

S/L 3  
13.01.2021  
Court. No. 19  
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C.O. 71 of 2021

Md. Kalamuddin & Anr.  
Vs.  
The Municipal Commissioner,  
The Kolkata Municipal Corporation & Ors.

*Mr. Arindam Banerjee,*  
*Mr. S. Ganguly,*  
*Mr. Koushik Bhatta.*

*...for the Petitioners.*

*Mr. Alope Ghosh,*  
*Ms. Manisha Nath.*

*.... For the Corporation.*

This revisional application has been filed by the co-owners of a premises situated at 37A, Taltala Lane, P.S. Taltala, Kolkata-700016.

The petitioners applied for sanction in the year 1992 for construction of a ground plus three storeyed building on the said premises upon demolition of the existing dilapidated structure. The Kolkata Municipal Corporation (KMC) allowed such sanction of G+3. Subsequently, the building was constructed by one Md. Jahangir allegedly a building contractor on behalf of the co-owners including the petitioners. After receiving some complaints about such unauthorized construction, a notice was served upon the co-owners of the building including the petitioners and demolition proceedings were initiated before the Special Officer (Building) KMC. The Special Officer (Building) KMC by an order dated July 18, 2019 came to a conclusion that

neither the petitioners nor the building contractor who were both heard, had taken the responsibility for the unauthorized construction and as such unauthorized construction on the fourth floor roof should be demolished.

Aggrieved, the petitioner preferred an appeal before the Municipal Building Tribunal, Kolkata Municipal Corporation. The appeal was registered as B.T. Appeal No.68 of 2019. The learned tribunal by an order dated January 1, 2021, came to a conclusion that the appeal was within time. The petitioners thereafter moved an application for stay in view of the urgency as a demolition notice dated January 6, 2021 had been served upon the petitioners indicating that the unauthorized construction would be demolished on January 13, 2021. The learned tribunal came to the conclusion that merely because the petitioners possessed a room on the portion to be demolished that could not itself be a ground for passing an order of stay as the petitioners had not taken responsibility for such construction. It was further held that the unauthorized construction may endanger human life and the learned tribunal could not take responsibility for the same.

Mr. Banerjee, learned advocate appearing on behalf of the petitioners submits that the appeal was filed within time but due to the pandemic situation the business of the learned tribunal did not permit the hearing of the applications filed in connection with the said appeal. He further submitted that the notice of demolition was served upon his clients

treating them to be the persons responsible. He also submitted that his clients were not responsible for the construction and the same was done through a contractor but in any event his clients were the persons who would be affected by such demolition being in possession of the unauthorized portion. Mr. Banerjee submits that the contractor was the agent of the co-owners and the co-owners could not avoid their responsibility with regard to such construction and that was why the notice of KMC was addressed to the persons responsible. Mr. Banerjee further submits that once an appeal has been filed against the demolition order, the person aggrieved under Section 400(3) ought to be heard before the demolition takes place otherwise, the appeal would become infructuous.

He relies on the decision of Mool Chand Yadav and Another Versus Raza Buland Sugar Company Limited, reported in (1982) 3 SCC 484, wherein the Hon'ble Apex Court held that, if an order against which an appeal has been preferred has serious civil consequences, then, during the pendency of an appeal therefrom the operation of the order should be stayed.

Mr. Aloke Ghosh, learned advocate appearing on behalf of the KMC, has relied on the decision of this Court in the matter of Sanjay Mehta & Ors. Versus the Kolkata Municipal Corporation & Ors. reported in 2006 (2) CLJ (Cal) 574, in support of his contention that if the petitioners did not take responsibility for the unauthorized construction

then, the petitioners neither had any right of audience nor a right of appeal. He also relies on a decision of the Hon'ble Division of this Court in the matter of Ziauddin versus Mayor-in-Council (Bldg) reported in 2001 (1) CHN 4, for the proposition that the KMC was vested with the power under Section 400(8) to demolish any portion or erection over which there was no right to property and in this case, as the co-owners did not claim any right to the said unauthorised construction, the KMC had the power to invoke the provisions of Section 400(8).

The points raised by both the parties as to whether the petitioners were the persons interested who had a right of appeal and a right to protect the property or whether the petitioners not having taken responsibility for such construction and having blamed the contractor should be at all given the privilege of availing of the provisions of appeal under the Act, are to be decided by the appellate authority.

The admitted position is that the petitioners are in occupation of the premises as co-owners. The KMC had given a notice to the petitioners as the persons responsible and the demolition proceeding was initiated. The petitioners contested the same and an order of demolition was passed. The petitioners preferred an appeal therefrom and the appeal has been admitted for hearing. The petitioners prayed for an urgent stay of the order of demolition as the date of demolition is January 13, 2021. The learned tribunal refused to stay the order of demolition and fixed the appeal for final

hearing on March 3, 2021. In such fact situation, nothing will remain to be decided in the appeal if the demolition is carried out, inasmuch as, if the petitioners are successful in the appeal, there will be no way of putting the clock back and restoring the property to its earlier position, prior to such demolition. On the other hand, if the KMC stays its hands from demolishing the building for a period of six weeks, no irreparable loss or injury will be caused to the Corporation as it is not the Corporation's case that the building required urgent demolition for public safety.

Under such circumstances, this revisional application is allowed. The KMC shall not act in terms of the order of demolition for a period of six weeks. The learned Municipal Building Tribunal, Kolkata Municipal Corporation is directed to hear out and dispose of the appeal within a period of four weeks from date upon allowing the parties to contest the same. The time limit fixed hereinabove is peremptory. The petitioners shall not be allowed any unnecessary adjournments.

The learned Tribunal will proceed independently and without being influenced by any observation made hereinabove.

The question as to whether the petitioner are the persons responsible and whether the petitioners can claim any protection to the unauthorised construction in view of the their submissions before the Special Officer that the petitioners were not responsible for such construction are

points to be determined in the appeal and this Court does not express any view in that regard.

The decisions cited by Mr. Ghosh are to be considered in the appeal itself and not by this Court. This Court has restricted this decision on the point of balance of convenience and inconvenience and irreparable loss and injury that would be suffered by the parties if an interim stay of the demolition order was not passed.

All points are left open for the learned Tribunal to decide. The learned Tribunal shall ensure transmission of the records of hearing within a week from date. The order dated January 11, 2021 is set aside and quashed.

The petitioners and the KMC shall act on the basis of the learned Advocates' letter.

As the matter has been passed in presence of both the parties the learned Advocate for the KMC shall also inform this order to his client.

Liberty is also granted to the petitioners to communicate this order by whatsapp and email.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

**(Shampa Sarkar, J.)**