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**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 20.07.2021

+ W.P.(C) 6613/2021 & CM APPL.20793/2021

SURAJ BHAN CHAUHAN

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION..... Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr. J.P.Sengh, Senior Advocate with Mr. Shashi Pratap Singh, Ms. Manisha Mehta and Mr. R.L.Sinha, Advocates.

For the Respondent: Mr. Sanjeev Sabharwal, Standing Counsel, SDMC.

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 22.06.2021 whereby the respondent Corporation has revoked the sanctioned building plan under Section 338 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the DMC Act).
3. Learned senior counsel for the petitioner submits that no show cause notice was ever served on the petitioner. He submits that a show

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cause notice dated 04.06.2021 was served on the architect and from the architect, the petitioner got to know of the same and accordingly sent a reply on 18.06.2021, however, the impugned order dated 22.06.2021 records that no reply to the said show cause notice has been received till then despite passage of stipulated time.

4. Learned senior counsel submits that no hearing as mandated under Section 338 of the DMC Act has been granted to the petitioner.

5. Learned counsel appearing for the respondent submits that show cause notice was duly sent to the petitioner by speed post. He, however, concedes that at the time of passing of the order the reply has not been taken into account.

6. He further submits that the construction plan was sanctioned under the Saral Scheme by the architect by making misrepresentations. Accordingly action has been taken against the architect. He further submits that since the property is situated in an unauthorised colony no construction activity is permitted therein.

7. Section 338 of the DMC Act reads as under:-

***“338. Sanction accorded under misrepresentation.—If at any time after the sanction of any building or work has been accorded, the Commissioner is satisfied that such sanction was accorded in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information further under sections 333, 334 and 335, he may be order in writing cancel for***

*reasons to be recorded such sanction and any building or work commenced, erected or done shall be deemed to have been commenced, erected or done without such sanction:*

*Provided that before making any such order the Commissioner shall give reasonable opportunity to the person affected as to why such order should not be made.”*

8. Proviso to Section 338 of the DMC Act mandates that before making any order under Section 338 DMC Act, the Commissioner shall give reasonable opportunity to the person affected, as to why such order should not be made.

9. In the present case the show cause notice dated 04.06.2021 is alleged to have been sent to the petitioner. The petitioner has filed a reply to the show cause notice which was received in the office of the SDMC on 18.06.2021 and specifically stated that notice has not been served upon him and he got to know of the same from the architect.

10. However, the impugned order records that no reply to the show cause notice has been received which clearly establishes that the reply given by the petitioner has not been taken into account at the time of passing the impugned order. Accordingly there is *ex facie* breach of the principles of natural justice as mandated by Section 338 of the DMC Act. On this count alone, order dated 22.06.2021 cannot be sustained.

11. In view of the above, impugned order dated 22.06.2021 is set aside. The matter is remitted to the respondents to pass a fresh speaking order on the show cause notice dated 04.06.2021 after giving an opportunity of a hearing to the petitioner.

12. It is clarified that this Court has neither considered nor expressed any opinion on the merits of the show cause notice or the reply given by the petitioner. Respondents would be at liberty to pass a fresh speaking order without being influenced by anything stated in this order.

13. Since one of the issues raised by the respondent Corporation is with regard to raising of a construction in an unauthorised colony, it is directed that the petitioner shall not carry out any further construction activity or create any third party rights in the property till the passing of the speaking order by the respondent Corporation.

14. Thereafter the petitioner would be permitted to raise construction only if permitted by the said speaking order and in case the same is not permitted and the sanction plan is revoked, petitioner would be at liberty to avail of his remedies in accordance with law.

15. With the consent of parties it is directed that petitioner shall appear before the concerned Deputy Commissioner, South Zone on 27.07.2021 at 2.30 PM. Petitioner shall be at liberty to produce additional documents in support of his reply on the said date before

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the concerned officer. The officer shall thereafter pass a speaking order within a period of two weeks therefrom.

16. It is further directed that in case the order is adverse to the petitioner, no demolition action shall be carried out for a period of one week of the passing of the order to enable the petitioner to avail of his remedies in accordance with law.

17. Petition is disposed of in the above terms.

18. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

**SANJEEV SACHDEVA, J.**

**JULY 20, 2021**

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