

08.04.2021

Item No. 36

Crt. No. 07

b.r.

C.O. 350 of 2019

Mahendra Baid

-vs-

***Municipal Commissioner,
the Kolkata Municipal Corporation & Anr.***

Mr. Debjyoti Basu
Mr. Bhaskar Prasad Banerjee
Mr. Parasar Baidya
..... for the petitioner.

Mr. Alope Kumar Ghosh
Mr. Swapan Kumar Debnath
..... for the KMC/Opposite Party.

In the instant application the petitioner has challenged the judgement and order dated January 15, 2019 passed by the Municipal Building Tribunal, in B.T. Appeal No. 41 of 2017.

A demolition proceeding under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 (for short “the 1980 Act”) was initiated being Demolition Case No. 46/D/V/2016-17 for construction of a mezzanine floor within the shop room at the ground floor.

The Special Officer, Building passed an order dated 19th April, 2017 directing the petitioner to demolish the construction as indicated in the demolition sketch plan with red colour.

The petitioner herein preferred an appeal before the Municipal Building Tribunal, Kolkata Municipal Corporation giving rise to B.T. Appeal No. 41 of 2017. The Municipal

Building Tribunal dismissed the appeal by the judgment and order dated 15.01.2019. Being aggrieved, the petitioner preferred the instant application.

Mr. Basu, learned advocate for the petitioner, draws the attention of the Court to the schedule of the deed of conveyance dated August 13, 2001, by virtue of which the petitioner herein is claiming to have acquired right, title and interest in respect of the mezzanine floor of the western portion of the building in question, and contends that it will be evident from the said deed of conveyance that the mezzanine floor is a part of an old building and such building was constructed long time back even prior to the coming into force of the 1980 Act. Mr. Basu, further, contends that the said mezzanine floor is immune from demolition and in support of such contention he relies upon Sub-Section 4 of Section 414 of the Calcutta Municipal Act, 1951 (for short “the 1951 Act”).

Mr. Ghosh the learned advocate for the opposite party seriously disputes the contentions of Mr. Basu and contends that no sanction was obtained by the petitioner herein from the appropriate authority of the Kolkata Municipal Corporation for such construction. He, further, contends that the person responsible has violated Rule 69, 78, 133 and 134 of the KMC Building Rules 2009. Mr. Ghosh also contends that the petitioner herein is taking the plea of immunity from demolition under the provisions of Section 414 (4) of the 1951 Act for the first time before this Hon’ble

Court which is not permissible. He, further, contends that at the time of inspection on 07.01.2016 it was detected that construction work was going on in respect of the impugned structure.

I have heard the learned advocates for the parties and have considered the materials on record.

Let me first decide the plea of immunity from demolition of the impugned construction raised by the petitioner herein. For the purpose of deciding such issue, Sub-section 4 of Section 414 of the 1951 Act is extracted.

“(4) Notwithstanding anything contained in the foregoing sub-sections, no action shall be taken under this section in respect of any erection, alteration, addition or other work executed more than twelve years before the issue of the notice under sub-section (1):

Provided that the onus of proving that the work was done more than twelve years previously shall lie on the person responsible.”

Sub-section 4 of the 1951 Act starts with a non-obstante clause and provides that no action shall be taken under that section in respect of any erection, alteration, addition or other work executed more than twelve years before the issue of the notice under sub-section 1 of Section 414 of the said Act. The proviso to such sub-section place the onus of proving that the work was done more than twelve years previously upon the person responsible.

However, the issue regarding immunity from demolition was not raised by the petitioner either before the Special Officer, Building or before the Municipal Building Tribunal and the same is being raised by the petitioner for the first time before this Court.

No document, excepting the deed of conveyance, has been produced by the petitioner in support of his claim. The deed of conveyance is silent as to when the impugned construction was made. The period of time when such construction was made is an issue of fact which cannot be decided by this Court sitting under Article 227 of the Constitution of India. The petitioner herein failed to discharge his onus of proving when the impugned construction was made. In order to claim immunity from demolition under the 1951 Act, the petitioner has to prove that erection, alteration, addition or other works have been executed more than 12 years before a notice under Section 414(1) of the said Act could have been issued in the instant case, which the petitioner miserably failed to prove. Thus, this Court is of the considered view that the petitioner cannot claim that the impugned construction is immune from demolition u/s 414(4) of 1951 Act.

Let me now consider whether the order of demolition passed in respect of the impugned construction is justified or not.

It appears from the inspection report, a copy of which has been filed by Mr. Ghosh in course of hearing of the

instant matter, that on the date of inspection i.e. January 7, 2016, it was detected that construction of the mezzanine floor was going on within the ground floor without sanction. The petitioner could not produce any document either before the authorities below or before this Court that the mezzanine floor was constructed in terms of a sanction building plan. The Special Officer, Building upon considering the materials on record held that the person responsible i.e. the petitioner herein have constructed one mezzanine floor within the shop room at the ground floor for which no sanction was obtained from the appropriate authority of the Kolkata Municipal Corporation. It was further observed by the Special Officer, Building that the person responsible have violated the Rules 69, 78, 133 and 134 of the Kolkata Municipal Building Rule, 1980. On the basis of such finding, the Special Officer, Building passed an order of demolition as stated herein before.

The Municipal Building Tribunal affirmed the order of demolition passed by the Special Officer (Building) as the petitioner failed to produce any document to show that the impugned construction was legal and authorised one. The petitioner also could not satisfy the Tribunal as to the legality of the said construction but the only contention of the petitioner herein before the Appellate Tribunal was that the mezzanine floor was purchased by the petitioner herein as would be evident from the schedule of the deed of conveyance.

It would not be out of place to mention that the authorised representative of the petitioner appeared before the Special Officer (Building) on 15.02.2017 and examined the demolition sketch plan containing the unauthorised construction area marked with red colour. On the prayer of the petitioner dates were fixed for filing written submission of the person responsible. However, the petitioner did not attend the hearing on 28.03.2017 and 19.04.2017. This Court is thus, of the view that the petitioner had no valid grounds of objection against the Inspection Report and Demolition sketch plan.

This Court is also of the considered view that the impugned construction was made at the point of time when the inspection of such premises was undertaken on 07.01.2016 and the same is an illegal and unauthorised one.

For the reasons as aforesaid this Court holds that the Special Officer (Building) and the Tribunal was justified in directing demolition of the impugned construction as indicated in the demolition sketch plan and marked with red colour.

The order impugned order does not suffer from any infirmity or perversity warranting interference under Article 227 of the Constitution of India.

C.O. 350 of 2019 is accordingly dismissed without however any order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)