

**IN THE COURT OF SHRI A.S. JAYACHANDRA
DISTRICT & SESSIONS JUDGE, SHAHDARA DISTRICT
KARKARDOOMA COURTS: DELHI.**

RCA No.01/2018

Sh. Darshan Singh Verma
S/o Sh. Ganga Dass Verma
R/o 1/11701 Panchsheel Garden,
Naveen Shahdara, Delhi-110032.

.... Appellant

Versus

1. *East Delhi Municipal Corporation*
Through its Commissioner
Industrial Area, Patpaganj,
Delhi-110092.
(Shahdara North Zone)

2. *Dr. J.C. Sharma*
S/o H.L. Sharma
R/o M-46, Uldhanpur,
Naveen Shahdara,
Delhi-110032.

(Though not arraigned – heard in view of the impugned order)

.....Respondents

Date of Institution	:	03.01.2018
Argument heard on	:	20.01.2018
Date of Judgment	:	20.01.2018

J U D G M E N T

1. This is an appeal filed under Section 347 D of the Delhi Municipal Corporation Act, 1957 assailing the orders passed by the

Appellate Tribunal dated 13.12.2017 in Appeal No.926/17.

Grounds of appeal :

2. The appellant challenges that the Tribunal had exceeded its jurisdiction in ordering the sealing of the property and the Tribunal had no inherent powers. The Tribunal has not considered the law laid down in **Hardayal Singh Mehta & Ors. vs. MCD AIR 1990 Del.** holding that none can intervene in an appeal against the authorities. The third party cannot be impleaded u/s 343 of DMC Act, hence the impugned order is bad in law since based on surmises and conjectures. The same is passed in a mechanical way. The same is also opposed to the law laid down in **Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner AIR 1978 SC 851** wherein it is held that an order of the authorities must be judged by the reasons therein and cannot be supplemented by fresh reasons or otherwise.

3. The impugned order is also bad in law since the applicant had no right, title or interest in the property of the appellant. There is an allegation against the applicant as noted by the Ld. ADJ which case details or the order is not furnished. There was no order by the Tribunal impleading him or permitting him to assist. No opportunity was given to the appellant to object to the application filed by the applicant. The same was baseless. The Tribunal did not make any request u/s 14 (4) of the DMC Appellate Tribunal Procedure Rules, 1986. The order is passed in a haste. The photographs furnished by the applicant were not filed on 13.12.2017. Section 347 C (7) of the DMC Act is not properly

appreciated. The liberty given to the authority to seal the property is against the earlier orders. The appellant is entitled for regularisation as per Clause 2.28 of the Unified Building Bye-laws. Certain other case laws are mentioned without reference to the indexing and the law journals. However, it is prayed that the impugned order be set aside.

4. Notices were issued on this appeal to the MCD as well as the alleged applicant before the Appellate Tribunal. The records pertaining to the impugned order are also summoned and perused. Heard the Ld. Counsel on either side.

5. The Ld. Counsel for the appellant submits that the impugned order is *per se* not in accordance with law in view of the ruling in **Hardayal Singh Mehta Vs. MCD AIR 1990 Del. 170** wherein it is held that no person other than the Corporation and its officers could be the parties to the appeal.

6. On the other hand, the Id. Counsel appearing for the MCD (R1) submits that the present appeal is not maintainable in view of Section 347 D (1) of the DMC Act, 1957.

7. The Ld. Counsel appearing for the applicant (who is not rightly arraigned as a party however appears consequent to the court notice which is issued in compliance of the principles of natural justice since the impugned order has noted the presence of a counsel) is also heard. The Ld. Counsel for the applicant submits that such an application was filed before the Appellate Tribunal consequent to the orders of the Hon'ble High Court dated 16.11.2017 in WP No. 7357/17 titled as J.C. Sharma vs. East Delhi

Municipal Corporation. He submits that the impugned order is justified in the facts and circumstances.

8. Ld. Counsel appearing for the appellant submits that the appeal is still maintainable within the limits of Section 347 D of the DMC Act. Having heard the Ld. Counsel on either side and after going through the records of the Id. Appellate Tribunal, the only point that arises for determination in this appeal is *“Whether the impugned order is in accordance with the provisions of DMC Act and the law laid down and further whether the impugned order is opposed to the principles of natural justice or not?”*.

9. In answering the above points for determination, the submissions made by the Ld. Counsel for the appellant concerning the law laid down and the contentions of the applicant with regard to the directions of the Hon'ble High Court in WP No.7357/17 DD 16.11.2017 are to be properly understood. The law laid down in **Hardayal Singh Mehta** (Supra) is worthy to be quoted herein.

“In other words, an order made by the Tribunal to add a party to the appeal would confer upon that party a right to participate in the proceedings in the appeal, a right to participate in the proceedings before the Commissioner if the Tribunal refers the case back to the Commissioner, and even a right to prefer an appeal under S. 347-B to the Administrator against an order of the Tribunal. These are essentially statutory rights that can be created only by the statute. The Tribunal cannot confer such rights upon a party. It has no power to do so. The provision made in Order 1, Rule 10, C.P.C. is, admittedly, not applicable to

proceedings before the Tribunal. The power to add a party under this provisions which vests in a Civil Court has not been conferred on the Tribunal. This power is not included in the matters enumerated in clauses (a) to (f) of Sub-Section (7) of S. 347 -C. (Paras 27, 28)”

10. The impugned order dated 13.12.2017 assailed herein notes the presence of the counsel Sh. V.K. Sharma. The same is reproduced as under :

“A. No. 909/17 & 926/17

13.12.2017

Present : Sh. Rohit Jain, Counsel for the appellant.
Sh. V.K. Aggarwal, proxy counsel for EDMC
alongwith Sh. S.K. Karara, AE (B)
Sh. V.K. Sharma, counsel for applicant.

File taken up today on an application filed by the applicant that appellant has carried out the construction in the property in question after passing of the stay order by this Tribunal. He has also filed photographs and CD. He also submits that appellant has sought time to carry out the rectification in the property, but he has not carried out any rectification till now.

On the other hand, Ld. Counsel for appellant submits that appellant has not done any construction activities in the property in question after passing of stay order and he further submits that rectification activities could not be done as respondent officials have informed him that property in question does not fall in layout plan of the colony

and therefore, he has filed application to the respondent officials for including the property in layout plan.

AE(B) also admits the said fact.

In the meanwhile since the appellant could not use the property for any purpose and even cannot carry out the rectification, it would be appropriate to avoid any dispute, the respondent to seal the property in pursuance of Impugned sealing order, hence, the interim stay to the extent of restraining the respondent from sealing the property in question in pursuance of impugned sealing order is hereby set aside. The interim stay granted qua demolition is to continue.

Put up for the purpose already fixed and for order on applications of the applicant on the date already fixed I.e.f. 22.01.2018.”

11. On going through the impugned order and the file, the order-sheet notes that after granting some relief to the appellant by an order dated 25.10.2017, the Ld. Tribunal had posted this matter awaiting the status report by the respondent Corporation by 22.1.2018.

12. In the meantime, by a separate order dated 5.12.2017 the file was taken up and notice on this application was also made to both the sides and the file was called on 13.12.2017. Thereafter, the impugned order came to be passed.

13. The prayer of the applicant – intervener is very relevant to be noted. The prayer is “That this Hon'ble Tribunal may

graciously may please to allow the applicant to assist this Hon'ble Court in the proceedings.... in the interest of justice". Such an application was filed on behalf of one J.C. Sharma to whom this court also issued notice in compliance of principles of natural justice in this appeal. In view of the law laid down in **Hardayal Singh Mehta** (Supra) whether such an application with the prayers sought could have been entertained or not is the sterling point. The Ld. Counsel for the said applicant points out that the basis for this application is the order of Hon'ble High Court in WP No.7357/17. The said writ petition was disposed of assuring a liberty to the petitioner to approach the Hon'ble High Court afresh if a fresh cause of action arose. However, it is noted that at the request of the counsel for the writ petitioner, a liberty to place the relevant documents/record before the Appellate Tribunal concerning the subject property is given. The said directions do not permit the intervener (writ petitioner) to assist the conducting of the proceedings.

14. After perusal of the orders of the Hon'ble High Court dated 16.11.2017 in WP No. 7357/17, no specific powers are given to the Tribunal to treat the applicant as one of the parties to the appeal proceedings. He was only permitted to place the documents.

Consequent to the said orders, the Ld. Tribunal had noted that Ld. Counsel for the applicant had also made submissions apart from filing the photographs and further made the submissions to the effect that the appellant had not carried out any rectification till now. Such participation and the arguments advanced by the Ld.

Counsel Sh. V.K. Sharma for the applicant before the Ld. Appellate Tribunal is beyond the scope of the orders passed in WP No. 7357/17 and also the law laid down in **Hardayal Singh** (Supra).

15. The Ld. Tribunal could have only received the documents/record relevant to the subject matter without being influenced by any of the submissions made by the applicant. The order sheet itself clearly shows that the Ld. Tribunal was influenced by the submissions made by the intervener and the same had sparked the judicial mind of the Ld. Tribunal since it had heard the Ld. Counsel for the intervener. The same is opposed to the spirit and ambit of the law laid down by the Hon'ble High Court. The application could have never been entertained in the form as is found from the impugned order.

16. Coming back to the submissions of the Ld. Counsel for the MCD that the present appeal is itself not maintainable in view of Section 347 D of DMC Act, it must be noted that an appeal lies against the order of a Tribunal in an appeal u/s 343, 347 B confirming, modifying or annulling an order made or notice issued under this Act. From the order sheet, it is clear that the by an order dated 25.10.2017 the Appellate Tribunal had ordered that the authorities will not take any demolition action till the next date of hearing and further the time is granted for rectifications. By the impugned order dated 13.12.2017, the Appellant Tribunal noted that the property be sealed and the interim stay granted earlier in sealing the property is set aside.

17. While vacating the stay granted earlier, the same falls

under modifying the order or annulling the order for which the aggrieved is always at liberty to approach the further appellate forum u/s 347 D of the DMC Act. Therefore, the contention of the Ld. Counsel appearing for the respondent Corporation is highly illogical and the same cannot be entertained.

18. One more aspect need to be noted is that the Appellate Tribunal was mis-directed by the participation and active assistance by the applicant which could have never been allowed. If at all the applicant wanted to place some material, the same ought to have been produced with the copy of the orders passed by the Hon'ble High Court which was never placed before the Ld. Tribunal with a list of such documents. The applicant cannot have any role either to assist or to participate in the proceedings. The prayer of the applicant before the Ld. Tribunal itself is beyond the scope of the liberty given to him in WP No.7357/17 and also beyond the scope of the DMC Act.

19. For the aforesaid reasons, the point arising for determination is answered holding that the impugned order is beyond the scope of law of the DMC Act and the ruling of the Hon'ble High Court as discussed above. Consequently, the following :

ORDER

The impugned order dated 13.12.2017 in A. No. 909/17 & 926/17 on the files of Ld. AD&SJ-cum-PO, Appellate Tribunal, MCD is hereby set aside.

The Ld. Tribunal is directed to proceed in accordance

with law by considering the status report of the Corporation, hear the appellant and shall pass a fresh order without taking any assistance or participation of any third party (intervener). A copy of this order along with the records summoned be sent back to the Ld. Tribunal. File be consigned to record room.

Typed to the dictation directly,
corrected and pronounced in
open court on 20.01.2018

(A.S. Jayachandra)
District & Sessions Judge,
Shahdara/KKD Courts, Delhi.