

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

APPEAL NO. 197/ATMCD/2025

Sh. Neelam Singh Chauhan
Proprietor of M/s Durga Trading Company
S/o Sh. Amar Singh Chauhan
R/o 10/10, Under Hill Lane,
Civil Lines, Delhi -110054.

..... Appellant

Versus

Municipal Corporation of Delhi.
(Through its Commissioner)
Civic Centre, Minto Road,
S. P. M. Mukherjee Marg,
New Delhi-110002.

..... Respondent

Date of Filing of Appeal : 04.04.2025

Date of Judgment : 24.07.2025

JUDGMENT

1. The present appeal has been filed by the appellant impugning the sealing order dated 04.10.2024 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 Farm No. 02, 12 Petals, Samalkha Revenue Estate, Rajokari to Kapashera Road, Delhi - 110097.
2. Ld. Counsel for the appellant submits that the delay in filing of the appeal occurred due to non-supply of the sealing order. He submits that appellant had applied for regularization of the property and was waiting for its decision. He submits that when no action was taken by the

MCD and his pleas went to deaf ears they filed the present case upon knowing about the passing of the order dated 04.10.2024. He also disputes receiving of notice by one Shubham and submits that order was never supplied to them. He submits that in case the appellant is not heard on merits, the appellant will become remediless against the sealing order .

3. In respect of the application seeking permission to file additional documents, it is submitted by Ld. Counsel for the appellant that during the proceeding before the Quasi Judicial Authority the appellant informed that they have applied for RTI and in the process of obtaining the documents. He submits that due to leakage and seepage in the property of the appellant, the appellant was not in the custody of relevant record. He submits that MCD closed the opportunity for filing the documents and proceeded ahead and passed the order. It is argued that appellant is relying upon the inspection report of the year 2007, the MCD property tax assessment report, revenue record and the legal proceedings between the erstwhile owner and the RWA to show that the structure in question existed prior to the cut off date and protected under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

4. In respect of the appeal, it is submitted by Ld. counsel for the appellant that initially MCD passed sealing order dated 01.05.2024 which was challenged before this Tribunal vide Appeal No. 393/2024. Vide judgment dated 05.06.2024 the Tribunal acknowledged the fact that the order is non-speaking as it does not provide any reasons and remanded back the matter for fresh adjudication with direction to pass speaking order after dealing with all submissions, pleas and defences raised by the appellant. He submits that after remand back of the proceeding, MCD had passed the impugned order dated 04.10.2024 which is once again non-

speaking. He submits that in reply dated 29.04.2024 submitted before the MCD appellant has taken a plea that the property is protected and have also filed relevant documents. He submits that despite the directions of the Tribunal, the impugned order do not give any reasons and do not appreciate the pleas / documents of the appellant. He submits that the order is arbitrary and passed in complete ignorance of directions issued by this Tribunal vide judgment dated 01.05.2024.

5. Ld. Counsel for MCD opposes the appeal. He submits that the appeal is time barred and no reasonable ground for condonation of delay has been cited. He submits that the additional documents filed by the appellant cannot be considered at this juncture. He submits that appellant had failed to file these documents before the MCD despite the remand back of the matter and cannot be permitted to bring new documents at this juncture. He submits that impugned order is passed after following due process of law. It is argued that appellant had failed to bring on record any evidence to show that the structure is old and protected. He submits that as the structure is constructed without any sanctioned building plan and therefore the same is unauthorized and liable to be demolished.
6. I have heard the arguments and perused the record. In respect of the limitation period, the appellant has disputed the service of sealing order. MCD record shows the receiving of notice by one Shubham Kumar on behalf of the appellant. Appellant has disputed the said service and submitted that order was not supplied to them. MCD record is silent in respect of the service by other modes as specified under Section 444 of the DMC Act, 1957. The fact of pendency of regularization application at that juncture is also not disputed by the MCD. In the circumstance especially when the service of sealing order is not free from doubts, the

appellant has been able to show sufficient cause for condonation of delay and the delay is condoned.

7. In respect of the application seeking permission to file additional documents, the MCD record at page 4/N 5/N 6/N and 8/N shows that appellant informed about the RTI application and sought time to file the documents. It is stated in the application that there was a seepage in the office of the appellant and the appellant was not in custody of the record. The opportunity to file documents was closed by the MCD on 23.09.2024 (at page 9/N). From the MCD record, it becomes clear that appellant was seeking opportunity to file documents before the Quasi Judicial Authority but due to their non-availability could not file the record and suffered the impugned order.
8. Through the present application the applicant is seeking to place on record the inspection report dated 31.01.2007, legal notice dated 11.09.2006, MCD assessment report dated 13.02.2025 and the revenue record. All these documents refer to the structure which was existing in the property prior to the cut off date. In order to unearth the truth and decide the controversy, these documents are necessary as they go to the root of the matter for deciding the question of protection available under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. Accordingly, the application seeking permission to file additional documents is allowed and the documents is taken on record.
9. It is argued by the Ld. Counsel for the appellant that despite the directions of this Tribunal, MCD has passed a non-speaking order which does not appreciate the pleas and the documents filed by the appellant. In order to appreciate the submissions, it will be relevant to reproduce the following extract:-

Order dated 01.05.2024

And whereas, upon carefully considering the reports before me and having gone through the file and all other relevant papers, the undersigned is satisfied that for the purpose of carrying out the provisions of this Act and for preventing any dispute and as to the nature and extent of unauthorized erection work, it would be essential to order sealing of the aforesaid premises or the unauthorized construction/work being carried on or completed therein for the purpose of carrying out the provisions of DMC Act and for preventing any dispute as to the extent and nature of erection or work later on.

Judgment Dated 05.06.2024 in Appeal No. 393/24

13. The right to be heard is one of the fundamental principles of natural justice, which is to be followed by all the Administrative Authorities and Quasi Judicial Authorities. The fundamental principle of natural justice is that the person against whom an order is passed must know as to why and on what basis said order has been passed. The order must be speaking one, giving reasons for reaching to the conclusion and must not be cryptic in nature.

16. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned sealing order dated 01.05.2024 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

17. The appellant shall appear before the Quasi Judicial Authority on **12.06.2024 at 03.00 PM**. The Quasi Judicial Authority shall provide an opportunity to the appellant to submit an additional reply, if any and also grant him personal hearing and thereafter shall pass a speaking order after dealing with all the submissions, pleas and defence raised by the appellant and shall communicate the said order to appellant. All the proceedings shall be completed by the Quasi Judicial Authority within a period of 1 month from the date of commencement of hearing.

Impugned Order dated 04.10.2024

Whereas, ample opportunities for personal hearings have been granted to the Appellant and upon carefully considering the reports and documents submitted before me and having gone through the file and other relevant papers submitted by the Applicant, the undersigned has come to the logical conclusion that the Appellant has failed to justify / explain the impugned unauthorized construction. Thus, it appears that the construction, as booked by the Department qua the property under question (as detailed out in above mentioned U.C. Files), is unauthorized and hence liable to be demolished and sealed

forthwith. The action already initiated by the Department under Section-345-A of the DMC Act is found appropriate. Regarding protection under The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, as claimed by the Appellant, the same cannot be extended to the Appellant, as he has failed to submit any concrete documents/evidence in support of his claim, which can prove that the construction of Basement, ground floor and first floor (booked under U.C. File No.360 dt 08/08/2023 & No.157 dt 28/03/2024) was made prior to cut off date i.e. 01/06/2014. The reply with contentions submitted by the Appellant is neither sustainable nor tenable.

10. In the first round of proceedings before the MCD, the appellant submitted a detailed reply dated 29.04.2024 in response to the show cause notice. The order dated 01.05.2024 did not mention anything about that reply and was non-speaking. The Tribunal vide its judgment dated 05.06.2024 in Appeal No. 393/24 set aside the said order and directed the MCD for fresh adjudication and passed a speaking order after dealing with all the submissions, pleas and defenses raised by the appellant in light of the mandate given by the Hon'ble High Court of Delhi in the case of **JaspalSingh Jolly Vs. Municipal Corpn. of Delhi**, (2005) 125 DLT 592. The relevant extract of the mandate given in the said case was reproduced by this Tribunal in the judgment dated 05.06.2024. At the cost of repetition, the mandate given by the Hon'ble High Court of Delhi in the case of **Jaspal Singh Jolly (Supra)** is reproduced below:-

“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 must reflect 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.”

11. From the mandate given in the of **Jaspal Singh Jolly (Supra)** it becomes clear that the Quasi Judicial Authority is required to record reasons in its order in order to ensure that the affected person knows the mind against him and also to enable to superior Court to effectively exercise supervisory jurisdiction.
12. It is painful to record that despite the discreet directions given by this Tribunal vide judgment dated 05.06.2024, MCD gave a deaf ear and the order dated 04.10.2024 is once against non-speaking. It merely records that appellant has failed to justify / explain the impugned unauthorized construction and thus it appears that the construction booked by the department is unauthorized. The impugned order does not record the pleas, the reasons for their rejections and the appreciation of the documents submitted by the appellant before the MCD. The order is mechanical and stereotyped and passed in complete ignorance of directions issued by the Tribunal in its judgment dated 05.06.2024.
13. In addition to aforesaid, the appellant has placed on record the documents to substantiate his claim that the property in question was constructed prior to the cut off date. The said documents also include the tax assessment report of MCD under Section 123 (D) of DMC Amendment Act, 2003. The aforesaid documents needs to be appreciated

by the MCD on merits before reaching any logical conclusions in respect of the protection available under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011.

14. In view of the above facts and circumstances, the impugned order dated 04.10.2024 is set aside and the property in question be de-sealed till adjudication by MCD. The matter is remanded back to the Quasi Judicial Authority for deciding the same afresh.
15. The appellant shall appear before the Quasi Judicial Authority on **07.08.2025 at 2.30 PM**. The Quasi Judicial Authority shall provide an opportunity to appellant to submit reply and also grant him personal hearing.
16. The Quasi-Judicial Authority 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 however not raise any unauthorized construction in the said property.
17. 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 24.07.2025 (s)**

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