

**MAT 497 of 2021
with
IA No: CAN 1 of 2021
with
CAN 2 of 2021**

**Prabir Ghosh
vs.
Sri Sri Iswar Singhabahinin Thakurani, RPTD
by Shebait Sarojendra Nath Bose & ORs.**

(Via Video Conference)

Mr. Surajit Samanta

.....for the Appellant

**Ms. Seba Roy
Mr. Bhaskar Sengupta
Mr. Prosenjit Das**

.....for the Respondent No.1

**Mr. Alok Kumar Ghosh
Mr. Ranajit Chatterjee
Ms. Sima Chakraborty
Mr. Subhransu Panda**

.....for the KMC

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

Under challenge in this appeal is the order dated
22nd March, 2021 in the writ petition. The petitioner is
the private respondent in this appeal.

At issue in this appeal is the construction of a staircase along with a stair head room at the premises in issue being No. 32, Bose Para Lane, Ward No. 008, Borough No. I under the Kolkata Municipal Corporation (KMC) (referred to for short as the said premises, the said staircase, and the said stair head room respectively).

The Hon'ble Single Bench, *inter alia*, held that the that since the demolition proceedings initiated on behalf of the KMC have reached a stage whereby the order of demolition passed by the Special Officer (Building) on the 30th June, 2007 has reached finality, the same requires to be executed at once. Accordingly, the KMC was directed to take steps to demolish the unauthorised construction in terms of the order of the Special Officer (Building) dated 30th June, 2007 within a specified time.

Being aggrieved, the appellant has arrived before this Court.

Mr. Samanta, learned Counsel appearing for the appellant, submits that the Hon'ble Single Bench failed to notice an earlier order of the Hon'ble Division Bench dated 11th September, 2014 in MAT 1364 of 2013. MAT 1364 of 2013 was in respect of the first demolition proceeding No. 15 -D /2002-2003 which was decided by the BT (Building Tribunal) Appeal No. 59 of 2004. The Hon'ble Division Bench, *inter alia*, directed the

Superintending Engineer, Public Works Department (PWD) to appoint an authorised responsible Executive Engineer to inspect the premises in presence of both the parties after giving due notice to the parties and then place a report before the Appellate Authority of the KMC. It was further directed that in the event the statutory Appellate Authority ultimately finds that the demolition was conducted in respect of a structure which was not irregular, the same shall be restored at the cost of the KMC. The parties were also permitted to place on record before the PWD documents in their possession indicating *jointness* of the wall and, any relevant fact.

Mr. Samanta submits that the facts as decided by the Hon'ble Division Bench in MAT 1364 of 2013 connected to the first demolition proceeding being Case No. 15-D/2002-2003 have a direct bearing on the second demolition proceeding numbered as 68 of 2003-2004. It is pointed out that the Hon'ble Single Bench could not have directed demolition of the alleged unauthorised structure in terms of the order of the Special Officer (Building) dated 30th June, 2007 without taking judicial notice of the order of the Hon'ble Single Bench in MAT 1364 of 2013 (*supra*).

It is also submitted that an intricate point in issue connected to the demolition is the *jointness* of the common wall share between the present appellant and

the private respondent/the writ petitioner. The *jointness* of the common wall is the subject matter of a civil *lis* pending before the competent Civil Court. It is pointed out that unless the competent Civil Court decides, one way or the other, on the *jointness* of the common wall, any construction made by one of the parties connected to such common wall cannot be rejected outright as unauthorised.

Per contra, Ms. Roy, learned Counsel appearing for the private respondent in this appeal/the writ petitioner draws the attention of this Court to the fact that the second demolition case No. 68 of 2003-2004 was challenged in appeal before the Municipal Building Tribunal numbered as BT Appeal No. 55 of 2007. It is pointed out that BT appeal No. 55 of 2007 preferred by the present appellant/the Person Responsible (PR) was dismissed by order dated 6th May, 2006 thereby affirming the order of demolition in Case No. 68-Dof 2003-2004.

Ms. Roy submits that challenging the proceedings and the final Orders issued by the Learned Tribunal, writ petitions were preferred by the parties. The writ petitions were decided by a common order of the Hon'ble Single Bench dated 12th August, 2013. Against the common order, the appeal being MAT 1364 of 2013 was preferred by the present appellant which was decided by directing

inspection of the premises and to place a report before the statutory Appellate Authority.

Mr. Ghosh, learned Counsel appearing for the Respondents/ KMC, submits that the subject of alleged unauthorised construction has been visited over and over again. It is pointed out by an order of this Court dated 11th June, 2021, the Executive Engineer (Civil), Building Department/Borough I, KMC has filed a detailed report dated 29th June, 2021.

Mr. Ghosh also refers to an inspection carried out in terms of the order of the Hon'ble Division Bench in MAT1364 of 2013 by the Executive Engineer II, City Division, PWD. The inspection report, *inter alia*, discusses the presence of the alleged unauthorised construction on the terms as contained therein.

Having heard the parties and considering the materials placed, this Court finds that from the order in MAT1364 of 2013 the Hon'ble Division Bench clearly directed that all points upon inspection of the premises in question shall be placed before the statutory Appellate Authority. This Court thereafter finds that such inspection has been carried out in terms of the order in MAT1364 of 2013 and as reported by the Executive Engineer in his report dated 29th June, 2021, the issue has been visited, revisited and visited again and again.

In the above view of the matter, this Court finds no justification in keeping this issue pending for consideration further. Since the demolition proceedings relate to the alleged unauthorised construction in respect of which BT Appeal No. 55 of 2007 filed by the present appellant is still pending, the parties are permitted to take all points before the Learned Municipal Building Tribunal which shall then decide the appeal not later than a period of eight weeks from the date of communication of this order.

All points are kept open to be decided on merits by the Learned Tribunal.

MAT 497 of 2021 with CAN 1 of 2021 stand accordingly **disposed of**.

In view of the order passed today, the judgment and order impugned dated 26th March, 2021 in the writ petition stands permanently stayed.

The application for substitution filed by the appellants for substituting now the deceased Respondent No. 1 in this appeal, is filed within time and thus allowed.

Leave is granted to the appellant to make the necessary amendment to the cause title.

Registry is directed to take the usual steps.

CAN 2 of 2021 also stands **disposed of**.

All parties to act on a server copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Kesang Doma Bhutia, J.)

(Subrata Talukdar, J)