

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

**APPEAL NO. 99/ATMCD/2025**

**M/s. Tara Palace Hotel,  
Through its Partner  
Sh. Sushil Kumar Goyal,  
Having its office at :4675-A, Gali No.21,  
Ansari Road, Darya Ganj,  
New Delhi**

**..... Appellant**

**Vs**

**Municipal Corporation of Delhi  
(Through its Commissioner)  
Civic Centre,  
Minto Road, New Delhi-110002**

**..... Respondent**

**Date of Filing of Appeal : 19.02.2025**

**Date of judgment : 16.07.2025**

**JUDGMENT**

1. The present appeal has been filed by the appellant impugning the demolition order dated 30.05.2023 passed under Section 343 of the DMC Act by MCD in respect of property No. 173-176, Katra Baryan, Fatehpuri, Delhi-10006 for unauthorized construction of part portion at ground floor.
2. It is the case of the appellant that neither the show cause notice nor the demolition order were served upon the appellant. It is submitted that the impugned order is passed without providing any hearing and in violation of mandate given under Section 343 of the DMC Act. In respect of the limitation period it is submitted that the delay has occurred due to non supply of the demolition order by the MCD. It is submitted that on

08.06.2023 MCD sealed the property and thereafter appellant approached the MCD and requested for supplying the orders. Appellant also filed an application dated 15.02.2025 with MCD with request to provide copy of demolition as well as sealing orders. On 17.02.2025 appellant received the copy of the orders and filed the appeal on 19.02.2025.

3. It is submitted by the Ld. counsel for appellant that the structure is old and they have placed on record the property tax / assessment record and other documentary evidence to show that the structure is old. He submits that the appellant was only carrying on repairs in the property which does not require any prior sanction/permission. He submits that while carrying on repairs the upper floors got collapsed and the property at present only comprises of ground floor.
4. Ld. counsel for appellant submits that there is a patent flaw in the demolition order. He submits that the demolition order refers to reply dated 27.01.2023 submitted by the appellant. He submits that reply dated 27.01.2023 was submitted by the appellant in the work stop notice proceedings which are appealable separately under Section 347-B (1)(k) of DMC Act, 1957. He submits that the appellant never received the show cause notice in the demolition proceedings and MCD has erroneously treated the reply submitted in a different proceedings in the demolition proceedings. He submits that this fact is also acknowledged by the MCD in their office notings at page No.1/N wherein it is recorded that the reply on record was received against show cause notice in work stop notice proceedings and no reply to the show cause notice in demolition proceedings was filed by the appellant. He submits that as the show cause notice was not received by the appellant, therefore, they never got any opportunity to submit their reply and documentary evidence in demolition proceedings before the MCD.
5. Ld. counsel for MCD submits that the appeal is time barred. He submits that the structure is unauthorized and the order was passed by the MCD

after following due process of law. He submits that appellant has failed to bring on record any concrete evidence to show that the structure is old and protected and in the absence of the same the structure without any sanctioned building plan is liable to be demolished.

6. I have heard the arguments and perused the record. So far as question of limitation is concerned, the appellant has claimed that neither the demolition order nor the show cause notice was supplied to them. Perusal of MCD record shows that the show cause notice dated 23.01.2023 was sent through speed post. The tracking report shows that the article delivery at GPO, Delhi. Thereafter on page 24/C and 25/C of the MCD record photographs of affixation are there. There is no office noting or endorsement in respect of approvals taken from the Senior Officer for carrying out affixation proceedings. It is not clear as to who is the officer who has affixed the show cause notice. The affixation proceedings are also not witnessed by any public person. It is clear from the facts and circumstances that service of show cause notice is not free from doubts.
7. In respect of demolition order dated 30.05.2023 the MCD record shows that the same was served through speed post. The tracking report of postal article is not on MCD record. The MCD record is silent as to what efforts were made to effect the service through other modes as specified in Section 444 of the DMC Act. MCD record (Page-39/C) shows the letter dated 15.02.2025, by which the appellant had requested MCD to provide the copy of demolition and sealing order. From the MCD record it is clear that the service of show cause notice as well as demolition order is not free from doubts. The letter dated 15.02.2025 written by the appellant also corroborate said fact. In these circumstances appellant has been able to show sufficient cause for condonation of delay. Accordingly, application seeking condonation of delay is allowed and the delay is condoned.

8. From the aforesaid it becomes clear that the impugned order had been passed without providing any opportunity of hearing to the appellant and the same is in contravention of settled legal position.
9. Perusal of the MCD record shows that initially work stop notice dated 29.12.2022 under Section 344 of DMC Act, 1957 was issued by the MCD (at page 18/C). The reply filed on 27.01.2023 (at page 28/C) is the reply to the show cause notice and the said fact becomes amply clear from the subject header. The file noting (at page 1/N of MCD record) also confirms the fact that the said reply was received in the work stop notice proceedings. The work stop notice proceedings are appealable separately under Section 347 (1) (k) of the DMC Act, 1957. It is clear that no reply is filed by the appellant in the demolition proceedings. It is also clear from the record that MCD has erroneously treated the reply submitted in the work stop proceedings under Section 344 of the DMC Act, 1957 during the demolition proceedings. This fact becomes grave in the light of the facts that the service of show cause notice in demolition proceedings is not free from doubts.
10. In addition to aforesaid, the appellant has placed on record the property tax /assessment inspection report and other documentary evidence to claim that the structure is old and protected under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act. The aforesaid documents need to be appreciated on merits by the MCD before reaching any logical conclusion in respect of protection available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.
11. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 30.05.2023 is set aside. The matter is remanded back to the MCD for deciding the same afresh.

12.The appellant shall appear before the MCD on **30.07.2025 at 02.00 PM.**

The MCD shall provide an opportunity to appellant to submit reply and also grant him personal hearing.

13.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 appellant. The appellant shall not raise any unauthorized construction in the said property without necessary permission as per law.

14.The file of the respondent be returned 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 16.07.2025 (J)**

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