

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

**APPEAL NO. 22/ATMCD/2021 & APPEAL No.23/ATMCD/2021**

**M/s Tara Palace Hotel**

**(A partnership Firm)**

**Having its Office**

**At 4675-A, Gali No.21, Ansari Road,**

**Darya Ganj, New Delhi-110002**

**Through its partner Shri Sushil Kumar**

**.....Appellant.**

**Vs**

**North Delhi Municipal Corporation,**

**Through Its Commissioner,**

**Civic Centre, Minto Road,**

**S.P. Mukherjee Marg,**

**Minto Road, New Delhi-2**

**.....Respondent**

**Date of Filing of Appeal : 27.01.2021**

**Date of Judgment : 04.08.2025**

**JUDGMENT**

1. This order will decide appeal No.22/21 as well as 23/21. Both the cases are decided by a common judgment as they pertain to one property and the issues involved are common.
2. In appeal No.22/21 the appellant has challenged the demolition order dated 10.11.2020 which is passed in respect of the ground floor to third floor part portion (rear portion) of property No.2701, Chatta Pratap Singh, Kinari Bazar, Chandni Chowk, Delhi.
3. In appeal No.23/21 appellant has challenged the order dated 22.12.2020 in respect of property No.2695-96-97-98 & 99, Kinari Bazar, Chandni Chowk, Delhi-6 in respect of unauthorized construction in the shape of first floor and second floor (ground floor old and occupied).
4. It is submitted by Ld. counsel for appellant that before passing demolition order dated 10.11.2020 MCD issued a show cause notice dated 22.01.2020. He submits that the said show cause notice was limited to property No.2701

(rear portion). He submits that appellant submitted reply dated 01.02.2020 in respect of the said show cause notice for property No.2701 only. He submits that thereafter MCD went beyond the show cause notice and passed the demolition order dated 10.11.2020 in respect of ground to third floor of the property No.2701 and 2702. He submits that by this order the MCD also covered the front portion of the property which was not included in the show cause notice. He submits that property No. 2702 was also not included in show cause notice and MCD travel beyond the scope of proceedings. He submits that appellant has placed on record the property tax returns of the year 2006-07 (page-84) which shows that the structure from ground floor to third floor is old and falls within the scope of protection. He submits that the impugned order did not appreciate the said documentary evidence and is silent about the same. He submits that the MCD in their demolition order has alleged regarding the removal of walls and creation of halls. He submits that UBBL-2016 permits the removal of non-load bearing walls and MCD in their impugned order failed to tender any explanation regarding the said legal position.

5. In respect of demolition order dated 22.12.2020 (appeal No.23/21) it is submitted that the property of the appellant as per sale deed dated 10.10.2019 is bearing number 2695 to 2702. He submits that in the said demolition order there is no mention of property No.2700. He submits that in the show cause notice dated 01.09.2020 the MCD has booked the first and second floor only but the demolition order has gone beyond the same and the demolition order is passed in respect of third floor of the property without providing any opportunity of hearing to the appellant in respect of the third floor.
6. It is argued that the demolition order dated 10.11.2020 and 22.12.2020 are self-contradictory. It is submitted that in demolition order dated 10.11.2020 MCD has stated that appellant has converted the old structure into hall in the rear and front portion and on the other hand in demolition order dated 22.12.2020 MCD has stated that the appellant has demolished the first floor and second floor and raised the structure without any sanctioned building plan. He submits that the aforesaid contradictory stand of the MCD shows the arbitrary exercise of powers without application of mind. He also submits that

in demolition order dated 22.12.2020 MCD also failed to appreciate the documents relied upon by the appellant. He submits that they have already filed regularization application with the MCD which is pending with the department.

7. Ld. counsel for MCD submits that the demolition order dated 10.11.2020 and 22.12.2020 were passed after following the due process of law. He submits that the appellant has carried out unauthorized construction in the property without obtaining any sanctioned building plan which is liable to be demolished. He submits that MCD has clearly mentioned about the identity of the property in rough sketch prepared on the show cause notice and there is no ambiguity about the same.
8. Ld. counsel for intervener submits that they are the shop owners in the ground floor and are aggrieved by the unauthorized construction raised by the appellant. He submits that intervener/applicant filed various complaints before the MCD and also filed writ petition before the Hon'ble High Court of Delhi wherein the directions to take appropriate action were issued. He submits that as the structure is unauthorized, therefore, the MCD has rightly booked the property and same needs to be demolished.
9. I have heard the arguments and perused the record. In appeal No.22/21 perusal of the show cause notice dated 22.01.2020 (page-88) shows that it was only issued in respect of property No.2701 (rear portion). The reply of the appellant was also limited to the property No. 2701. But the perusal of the MCD order dated 10.11.2020 clearly shows that MCD went beyond the show cause notice and demolition order is passed in respect of the property No. 2701 and 2702 also. There is patent error in the MCD proceedings in that regard. It is also apparent that the show cause notice in these proceedings are limited to the rear portion but the demolition order is also passed in respect of front portion of the property which also goes to the root of the matter. It is a thumb rule that the identity of the property needs to be precisely clear, firstly to appreciate the documentary evidence in respect of that property and secondly, from the point of view of demolition of structure which has been booked. Unfortunately, in present appeal the demolition order lacks clarity in that regard.

10. Similar is the position in appeal No.23/21 which is filed in respect of demolition order dated 22.12.2020. The show cause notice pertains to property No. No.2695-96-97-98 & 99, Kinari Bazar, Chandni Chowk, Delhi-6 for first floor and second floor. The demolition order as well as show cause notice do not mention anything about the property No.2700. It is not clarified whether any unauthorized structure is existed in the property No.2700 or not. In addition to aforesaid, the demolition order travel beyond the show cause notice and also directs to demolish the third floor of the property which was not the issue at the time of issuance of show cause notice. In case the third floor has cropped up in intervening period, the MCD should have initiated fresh proceedings in respect of fresh cause of action, but while passing the demolition order MCD bye-passed the same.
11. In addition to aforesaid the appellant has relied upon the documentary evidence in the form of property tax returns of the year 2007-08 which shows existence of the structure from ground floor to third floor at that juncture. MCD was at liberty to appreciate those documents on merits but unfortunately there is no whisper in the demolition order regarding the said documentary evidence which goes to the root of the matter.
12. Apart from aforesaid, there is patent contradiction in the stand of MCD in demolition orders dated 10.11.2020 and 22.12.2020. In order dated 10.11.2020 MCD has given a finding that the appellant has converted the old structure into hall in the rear as well as front portion and further construction was carried out in front portion. On the other hand in demolition order dated 22.12.2020 MCD has observed that the structure was demolished and the first and second floor was raised without any sanctioned building plan.
13. A conjoint reading of both the demolition orders do not give any clarity as to which structure is new and which structure has been converted into halls. The aforesaid aspect also needs to be clarified by the MCD while deliberating in the matter.
14. From the aforesaid facts it is clear that the demolition orders dated 10.11.2020 and 22.12.2020 are ambiguous. They do not appreciate the documentary evidence, they travel beyond the show cause notice, the identity of the property number is also not free from doubt. In these circumstances, it is necessary that the MCD shall do the fresh adjudication in the matter after

hearing all the stake holders and pass fresh order after considering evidence produced by the parties.

15. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition orders dated 10.11.2020 and 22.12.2020 are set aside. The matter is remanded back to the MCD for deciding the same afresh. Needless to say that the MCD shall also consider the regularization application of appellant as per law while deliberating on aspect of demolition order to ascertain compoundable and non-compoundable deviations in view of the mandate given by Hon'ble Supreme Court of India in **Re. Direction in the matter of Demolition of structure W.P.(C) 295/22 vide judgment dated 13.11.2024.**
16. The appellant shall appear before the Quasi Judicial Authority on **25.08.2025 at 02.00 PM.** The MCD shall provide an opportunity to appellant to submit reply and also grant him personal hearing.
17. The MCD thereafter shall pass a speaking order after dealing with all the submissions, pleas and defenses raised by parties and shall communicate the said order to the parties. The appellant shall not raise any unauthorized construction in the said property.
18. 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 04.08.2025 (J)**

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