

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

**APPEAL NO. 723/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,**  
**17<sup>th</sup> 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           :     01.10.2018**  
**Date of Order                           :     10.05.2024.**

**ORDER**

1. Vide this order, I shall decide the appeal filed against impugned sealing order dated 12.10.2018, passed with respect to property bearing no. A-2/40, Rajouri Garden, New Delhi.

2. Ms. Aakanksha, Ld. proxy counsel for the appellant has contended that after the service of the show cause notice, appellant wrote a letter to the Quasi Judicial Authority for seeking personal hearing but no personal hearing was granted to him and the impugned sealing order has been passed in violation of principle of natural justice. She prayed that appeal may be allowed and impugned sealing 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 duly received by the appellant, who wrote a letter but did not give any detail regarding the booking, therefore, Quasi Judicial Authority passed the impugned sealing order. 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 29.08.2018 was given and thereafter sealing order dated 12.10.2018 was passed.

5. The plea of the appellant is that he asked for personal hearing but no such personal hearing was granted to the appellant by the Quasi Judicial Authority before passing of the impugned sealing order.
6. A perusal of the show cause notice dated 29.08.2018 shows that same was issued by mere mentioning owner / builder, 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 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 owner / occupant of the property in question and not by mere mentioning owner / builder.

9. A perusal of the record further shows that appellant wrote a letter to the Quasi Judicial Authority, which was received in the office of the respondent on 07.09.2018, whereby appellant had asked for personal hearing to put forth his case. There is a noting dated 10.09.2018 with respect to the receipt of reply from the appellant at page no. 2/N of the record.
10. Despite receiving the said letter the Quasi Judicial Authority has neither perused the said letter nor provided any personal hearing to the appellant and passed the sealing order dated 12.10.2018. Even in the sealing order, there is no reference of letter dated 07.09.2018 filed by appellant.
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 impugned sealing order dated 12.10.2018 passed by the Quasi-Judicial Authority is thus not sustainable in law, as same has been passed in violation of principal of natural justice.
14. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned sealing order dated 12.10.2018 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
15. The appellant shall appear before the Quasi Judicial Authority on **20.05.2024 at 03.00 PM**. The Quasi Judicial Authority shall provide an opportunity to appellants to submit reply and also grant them personal hearing.
16. 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.
17. The appellants shall however not raise any unauthorized construction in the said property.

18. 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**