

08.02.2021
Item No.1
Crt.No.11
K.B.

**M.A.T. 154 of 2021
with
I.A. No. CAN 1 of 2021**

**Robiul Amin Molla & Ors.
-Versus-
The Kolkata Municipal Corporation & Ors.**

Mr. Ranajit Chatterjee
Mr. Syed Nurul Arefin
.... For the appellants.

Mr. Alok Ghosh
Mr. Subhrangsu Panda
.... For the Kolkata
Municipal Corporaiton.

Under challenge in this appeal is the order impugned dated 3rd February, 2021 in Writ Petition No. WPA 3714 of 2021. By the said impugned order, the Hon'ble Single Bench was pleased to dismiss the challenge of the present appellants/the writ petitioners to the notice dated 27th January, 2021 issued by the Respondents/Kolkata Municipal Corporation (*KMC*).

From the facts of this case, it emerges that the notice dated 27th January, 2021 (*supra*) was in furtherance of a demolition proceeding instituted under Section 400 of the Kolkata Municipal Corporation (*KMC*) Act, 1980 against the writ petitioners/the present appellants.

The said impugned order of the Hon'ble Single Bench refers copiously to an order dated 19th July, 2017 as issued

by the concerned authority of the *KMC* adequately explaining the present unauthorised and dangerous status of the building in issue.

Mr. Chatterjee, Learned Counsel, appears for the appellants and makes the primary submission that Section 400(7) of the *KMC* Act, 1980 permits the person proceeded against *qua* the demolition proceeding to await the final decision in the appeal. It is submitted that since three appeals, being BT Appeal Nos. 61 of 2017, 62 of 2017 and 63 of 2017 as filed by the present appellants are pending before the Learned Municipal Building Tribunal (for short the Tribunal), the final decision in the appeal ought to be awaited.

It is argued that by issuing the notice impugned dated 27th January, 2021, the *KMC* has, jumped the proverbial gun by initiating the demolition proceeding even before the Learned Tribunal as had an opportunity of arriving at a final decision in the appeal.

Mr. Ghosh, Learned Counsel, appearing for the *KMC* with Mr. Panda, Learned Counsel, points out in the three appeals as filed by the present appellants, being BT Appeals Nos.61, 62 and 63, all of 2017, the present appellants preferred individual stay applications before the Learned Tribunal. The stay applications were preferred purportedly in exercise of rights granted under Section 400 (4) of the *KMC* Act, 1980.

It is submitted that the stay applications were rejected by the Ld. Tribunal *vide* its order dated 28th November, 2018. It is submitted that the rejection of the stay applications were not challenged by the present appellants.

It is submitted that the procedure for challenging a proceeding initiated under Section 400 of the KMC Act, 1980 is specific and the present appellants cannot insist on exhaustion of the provisions laid down in Section 400(7) of the KMC Act, 1980 by giving a go-by to the provisions of Section 400(4) of the said KMC Act. It is submitted that the Hon'ble Single Bench took notice of the fact that the Hon'ble Court only granted limited protection against the demolition and, such period has since long expired.

Having heard the parties and considering the materials placed, this Court finds that the Hon'ble Single Bench has taken notice of the fact that the present appellants did not proceed to challenge the rejection of the prayers for stay filed by them under Section 400(4) of the KMC Act, 1980.

This Court also finds that the Hon'ble Single Bench has noticed such fact and held that the pendency of the appeal does not *ipso facto* operate as a stay.

In the backdrop of the above discussion, this Court finds no merit in the appeal. Since this Court has taken a view on the law applicable to the facts in the present

appeal, further pendency of the application shall be an idle formality.

Accordingly, both the appeal and the stay application being, **MAT 154 of 2021** with **IA No. CAN 1 of 2021** stand **dismissed**.

In view of the discussion above, affidavits are naturally not invited. All other allegations stand denied and disputed.

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

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar, J.)