that on the date of passing of demolition order dated 30.10.2023 and 29.12.2023 the sanctioned building plan was subsisting and was not revoked by the MCD. MCD was bound to appreciate and pass the demolition order in the light of sanctioned building plan which is unfortunately not considered despite a categorical reply submitted by the appellants.
10. Apart from that, the MCD record shows that no hearing notices have been issued to the appellants as mandated under first proviso to Section 343 of DMC Act, 1957 in File no. 167/UC/74/B-II/CSPZ/2023 dated 17.10.2023. The demolition order is sent by post, the name of the addressee in the registered post receipt is mentioned as “owner / occupier”. The name of any individual is not mentioned in the postal receipt. Appellants have denied receipt of the postal article. Service of postal article in the name of “owner / builder” creates ambiguity regarding name of the addressee and the service cannot be said to be free from doubts.
11. In view of the above facts and circumstances, the impugned demolition orders dated 30.10.2023 and 29.12.2023 are set aside. The

matter is remanded back to the Quasi Judicial Authority of MCD for deciding the same afresh.

12. 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.
13. 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.
14. 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**