

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

APPEAL NO. 543 /ATMCD/2017

M/s Vanshika Buildtech Limited
2nd & 3rd Floor, Scindia House,
New Delhi -110001

..... Appellant

Versus

New Delhi Municipal Council
Through its Chairman,
NDMC Building, Palika Kendra,
Parliament Street, New Delhi-110001

..... Respondent

Date of Filing of Appeal : 20.07.2017

Date of Judgment : 05.08.2025

JUDGMENT

1. The present appeal has been filed by the appellant impugning the demolition order dated 13.07.2017 passed by New Delhi Municipal Council (hereinafter referred as NDMC) under Section 247 of NDMC Act, 1994 passed in respect of the unauthorized construction mentioned in scheduled – ‘A’ of impugned order.
2. Ld. Counsel for the appellant submits that in the present case the show cause notice was issued by Mr. Lalit Paul Toppo and the hearing were conducted by Mr. Neeraj Bhati, Director Enforcement NDMC and the impugned demolition order was passed by Mr. V.K. Nimesh Executive Engineer. He submits that the order is passed in ignorance of the directions issued by the Hon’ble High Court of Delhi in the case titled as **Sudesh Kumar Vs. SDMC**, CM (M) 500 of 2020 dated 22.12.2020 wherein it is held that the officers who heard the party needs to pass the impugned order.

3. It is submitted that the impugned order is passed in ignorance of documentary evidence. He submits that appellant has placed on record copy of lease deed dated 26.04.2005 which shows that the structure at the second floor and the third floor was in existence prior to the cut off date of February, 2007 and falls within the ambit of protection under National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. He submits that appellant has also placed on record the screen shots of google earth map for the year 2004 which also corroborates the existence of the structure in question.
4. Ld. Counsel further submits that appellant has filed on record the copy of FIR no. 618 of 2006 registered at PS Connaught Place, New Delhi which clearly mentions the existence of second and third floor in the property in the year 2006 and NDMC has acted in ignorance of that public record.
5. It is further argued that the first round of proceedings at the property in question were initiated by the NDMC in the year 2014. Vide order dated 04.09.2014 the NDMC gave a clean chit to the property and dropped the proceedings under Section 248 of NDMC Act, 1994.
6. He submits that the show cause notice as well as impugned order has failed to clarify whether the structure has come into picture after 2014 or existed at that juncture. The period of the alleged construction is not specified and impugned order is passed in ignorance of directions passed by Hon'ble High Court of Delhi in the case titled as **Masonic Club Vs. MCD &Anr**, (2001) 91 DLT 149.
7. It is submitted by Ld. Counsel for the appellant that the impugned order is absolutely non-speaking as it does not appreciate the pleas and documents which were submitted by the appellant.

8. It is argued that in view of the documentary evidence available on record the property is protected and the action of NDMC is misconceived and arbitrary.
9. Ld. Counsel for the NDMC submits that the impugned order is passed after following due process of law. He admits that the proceeding initiated in the year 2014 were dropped but clarifies that the structure that was booked in the year 2017 is over and above the structure that was booked in the year 2014. He submits that no prior sanction was obtained from NDMC. He submits that in auction notice shows appellant has bought second floor and thereafter he has constructed the structure over and above the same. He submits that google map cannot be considered as sole evidence to decide the fate of the structure in question. In respect of the pleas regarding hearing done by one officer and passing of order by the other officer, it is clarified that the show notice was issued under the directions of Executive Engineer and thereafter the impugned order was issued by the Executive Engineer (EBR) and there is no ambiguity in the proceedings. He submits that the structure is unauthorized and liable to be demolished.
10. I have heard the arguments and perused the record. So far as the question regarding the issuance of show cause notice by Mr. Toppo and passing of the order by Mr. V. K. Nimesh is concerned, the file noting at 1/N to 3/N of the NDMC record shows that the show cause notice was issued under the authority and approval of the Executive Engineer under whose supervision the proceedings were conducted and finally the order was passed and signed by the Executive Engineer and there is no ambiguity regarding the same.
11. In present case, NDMC in first round of litigation dropped the proceedings vide order dated 04.09.2014. The relevant extract of the order dated 04.09.2014 passed by the NDMC is reproduced below:-

"Subsequently, the E-BR Branch vide notings dated 8.8.2014 stated that:

"In context to above, a lot of public hearings have been given to party for submit the supporting documents related to occupied premises. Now party has submitted photocopy of rent agreement vide No. 0288581098 dated 08.4.05 and also vide No. 0288598716 dated 08.4.2005, of Flat No. 4 and Flat No. 4A, 3, Scindia House which are placed on file. Thereafter, site has been inspected by the undersigned alongwith AE(E-BR) and observed that party has carried out mass renovation in both flats i.e. Flat No.4 and Flat No. 4-A, 3, Scindia House. From the documents it seems that party has not covered any area. After renovation party has occupied the premises Flat No.4 and flat No.4A, 3, Scindia House, New Delhi. Now I think no further action required in this regard."

The respondents have also submitted two lease deed having No. 02BB581098 dated 08.4.2005 for flat No.4A and No. 0288598716 dated 08.4.2005 for Flat No. 4. As far as roof recasting is concerned, the applicant stated that it was a minor repair work and height of the roof was not changed and that can be verified by the fact that height of triangular roof is same as of other properties. The respondent has also submitted the lay out plans of May 2005, prepared by Architron Group for lower and upper floors. In the drawing of upper i.e. 3rd floor there is a provision of stair case moving in upward direction. These documents are also placed before the Hon'ble High Court of Delhi in Writ Petition No. 1037/2014 titled as M/s Vanshika Buildtech V/S NDMC. The applicants have also submitted the tax receipts which seems unchanged since 2005.

Therefore, after careful examining the facts available on record and documents submitted by the applicant and the recommendation/Technical Report made by E-BR Branch, no further action appears necessary and proceedings are hereby dropped. Matter disposed of accordingly".

12. A perusal of the order dated 04.09.2014 passed by the NDMC shows that NDMC considered the documentary evidence filed by the appellant in respect of second and third floor of the property in question. NDMC observed that no further action is necessary and dropped the proceedings by giving clean chit to the structure in question. Therefore in view of the order dated dated 04.09.2014 the controversy in the present case is narrowed down only in respect of the structure which has come into picture after passing of order dated 04.09.2014.

13. In reply to show cause notice appellant submitted a detailed reply dated 18.04.2017. In the said reply appellant categorically referred to the lease agreement with M/s Allianz and the structure referred in the map annexed to it. Certified copy of the lease deed as well as site map is

also filed on record. NDMC in their order dated 04.09.2014 have also referred and examined these documents and acknowledged that they were also placed before the Hon'ble High Court of Delhi in W.P. (C) 1037 of 2014. Therefore historical value of these documents is not disputed by the NDMC.

14. It is ironical that though NDMC in order dated 04.09.2014 has appreciated these documents but in the impugned order 14.07.2017 there is no appreciation of this documentary evidence despite the fact that appellant has taken a specific plea in their reply. Perusal of order dated 04.09.2014 records that the lay out plans for the floors including the third floor was available on NDMC record. Despite that NDMC in their impugned order has failed to clarify and cite the structure which has cropped up over and above the said lay out plan.

15. The show cause notice as well as the demolition order does not specify the period when the structure has come into picture and failed to specify deviations in comparison to layout plan and has been passed in ignorance in the directions passed in the case of **Masonic Club Vs. MCD & Anr.** (Supra) in which the Hon'ble High Court of Delhi held that:

“Aggrieved by the order of sealing, this petition has been filed by the petitioner. It has been contended that no show cause was given to the petitioner before sealing the property. It has also been contended that no notice was served upon the petitioner after 15.9.2000 when according to the record of the respondent, which has been perused by me, the alleged unauthorised construction was booked. The method and manner in which the original notice dated 25.10.2000 is prepared by the respondent, create doubt about the genuineness of the same. Even the same has not been properly served on the petitioner. In any event of the matter, I have perused the notice in question. No specific mention has been made in the notice as to which portion of the property in question is unauthorised, as to what is the approximate or alleged date of construction, the area of unauthorised construction. Notice dated 21.9.2000 is no notice in the eye of law. As the premises of the petitioner is sealed without giving any opportunity to the petitioner, I direct Mr. Rajesh Mishra, Zonal Engineer (Building) and Mr. S.M.R. Zaidi, Junior Engineer (Building), Who are present in Court, to de-seal the property of the petitioner forthwith. However, respondents will be at liberty to give notice of any unauthorised

construction in the premises in question to the petitioner in accordance with law.”

16. So far as the question of existence of structure at the second floor and the third floor is concerned, the lease deeds dated 26.04.2005 shows the structure having area 3841 sq. ft on second floor and 3958 sq. ft on the third floor was in existence. The site plan is also filed along with the appeal. The FIR bearing no. 618/2006 dated 16.11.2006 registered at PS Connaught Place also mentions about the existence of the third floor in the year 2006. Appellant in their reply filed in the year 2014 as well as in the year 2017 have relied upon these documents consistently to show that the structure is old. NDMC has failed to highlight the change in covered area of second and third floor especially in circumstances when the structure is alleged to have surfaced after the year 2014 and allegedly breached the status quo.
17. It is clear that the impugned order is passed in ignorance of directions passed by Hon'ble Delhi High Court in case titled as **Jaspal Singh Jolly Vs. Municipal Corpn. of Delhi**, (2005) 125 DLT 592 and it was held that:

“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 much reflects 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.”

18. From the impugned order it is amply clear that the order is non-speaking. It does not appreciate the pleas and documentary evidence. It also does not refer to the conclusions and the documents relied and reached by the NDMC in the order dated 04.09.2014. From the record it is clear that that structure was already in existence well before the cut off date and covered with the ambit of National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011. NDMC has failed to specify the change in covered area and the period when the alleged structure has surfaced. The impugned order is ambiguous and does not consider the settled position before the NDMC in the year 2014 by their order dated 04.09.2014.
19. Accordingly the impugned order is set aside and the appeal is upheld.
20. 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 05.08.2025 (s)**

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