

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

APPEAL NO. 657/ATMCD/2018

Sh. Kimti Lal Jain (Since Deceased)
Through LRs

- 1. Amit Jain**
S/o Sh. Kimti Lal Jain
R/o B-3/5, Phase – II, Ashok Vihar,
Delhi – 110052.
- 2. Sh. Rupal Jain**
S/o Sh. Kimti Lal Jain
R/o B-3/5, Phase – II, Ashok Vihar,
Delhi – 110052.

.....Appellants

Vs

- 1. South Delhi Municipal Corporation**
(Through its Commissioner)
Dr. S.P.M. Civic Centre,
17th Floor, Minto Road,
New Delhi.
- 2. Office of the Deputy Commissioner,**
West Zone, Shivaji Place,
Rajouri Garden, New Delhi.

.....Respondents

Date of Filing of Appeal : 12.09.2018
Date of Order : 10.05.2024.

ORDER

1. Vide this order, I shall decide the appeal filed against impugned
 demolition order dated 16.07.2018, passed with respect to unauthorized

construction by way of changing walls at part ground floor and renovation work in part basement in existing property basement (part), ground floor to second floor in property bearing no. A-2/40, Rajouri Garden, New Delhi.

2. Ms. Aakanksha, Ld. proxy counsel for the appellant has contended that the appellant was neither served with the show cause notice nor provided the demolition order and the impugned demolition order has been passed in violation of the principle of natural justice. She further contended that the show cause notice was issued and the demolition order was passed by mentioning owner / builder / occupier, without mentioning the name of the appellant, who is the owner of the property in question. She prayed that appeal may be allowed and impugned demolition order may be set aside.

3. Sh. Ranjeet Pandey, Ld. counsel for the respondent has contended that appellant was renovating / reconstructing the property in question, due to which same was booked and show cause notice was issued, which was served upon the appellant through pasting but as no reply was submitted, 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 and perused the appeal, impugned order and record. Perusal of the above shows that the property in question was booked for unauthorized construction and show cause notice dated 05.07.2018 was served through pasting but as no reply was submitted, demolition order dated 16.07.2018 was passed.
5. The plea of the appellant is that he was never served with the show cause notice or the demolition order at any point of time.
6. A perusal of the show cause notice dated 05.07.2018 shows that same was issued by mere mentioning owner / builder / occupier, without specifying the name of the appellant, who is the owner of the property in question and has placed on record copy of sale deed dated 14.02.2008.
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 demolition 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 demolition 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 owner / occupant of the property in question and not by mere mentioning owner / builder / occupier.
9. A perusal of the show cause notice dated 05.07.2018 further shows that same was served upon the owner / builder / occupier through pasting on 10.07.2018, however, while pasting the said show cause notice at site, neither signatures of two witnesses were obtained nor any photograph of pasting is available in the record, which can prove that the show cause notice was in fact pasted at site.
10. The Quasi Judicial Authority before proceeding to pass the demolition order, was required to ensure that the show cause notice was in fact served upon the owner / occupant of the property in question in accordance with law and only thereafter the Quasi Judicial Authority was required to invoke the jurisdiction to pass the demolition order under Section 343 of the DMC Act.
11. The Quasi Judicial Authority in the present case, has not bothered to see whether the show cause notice was in fact served upon

the owner / occupant of the property or not and proceeded to pass the demolition order, which is in violation of the principle of natural justice.

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 impugned demolition order dated 16.07.2018 passed by the Quasi-Judicial Authority is thus not sustainable in law, 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 16.07.2018 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
16. The appellants shall treat this order as a show cause notice and shall appear before the Quasi Judicial Authority on **20.05.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide an

opportunity to appellants to submit reply and also grant them personal hearing.

17. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defence raised by appellants and shall communicate the said order to appellants. All the proceedings shall be completed by the Quasi Judicial Authority within a period of 2 months from the date of hearing.

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

19. The Record of the respondent be returned back along with copy of this order and appeal file be consigned to Record Room after due compliance.

**Announced in the open Court,
Today i.e. on 10.05.2024**

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