

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

**APPEAL NO. 599/ATMCD/2019**

**Sh. Raunak Sharma  
S/o Sh. Rishipal Sharma  
R/o House no. 3161,  
Phatak Kedar Nath  
Ballimaran, Delhi – 110006.**

**..... Appellant**

**Vs**

**North Delhi Municipal Corporation  
(Through its Commissioner)  
City Civic Centre,  
Jawahar Lal Nehru Marg,  
Minto Road,  
Delhi – 110006.**

**..... Respondent**

**Date of Filing of Appeal       :       03.10.2019**  
**Date of Order                       :       02.05.2024**

**ORDER**

1.       Vide this order, I shall decide the appeal filed by the appellant against impugned demolition order dated 26.09.2019, passed with respect to property bearing no. 3271, Gali Raja Wali, Charkhewalan, Peepal Mahadev, Delhi – 110006 for unauthorized construction of ground floor, first floor, second floor and third floor.

2.       Sh. R.K. Singh, Ld. counsel for the appellant has contended that the appellant is the owner of the property in question but neither the show

cause notice was issued in his name nor same was served upon the appellant in accordance with law. He further contended that the demolition order has been passed in violation of principle of natural justice. He further contended that there was no unauthorized construction existing in the property in question. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. Dharamvir Gupta, Ld. counsel for the respondent has contended that the property in question was booked for unauthorized construction from ground floor to third floor and show cause notice dated 16.09.2019 was issued, which was sent through speed post and served through pasting as well but as no reply was submitted, therefore, demolition order was passed. It is 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 as well as record. A perusal of the above shows that property bearing no. 3271, Gali Raja Wali, Charkhewalan, Peepal Mahadev, Delhi – 110006 was booked for unauthorized construction of ground floor, first floor, second floor and third floor and show cause notice dated 16.09.2019 was issued, which was sent through speed post and served through pasting as well but as no reply was submitted, therefore, demolition order was passed.

5. A perusal of the record shows that the property of the appellant was booked for unauthorized construction and show cause notice dated 16.09.2019 was issued in the name of owner / builder and not in the name of appellant.

6. The appellant has placed on record registered sale deed dated 06.09.2019, got registered on 09.09.2019. The appellant was thus the owner of the property in question prior to issuance of said show cause notice. The show cause notice should have been issued in the name of appellant but same 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 for initiating proceedings against a property, the show cause notice should

have been issued in the name of the owner of the property in question and not by mere mentioning owner / builder.

9. A perusal of the record further shows that the show cause notice dated 16.09.2019 was sent through speed post but tracking report of the said speed post is not available in the record.

10. The show cause notice dated 16.09.2019 was also served through pasting but neither any permission of pasting was obtained nor signatures of two witnesses were taken while pasting the said show cause notice. It is also not mentioned in the entire show cause notice whether any endeavor was made to serve the show cause notice personally upon the appellant or not?

11. As per the law, the Quasi Judicial Authority before proceeding to pass an order under Section 343 of the DMC Act, was required to serve the show cause notice upon the owner / occupier of the property in question. However, in the present case, the Quasi Judicial Authority has not ensured that the show cause notice was duly served upon the appellant in accordance with law.

12. The cardinal principal of natural justice is that no one can be condemned without an opportunity of being heard. The Quasi-Judicial Authority was bound to conduct its proceedings in accordance with the

principal of natural justice. The justice should not only be done but the same should also appear to have been done.

13. The Hon'ble High Court in *J.T. India Experts Vs UOI and Another 94 (2001) DLT 301 (FB)* has held as under: -

*“These Principles are well settled. The first and foremost principle is what is commonly known as audi-alteram partem rule. It says that none should be condemned unheard. Notice is the first limb of this principle. It must be précised and un-ambiguous. It should apprise the party determinately the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed against the person absentia becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.*

*Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial,*

*quasi-judicial authority while making an order affecting these rights. These rules are intended to prevent such authority from doing injustice.”*

14. The show cause notice dated 16.09.2019 has thus not been served in accordance with law. The impugned demolition order dated 26.09.2019 passed without proper service of show cause notice dated 16.09.2019 is thus not sustainable, as same has been passed in utter violation of principal of natural justice.
15. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned demolition order dated 26.09.2019 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
16. The appellant shall treat this order as a show cause notice and shall appear before the Quasi Judicial Authority on **13.05.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide an opportunity to the appellant to submit reply and also grant him personal hearing.
17. The Quasi-Judicial Authority 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 the appellant. All the

proceedings shall be completed by the Quasi Judicial Authority within a period of 2 months from the date of commencement of the hearing.

18. The appellant shall not raise any unauthorized construction in the property in question.

19. 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 02.05.2024**

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