

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

APPEAL NO. 728/ATMCD/2022

**Sh. F.S. Chauhan
S/o Late Sh. B.S. Chauhan
R/o Flat No. 22-C, Pocket – A,
S.F.S. Flats, Mayur Vihar – III,
Delhi – 110096.**

..... Appellant

Vs

**Municipal Corporation of Delhi
(Through its Commissioner)
Civic Centre, New Delhi - 110002**

..... Respondent

Date of Filing of Appeal : 28.11.2022
Date of Order : 22.05.2024

ORDER

1. Vide this order, I shall decide the appeal filed against impugned demolition order dated 27.10.2022, passed with respect to unauthorized construction in property bearing no. 22-C, Pocket – A, SFS Flats, Mayur Vihar Phase – III, Delhi.

2. Sh. F.S. Chauhan, appellant in person argued that this Court remanded the previous appeal filed by him vide order dated 06.05.2022 and direction was given to the Quasi Judicial Authority to pass a fresh

speaking order after granting hearing to him. He further argued that in this case hearing was conducted by Sh. A. Raju, the then AE(B), who concluded the hearing on 16.07.2022 but in the meantime he got transferred and the speaking order was not passed by Sh. A. Raju, AE(B) but same was passed by another AE(B) Sh. Rohit Goel, who did not provide any hearing to him. He further argued that the impugned demolition order has been passed in violation of law. He prayed that appeal may be allowed and impugned demolition order may be set aside. In support of his plea, appellant has relied upon judgments titled ***“Gullapalli Nageswara Rao & Ors. Vs Andhra Pradesh State Road Transport Corporation & Anr.”***, reported as AIR 1959 SC 308 and ***“Sudesh Kumar Vs South Delhi Municipal Corporation”***, reported as 2020 LAWPACK (Del) 81358

3. Sh. Ashutosh Gupta, Ld. counsel for the respondent has contended that the appellant was granted due hearing by the Quasi Judicial Authority and the appellant filed reply along with documents, which were considered by the Quasi Judicial Authority while passing the speaking order. He further contended that the AE(B), who passed the speaking order was competent to pass the speaking order and if hearing was granted by another AE(B), same would not prejudice the appellant. He prayed that appeal may be dismissed.

4. I have heard Ld. counsel for the appellant, Ld. counsel for the respondent and perused the impugned demolition order, appeal as well as the record.
5. The moot plea of the appellant in this case is that the personal hearing was provided by one AE(B) but the order was not passed by the same officer but passed by another officer, who did not provide any hearing, prior to passing of impugned speaking order, in terms of the directions given by this Tribunal while remanding the appeal to the Quasi Judicial Authority.
6. Admittedly, hearing in this case was provided to the appellant by Sh. A. Raju, the then AE(B), who received the reply and also heard the appellant. The said AE(B), however, failed to pass the order and the impugned speaking order was passed subsequently by Sh. Rohit Goel, AE(B), who did not grant opportunity of personal hearing to the appellant before passing the impugned speaking order.
7. As a matter of fact, once the hearing was granted by a Quasi Judicial Authority, it was incumbent upon the said officer to pass a specific speaking order on the basis of the facts, which came to his knowledge at the time of granting the hearing. If the said officer is transferred before passing the order then the subsequent officer, who

assume charge, may pass an order only after granting fresh hearing. An order passed by the subsequent officer, without affording any hearing is not in consonance with the law.

8. The Hon'ble Supreme Court of India in "***Gullapalli Nageswara Rao & Ors Vs Andhra Pradesh State Road Transport Corporation & Anr***" (*Supra*) has held that:-

"If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

9. Similar observation has been made by the Hon'ble High Court of Delhi in "***Sudesh Kumar Vs SDMC***" (*Supra*).
10. The impugned speaking order dated 27.10.2022, has been passed by the Quasi Judicial Authority without affording fresh hearing to the appellant, therefore, the said order is not sustainable in view of the above legal proposition.
11. In view of the above facts and circumstances, the appeal filed by the appellant is allowed. The impugned demolition order dated

27.10.2022 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

12. The appellant shall appear before the Quasi Judicial Authority on **05.06.2024 at 02.00 PM**. The Quasi Judicial Authority shall allow the appellant to submit an additional reply, if any, and also grant him personal hearing.
13. It is directed that the officer concerned, who would provide the hearing to the appellant, shall also pass the speaking order after dealing with all the submissions, pleas and defence raised by appellant and shall communicate the said order to 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 however 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 22.05.2024**

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