

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

APPEAL NO. 1047/ATMCD/2016

Sh. B. Kashyap
S/o Sh. M.L. Kashyap
R/o 151, RPS Flats, Sheikh Sarai,
Phase – I, New Delhi – 110017.

..... Appellant

Vs

South Delhi Municipal Corporation
(Through its Commissioner)
Civic Centre, Minto Road,
New Delhi

..... Respondent

Date of Filing of Appeal : 17.11.2016
Date of Order : 15.04.2024

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 25.10.2012, passed with respect to flat bearing no. 151, RPS Flats, Sheikh Sarai – I, New Delhi, booked for unauthorized construction in the shape of excess coverage / deviation against the standard plan of DDA.

2. Sh. Rajan Mishra, Ld. Counsel for the appellant has contended that the appellant is the owner of the flat in question, which was purchased by him by virtue of registered sale deed dated 30.03.2012 but neither the show cause notice was given in his name nor the demolition

order was served upon him. He further contended that the appellant has not raised any unauthorized construction and there exist no excess coverage / deviation in the flat in question, therefore, the impugned demolition order is not sustainable in law. He further contended that no detail of excess coverage / deviation is given in the demolition order, which is against the standard plan of DDA. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. V.K. Aggarwal, Ld. Counsel for the respondent has contended that the flat in question was booked for excess coverage / deviation against the standard plan of DDA and a show cause notice was given, which was served through pasting but as no reply was received, therefore, demolition order was passed. He prayed that appeal may be dismissed.

4. I have heard Ld counsel for the appellant, Ld counsel for the respondent, perused the appeal, impugned order and record. Perusal of the above shows that flat bearing no. 151, RPS Flats, Sheikh Sarai – I, New Delhi was booked for unauthorized construction in the shape of excess coverage and deviation against the standard plan of DDA and a show cause notice dated 17.10.2012 was issued, which was served through pasting but as no reply was received, therefore, demolition order dated 25.10.2012 was passed.

5. A perusal of the record shows that the flat in question was booked for excess coverage / deviation against the standard plan of DDA, and a show cause notice dated 17.10.2012 was issued in the name of owner / builder.
6. The appellant has placed on record copy of sale deed dated 30.03.2012, vide which he purchased the flat in question. Thus, the appellant was the owner of the flat in question on the day when the flat in question was booked. However, the show cause notice was not issued in the name of the appellant but was issued by mere mentioning owner / builder.
7. The Hon'ble Delhi High Court in case titled "***Mahender Singh Vs MCD***", reported as 1988 (34) DLT 118 has held that:-

"The law required that before passing the sealing order in the name of petitioner show cause notice ought to have been issued in his name and served upon him.....as it has not been done, it must be held that the whole proceedings regarding passing of the sealing order are illegal and liable to be set aside.....MCD can serve fresh show cause notice....then after following necessary procedure can pass necessary orders"

8. The above legal proposition makes it absolutely clear that show cause notice for initiating proceedings against the property of the appellant should have been issued in the name of the appellant and not by mere mentioning owner / builder.
9. The flat in question was booked for unauthorized construction in the shape of excess coverage / deviation, against the standard plan of DDA. However, nothing has been mentioned either in the show cause notice or in the demolition order as to what kind of deviations / excess coverage were existing in the flat in question, which were against the standard plan of the DDA.
10. The Quasi Judicial Authority was required to carry out inspection of the flat in question before issuing the show cause notice and was required to specify in the show cause notice, that what deviations / excess coverage were existing in the flat in question, which were against the standard plan of DDA. However, not a word has been mentioned either in the show cause notice or in the demolition order in this regard.
11. The *Hon'ble Delhi High Court in case titled "Masonic Club Vs MCD & Ors, C.W.P. No. 6674 / 2000 and C.M. No. 10226 of 2000* has held that:-

“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 unauthorized, as to what is the approximate or alleged date of construction, the area of unauthorized construction. Notice dated 21.09.2000 is no notice in the eyes of law.”

12. The above law laid down by the Hon’ble Delhi High Court shows that the show cause notice issued to appellant without giving details of deviations / excess coverage existing at site is no notice in the eyes of law. Therefore, the demolition order dated 25.10.2012, passed pursuant to show cause notice dated 17.10.2012, is not sustainable in law.

13. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 25.10.2012, which has been passed pursuant to the show cause notice dated 17.10.2012 is set aside. The respondent is however at liberty to issue fresh show cause notices to the appellant, if there exist any deviation /

excess coverage, after highlighting those deviations / excess coverage, in accordance with law.

14. The appellant shall not raise any unauthorized construction in the flat in question.

15. The record 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 15.04.2024**

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