

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

APPEAL NO. 289/ATMCD/2020

**Sh. Ravinder Kumar Sharma
S/o Late Sh. Raghunath Prasad Sharma
R/o 1/2645, Gali No.3, Ram Nagar,
Opposite Ahinsa Vatika,
Delhi – 110032.**

..... Appellant

Vs

**1. East Delhi Municipal Corporation
(Through its Commissioner)
At Building Department,
Shahdara North Zone,
Keshav Chowk, G.T. Road,
Shahdara, Delhi.**

**2. A.E. (Building)
East Delhi Municipal Corporation
Shahdara North Zone,
Keshav Chowk, G. T. Road,
Shahdara, Delhi.**

..... Respondent

**Date of Filing of Appeal : 26.10.2020
Date of Order : 17.05.2024**

ORDER

1. Vide this order, I shall decide the appeal filed by the appellant against impugned demolition order dated 24.06.2019, passed with respect to property bearing no. 1/2645, Gali No. 3, Ram Nagar, Opposite Ahinsa Vatika, Delhi, which was booked for unauthorized construction of rooms, hall etc. at ground floor and first floor.

2. Sh. S.D. Dixit, Ld. counsel for the appellant has contended that the appellant was neither served with any show cause notice nor opportunity of being heard was given and the impugned demolition order has been passed in violation of principle of natural justice. 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 appellant has raised unauthorized construction, which was booked and show cause notice was issued, which was sent through speed post but as no reply was received, 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, perused the appeal, impugned order as well as record. A perusal of the above shows that property bearing no. 1/2645, Gali No. 3, Ram Nagar, Opposite Ahinsa Vatika, Delhi – 110032 was booked for unauthorized construction of rooms, hall etc. at ground floor and first floor and show cause notice dated 12.06.2019 was sent through speed post but as no reply was submitted, demolition order dated 24.06.2019 was passed.

5. The only plea taken by the appellant is that he was not served with the show cause notice and no opportunity of being heard was provided to him before passing of impugned demolition order.
6. A perusal of the record submitted by the respondent shows that the show cause notice dated 12.06.2019 was issued in the name of appellant, which was sent through speed post but no tracking report is available in the record, which can suggest that the show cause notice was in fact served upon the appellant in accordance with law.
7. No endeavor were made by the Quasi Judicial Authority to serve the show cause notice upon the appellant personally or by way of pasting before passing the impugned demolition order.
8. 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.
9. 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.”

10. The show cause notice dated 12.06.2019 has not been served in accordance with law. The impugned demolition order dated 24.06.2019 passed without proper service of show cause notice dated 12.06.2019 is

thus not sustainable, as same has been passed in utter violation of principal of natural justice.

11. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned demolition order dated 24.06.2019 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.
12. The appellant shall treat this order as a show cause notice and shall appear before the Quasi Judicial Authority on **27.05.2024 at 02.00 PM**. The Quasi Judicial Authority shall provide an opportunity to the appellant to submit his reply and also grant him personal hearing.
13. 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.
14. The appellant shall not raise any unauthorized construction in the property in question.

15. 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 17.05.2024**

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