

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

APPEAL NO. 94/ATMCD/2018

- 1. Prajapita Brahma Kumari R. Venkata Kanaka Ratnam**
- 2. Sukarma D/o Bhimsingh Rathore**
- 3. Tandra Das D/o Late Shailendranath Das**
- 4. Harsha Kapadia D/o Laljibhai**
- 5. Kala Nepal**
- 6. Prajapita Brahma Kumari Pragati Gaikwad**
(Authorized Representative of 119 inmates of property)
- 7. Kalpana Mallick D/o Sadashiba Mallick**
- 8. Asha Gore D/o Govind Gore**
- 9. Tulsi Pandurang Shitole W/o Pandurangh Shitole**

**All Residing at Adhyatmik Vishwa Vidyalaya
346 to 349, 351 & 352, Vijay Vihar,
Phase – 1, Delhi – 110085.**

- 10. Geeta Singh Payal**
W/o Bhagat Singh Payal
R/o Suman Vihar, Bapu Gram,
Post Veerbhadra, Rishikesh,
District Dehradun, Uttarakhand.

Through her Special Power of Attorney
Hradesh Pandey
S/o Vishwanath
Village Shamshabad,
District Farrukhabad,
Uttar Pradesh.

..... Appellants

Vs

**North Delhi Municipal Corporation
Sector – 5, Rohini Zone,
Delhi – 110085.**

..... Respondent

**Date of Filing of Appeal : 31.01.2018
Date of Order : 26.04.2024**

ORDER

1. Vide this order, I shall decide the above appeal filed against impugned sealing order dated 30.01.2018, passed with respect to the property known as Adhyatmik Vishwa Vidhyalaya, bearing property no. A-346-349, 351-352, Vijay Vihar, Phase – I, Delhi. The brief facts necessitated in filing of the present appeal are given as under:-
2. The appellants have averred that property bearing no. A-346-349, 351-352, Vijay Vihar, Phase – I, Delhi, was purchased by Smt. Kamla Devi Dixit and Sh. Virendra Deo Dixit in July 1995, by virtue of a single General Power of Attorney. Appellants have further averred that they along with other inmates started residing in the property since the year 1996-97, as the major portion of the building i.e. basement, ground floor, first floor and second floor were constructed by the end of 1998 and

entire structure of the building was completed prior to year 01.06.2014, therefore, same was entitled for protection under the Special Act.

3. The appellants have further averred that in the year 2007, DDA issued a notice under Section 30 (1) and 31 (1) of the DDA Act, 1957 with respect to the second floor of the property in question, pursuant to which Prajapita Brahma Kumari Tandra Das filed her reply on behalf of Adhyatmik Vishwa Vidyalaya on 16.08.2007 and thereafter the DDA ratified the uninterrupted possession of appellants and did not take any action against the property in question.

4. The appellants have further averred that respondent / MCD issued a show cause notice under Section 345-A of the DMC Act dated 29.12.2017, which was received by them on 01.01.2018 and in response thereof, they submitted their brief reply dated 05.01.2018 along with requisite documents before the Quasi Judicial Authority. They also submitted their detailed reply dated 27.01.2018, which was received in the office of the Deputy Commissioner on 29.01.2018, however, the Quasi Judicial Authority without considering their replies and documents submitted therewith passed the sealing order dated 30.01.2018 and sealed their property on 30.01.2018 itself. Feeling aggrieved from the impugned sealing order dated 30.01.2018, the present appeal has been preferred.

5. Sh. Amol Kokne, Ld. Counsel for appellants has contended that the impugned sealing order is bad in law as same has been passed in violation of the principle of natural justice. He further contended that pursuant to the show cause notice, appellants, filed their brief reply along with documents as well as a detailed reply, but the Quasi Judicial Authority without considering their replies and the documents submitted therewith, passed the impugned sealing order in violation of the principle of natural justice. He further contended that the property in question is situated in an unauthorized colony and same was purchased in the year 1995 vide registered general power of attorney in the year 1995. He further contended that entire construction in the property in question has been in existence prior to 01.06.2014, therefore, same was entitled for protection under the Special Act, but, the Quasi Judicial Authority has not considered the said aspect and passed the impugned sealing order wrongly. He prayed that appeal may be allowed and impugned sealing order may be set aside.

6. Sh. Ashutosh Gupta, Ld. Counsel for the respondent has contended that the property of the appellants was booked for unauthorized construction in the shape of basement, ground floor, first floor, second floor, third floor and fourth floor of low height and tin shed

at fifth floor and a show cause notice dated 29.12.2017 was served upon appellants, pursuant to which they submitted their replies along with documents. He further contended that from the documents submitted by the appellants along with their reply, it could not be ascertained, whether the entire construction came up prior to 01.06.2014, that is why the sealing order was passed. He further contended that the property in question is not entitled for the protection under the Special Act as the property was being used for capturing inmates by way of installation of various metal doors and structure / floor of such low height that one has to crawl and the preamble of the Special Protection Act does not intend to give protection to such structure, where, the structure is neither being used for residential, commercial or for any other purpose recognized in the law, therefore, the property was not entitled for protection under the Special Act. He prayed that appeal may be dismissed.

7. I have heard Ld. counsel for appellants, Ld counsel for the respondent, and perused the appeal, impugned order as well as the record. Perusal of the above shows that property bearing no. A-346-349, 351-352, Vijay Vihar, Phase – I, Delhi was booked for unauthorized construction in the shape of basement, ground floor, first floor, second

floor, third floor and fourth floor of low height and tin shed at fifth floor and show cause notice dated 29.12.2017 was served upon appellants, pursuant to which appellants submitted their brief reply dated 05.01.2018 along with requisite documents before the Quasi Judicial Authority. They also submitted their detailed reply dated 27.01.2018, which was received in the office of the Deputy Commissioner on 29.01.2018. After receiving these replies along with documents, the Quasi Judicial Authority passed the sealing order dated 30.01.2018.

8. The plea of the appellants is that the structure in question has been in existence much prior to 01.06.2014, therefore, same was entitled for the protection under the National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2011, but the Quasi Judicial Authority without considering their replies and the documents submitted therewith, has passed the impugned sealing order in violation of the principle of natural justice.

9. The respondent booked the property in question for unauthorized construction in the shape of basement, ground floor, first floor, second floor, third floor, fourth floor of low height and tin shed at the fifth floor of the property and a show cause notice dated 29.12.2017 under Section 345-A of the DMC Act was given. Pursuant to the said show cause

notice, the occupants of said building submitted their brief reply on 05.01.2018 as well as a detailed reply dated 27.01.2018, which was received in the office of the Quasi Judicial Authority on 29.01.2018 along with various documents in the form of registered GPA, copy of passbook, ration card, police verification form, electricity bills and water bills etc. and claimed that major portion of the building was completed by the year 1998 and second floor mezzanine, third floor and third floor mezzanine (fourth floor of low height) along with tin shaded terrace was constructed till year 2010 by mutual co-operation of spiritual followers and Brahma Kumaris of Adhyatmik Vishwa Vidyalaya, who contributed in building both financially and physically.

10. The Quasi Judicial Authority after receiving the above reply, passed the sealing order dated 30.01.2018, holding that the reply was found not satisfactory. However, the Quasi Judicial Authority has not mentioned a word, as to why the reply filed by appellant was found unsatisfactory.

11. 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 a speaking one, giving reasons for reaching to the conclusion and must not be cryptic in nature.

12. The Hon'ble Delhi High Court in case titled *Jaspal Singh Jolly Vs Municipal Corporation of Delhi, reported as 125 (2005) DLT 592* has dealt with said issue, which is reproduced herein below:-

“Noting the decision of the Supreme Court as Erusia Equipments & Chemical Ltd. Vs State of West Bengal, (1975) 1 SCC 70: AIR 1975 SC 266 (at P. 269); 106 (2003) DLT 573, Mekaster Trading Corporation Vs Union of India; and (1990) 4 SCC 594, S.N. Mukherjee Vs 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 principle of natural justice, namely (a) proper hearing, (b) decision by an unbiased mind; (c) taking into consideration all the relevant factors and excluding the irrelevant factors; and (d) reasons to be recorded. Needless to state, reasons enable the superior Court to

*effectively exercise
supervisory jurisdiction.
Additionally, when reasons
are stated, the persons
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.”*

13. The Quasi Judicial Authority was required to examine the documents submitted by appellants along with their reply and was required to give a finding as to which portion of the property was existing prior to 01.06.2014 and which portion was raised subsequently. The Quasi Judicial Authority however has not considered these aspects, therefore, the sealing order dated 30.01.2018 is not sustainable in law
14. The appellants have placed on record copy of gas connection at the address of third floor of the property in question. Even an electricity connection was installed at the right hand side and left hand side portion of the third floor of the property in question, which was applied on 18.02.2014 and the electricity connection was installed on 14.07.2014. Meaning thereby that the construction in question, at least upto third floor was in existence prior to 01.06.2014, when electricity connection was applied.

15. The Quasi Judicial Authority however has not considered any of these documents so relied upon by appellants and has simply mentioned in the sealing order that appellants could not adduce any proof to show that the entire structure was in existence prior to 01.06.2014.
16. In view of the above facts and circumstances, the appeal filed by the appellants is allowed. The impugned sealing order dated 30.01.2018 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
17. The appellants shall appear before the Quasi Judicial Authority on **06.05.2024 at 03.00 PM**. The Quasi Judicial Authority shall provide an opportunity to the appellants to submit an additional reply, if any and also grant them personal hearing.
18. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defences raised by the appellants and shall communicate the said order to the appellants. All the proceedings shall be completed by the Quasi Judicial Authority within a period of 2 months from the date of hearing.

19. The appellants shall however not raise any unauthorized construction in the property in question.

20. The record of the respondent be send back alongwith copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court
Today i.e. on 26.04.2024**

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