

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

APPEAL NO. 259/ATMCD/2024

**Sh. Neelam Singh Chauhan
Proprietor of M/s Durga Trading Company
S/o Sh. Amar Singh Chauhan
R/o 10/10, Under Hill Lane,
Civil Lines, New Delhi – 110054.**

..... Appellant

Vs

**Municipal Corporation of Delhi
(Through its Commissioner)
S.P.M Civic Centre,
Near Minto Road, New Delhi**

..... Respondent

**Date of Filing of Appeal : 09.04.2024
Date of Order : 06.05.2024**

ORDER

1. Vide this order, I shall decide the appeal filed by the appellant against impugned demolition order dated 21.08.2023, passed with respect to Farm No. 2, 12 Petals, Samalkha Revenue Estate, Rajokari to Kapashera Road, New Delhi for unauthorized construction in the shape of raising of boundary wall and construction of entire basement and ground floor.

2. Sh. Dalip Rastogi, Ld. Counsel for the appellant has contended that the respondent has not served show cause notice upon the appellant in

accordance with law. He further contended that the show cause notice was received by the appellant only on 29.08.2023, to which a reply was submitted on 04.09.2023 but, demolition order was already passed. He further contended that impugned demolition order has been passed in violation of the principle of natural justice. He further contended that appellant has applied for regularization of the construction existing in the property in question, which is pending adjudication. He prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. Ashutosh Gupta, Ld. Counsel for the respondent has contended that property in question was booked for unauthorized construction of entire basement and ground floor and a show cause notice dated 08.08.2023 was issued, which was sent through speed post and was also pasted at site on 11.08.2023 and photograph of the pasting was taken on 12.08.2023, through Google image, showing longitude and latitude of the site, where the show cause notice was pasted. He further contended that the appellant has not produced any proof to show that property was being constructed on the basis of sanction building plan or has been in existence prior to 01.06.2014. He further contended that as per the sale deed placed by the appellant, they purchased the agricultural land having cultivation in the year 2022. He further contended that the appellant also constructed the first floor in the property in question after passing of the demolition

order dated 21.08.2023, which has also been booked and a separate demolition order has been passed, which has not been assailed and even the property in question has been sealed. He prayed that appeal may be dismissed.

4. Sh. Dalip Rastogi, Ld. Counsel for the appellant in rebuttal contended that the demolition order with respect to the first floor of the property has not been served upon the appellant.

5. 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 Farm No. 2, 12 Petals, Samalkha Revenue Estate, Rajokari to Kapashera Road, New Delhi was booked for unauthorized construction of raising of boundary wall and construction of entire basement and ground floor. A show cause notice dated 08.08.2023 was sent through speed post and also pasted at site, but as no reply was submitted within the stipulated time, therefore, the demolition order dated 21.08.2023 was passed.

6. The plea of the appellant is that the show cause notice was not served upon the appellant and same was provided to them on 29.08.2023 by one beldar of the respondent.

7. On 24.04.2024, the appellant was asked about the name of the said beldar, who supplied the show cause notice to them on 29.08.2023. Ld. Counsel of the appellant on instructions from the son of the appellant, who was present in the Court, told the name of the said beldar as 'Manoj', who handed over the copy of show cause notice to the appellant on 29.08.2023
8. The respondent vide order dated 24.04.2024, was directed to file a status report whether any person namely 'Manoj' is working as Beldar in the Najafgarh Zone of the MCD or not? And if any such person is working in the said Department, then for the appearance of said person in the Court on the next date of hearing.
9. In compliance of the said directions, the respondent has filed a status report today in the Court, stating in it that there is no person by the name of Manoj, posted in the Building Department of Najafgarh Zone, MCD nor any other person was deputed by the Department to paste the notice at site on 29.08.2023.
10. The onus to prove the fact that the show cause notice was handed over to the appellant on 29.08.2023, as claimed by the appellant in their reply, is upon the appellant.

11. The appellant however has failed to adduce any proof to show that the show cause notice was delivered upon them by any person from the side of the respondent on 29.08.2023.
12. The record produced by the respondent shows that the show cause notice dated 08.08.2023 was sent through speed post and also pasted at site on 11.08.2023. As per the tracking report of the speed post available in the record, the show cause notice was received back on 16.08.2023.
13. The show cause notice dated 08.08.2023 was also pasted at site. The photograph of pasting has been filed by the respondent along with the status report today in the Court as Annexure – B, having the Google image of the property where the show cause notice was pasted on 12.08.2023. The Google image clearly shows that the latitude of the site where show cause notice was pasted as 28.526715 degree and longitude of the site as 77.09476 degree.
14. Ld. Counsel of the appellant though tried to dispute the correctness of the property, shown in the Google image, but he could not furnish any details about the latitude and longitude of the property in question nor he disputed the same. The show cause notice was thus pasted at the outer gate of the property in question.

15. Ld. Counsel for the appellant further contended that as per the report, the show cause notice was pasted on 11.08.2023 whereas photograph of pasting, filed by the respondent, shows that same was taken on 12.08.2023, therefore, pasting is just a camouflage.
16. The said contention of Ld. Counsel of the appellant is not sustainable. The respondent has given an explanation in the status report that show cause notice was pasted at site on 11.08.2023 but the photograph of pasting was taken on 12.08.2023, which is apparent from the photograph annexed with the show cause notice.
17. The show cause notice dated 08.08.2023 was thus served upon the appellant in accordance with law on 11.08.2023 and not on 29.08.2023 as sought to be contended by the appellant in their reply.
18. The appellant did not file any reply to the show cause notice within the period stipulated and submitted his reply on 04.09.2023 i.e. much after passing of the demolition order dated 21.08.2023.
19. The next question is whether the construction in question was raised as per the sanction building plan? Or whether the construction in question was existing prior to 01.06.2014, making the same entitled for protection under the Special Act?

20. The appellant has not adduced any proof whatsoever to show that the construction in question was raised on the basis of sanction building plan.
21. The sale deed, vide which the property in question was purchased by the appellant shows that appellant had purchased a land measuring 4 Bighas and 16 Biswas in the revenue estate of Village Samalkha on 07.11.2022. Meaning thereby that on the day when the appellant purchased the property in question, it was a land and there was no construction existing there.
22. The appellant started raising construction over the said land after purchasing the same, without any sanction building plan, therefore, the whole construction existing at site is unauthorized.
23. The respondent has rightly booked the whole property for unauthorized construction and the Quasi Judicial Authority has rightly passed the demolition order dated 21.08.2023 in accordance with law and I find no legal infirmity in the same.
24. Ld. Counsel of the appellant has further contended that appellant has filed an application for regularization, which is pending adjudication.

25. Filing of an application for regularization cannot be an embargo for deciding the appeal. The application for regularization shall be decided by the respondent on its own merits.
26. In view of the above facts and circumstances, I am of the considered view that the Quasi Judicial Authority has passed the demolition order dated 21.08.2023 in accordance with law and I find no legal infirmity in the same. Accordingly, the appeal filed by the appellant is dismissed.
27. The respondent is however directed to decide the application for regularization filed by the appellant, within three weeks from today.
28. 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 06.05.2024**

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