

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

APPEAL NO. 181/ATMCD/2023

- 1. Sh. Varun Gandhi**
S/o Sh. Shiv Kumar Gandhi
R/o D-303, Varun Marg, Defence Colony,
New Delhi -110034.
- 2. Smt. Sudha Gandhi**
W/o Sh. Shiv Kumar Gandhi
R/o D-303, Varun Marg, Defence Colony,
New Delhi -110034. Appellants

Versus

Municipal Corporation of Delhi
(Through its Commissioner)
O/o the Chief Legal Officer,
17th Floor, Civic Centre, Minto Road,
New Delhi-110002. Respondent

Date of Filing of Appeal : 29.03.2023

Date of Judgment : 22.07.2025

JUDGMENT

1. The present appeal has been filed by the appellants impugning the sealing order dated 10.12.2010 passed by the MCD under Section 345-A of The Delhi Municipal Corporation Act, 1957 (hereinafter referred as DMC Act, 1957) in respect of the property bearing no. IX/1242, Multani Mohalla, Subhash Road, Gandhi Nagar, Delhi-110031 for unauthorized construction at Ground Floor, First Floor, Second Floor, Third Floor, Fourth Floor and structure thereupon.

2. It is submitted by Ld. Counsel for the appellants that the impugned order as well as show cause notice was never served upon the appellants. He submits that appellants had purchased the property in the year 2005-2006. The mutation also exist in their name in the MCD record. He submits that despite the said fact the MCD did not bother to initiate the proceeding in the name of the owners / appellants and acted in violations of directions issued by Hon'ble High Court of Delhi in the case titled as **Mahender Singh V. MCD** reported as 1988 (34) DLT 118.
3. It is submitted by Ld. Counsel for the appellants that they came to know about the impugned order only when the liquor shop at the ground floor was sealed by the MCD on 15.03.2022. He submits that MCD has also created a false record to justify their sealing action of the year 2010. He submits that no sealing action was done by the MCD in the year 2010. He submits that the said facts become clear by the statement given by the then AE Mr. Vinod Kr. Sharma on 02.06.2025 wherein he stated that the file noting at page 3/N of sealing file is not signed by him and he has no knowledge about the sealing action. He submits that the file noting at page 10/C of the MCD sealing record does not mention anything about the history of sealing in the year 2010 and clearly shows that MCD has interpolated the record to justify their arbitrary action.
4. Ld. Counsel for the appellants submits that they have placed on record the property documents, property tax returns, property tax assessment returns to show that the property in question is old and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. He submits that appellants never got any opportunity to place these documents before the MCD and put forth their versions.

5. Ld. Counsel for MCD submits that the appeal is time barred. He submits that the impugned order was passed in the year 2010 and the appeal was filed in the year 2023 and is highly time barred and no reasonable justification is provided by the appellants. He submits that the property in question is unauthorized. The appellants failed to appear before the MCD despite issuance of notice and due process of law was followed while passing the impugned order.
6. I have heard the arguments and perused the record. Perusal of MCD record shows that the impugned order is passed and addressed to one Mr. Shiv Gandhi and not to the appellants. Appellants have placed on record copy of Mutation Certificate dated 06.03.2006. The said Certificate shows that MCD was aware about the owners of the property at the time of passing of the impugned order but despite that the order was not passed against the owners. It is clear that the MCD has acted in ignorance of directions passed by Honble High Court of Delhi in case titled as **“Mahender Singh Vs MCD”, reported as 1988 (34) DLT 118** has 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.

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 and not by mere mentioning owner / occupier / builder.

7. Perusal of the MCD record shows that the show cause notice for sealing was issued by Speed Post but tracking report is not on record. The MCD record is silent regarding mode of service of sealing order. MCD has relied upon the file noting at page 3/N to show that the property was sealed on 13.12.2010 and the appellants were aware about the sealing action. The said file noting was not signed by the then AE. The then AE Mr. Vinod Kumar Sharma appeared before the Tribunal and stated that he has no knowledge about the sealing action mentioned at page 3/N and the file is not signed by him.
8. From the MCD record it is clear that from the year 2010 to 2022 no action was taken against the property in question and the second

instance of sealing happened only on 15.03.2022. It is the case of the appellants that they came to know about the impugned order only when the property was sealed on 15.03.2022.

9. From the record it is clear that neither the show cause notice nor impugned order was addressed to the appellants / owners. The sealing of 2010 is in dispute especially in view of the denial made by Mr. Vinod Kumar Sharma the then AE in his statement. The file noting at page 10/C also does not mention anything about the sealing action of the year 2010 and creates a doubt about the file noting at page 3/N. No action was taken against the property for a period around 12 years. After sealing action on 15.03.2022 appellants came to know about the impugned order and filed the appeal. It is clear that appellants have been able to show sufficient cause for condonation of delay and the delay is condoned.
10. The MCD record does not contain any notice of hearings or the office notings showing the proceeding before the Quasi Judicial Authority. It is clear that the order has been passed by the MCD without providing any opportunity of hearing to the owners of the property / appellants and the order is in violation of mandate in the first proviso of Section 345A of the DMC Act, 1957 and mandate given by Hon'ble High Court of Delhi in the case titled as **Parveen Ahuja v. MCD and Ors.** and has passed the following directions:-

It cannot be denied that principles of natural justice have been violated in the present case, particularly when it is settled law that rules of natural justice must be read into Section 345-A of the DMC Act, as observed in the case of *Ahuja Property Developers (P) Ltd. vs. MCD* reported as 42(1990) DLT 474 (DB).

11. In addition to aforesaid, the appellants have placed on record the title documents property tax returns, property tax assessment returns. MCD in the status report dated 09.07.2025 also confirmed the issuance of

rectification order dated 07.10.2020 and 06.05.2024. The appellants did not get any opportunity to place the said record before the MCD. The said record is necessary to be considered by MCD on merits before reaching any logical conclusion in respect of protection which may be available under under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

12. In view of the above facts and circumstances, the impugned order dated 10.12.2010 is set aside. The matter is remanded back to the Quasi Judicial Authority for deciding the same afresh.
13. The appellants shall appear before the Quasi Judicial Authority on **04.08.2025 at 2.30 PM**. The Quasi Judicial Authority shall provide an opportunity to appellants to submit reply and also grant them personal hearing.
14. 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.
15. 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 22.07.2025 (s)**

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