

Item No.8

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

03.03.2021
Ct-24

W.P.A.9873 of 2020
CAN 1 of 2021

Masihuddin Qureshi

v

The Kolkata Municipal Corporation & Ors.

Mr. Tarique Quasimuddin

Mr. Aranya Saha

Mr. Debnath Ganguly

... for the petitioner.

Mr. Raja Saha

Mr. Amit Kumar Ghosh

... for the State.

Mr. Ranajit Chatterjee

Mr. Gopal Chandra Das

... for KMC.

Mr. K. Das

... for the respondent no. 7.

Mr. Joydip Banerjee

Mr. Abhishek Banerjee

Ms. Parna Roy Chowdhury

... for the applicant.

The writ petitioner alleges illegal and unauthorized construction in the Premises No.65, Sisir Bhaduri Sarani, Ward No. 27, Borough-IV, Kolkata- 700006. The petitioner is carrying on business in the ground floor of the said premises.

The allegation of the petitioner is that the private respondents are persons responsible for making illegal

and unauthorized construction of the 4th and 5th floors of the said building. The petitioner prays for an order of demolition of the unauthorized construction.

The Kolkata Municipal Corporation, in response to the query made by the petitioner under the Right to Information Act, 2005 intimated the petitioner that an illegal construction of additional two floors covering the mandatory open space has been constructed in the said premises. The department has served a stop work notice and thereafter initiated proceeding under Section 400 of the Kolkata Municipal Corporation Act. The demolition proceeding could not be carried out in view of the different cases that are pending before the learned City Civil Court, Calcutta.

An application for addition of party has been filed by one Barun Das claiming to be one of the tenants in respect of the premises in question. In the said application an order dated July 30, 2019 passed by the Learned Judge, Bench X, City Civil Court, Calcutta in Title Suit No. 1009 of 2019 has been annexed.

It appears therefrom that a Suit was filed by Barun Das & Anr. against Prabir Ghosh & Ors. The Kolkata Municipal Corporation has been impleaded as defendant in the said Suit. The plaintiff in the Suit is the applicant herein.

The case made out by the present applicant before the learned Civil Court is that he is a tenant in respect of two rooms with kitchen, bathroom in the 5th floor of the said premises. The landlord/owner of the suit property executed a tenancy agreement and the applicant is paying monthly rent to the landlord. The applicant has already paid a sum of Rs. 6,00,000/- only as a security deposit at the time of execution of the tenancy agreement. The men and agents of the Kolkata Municipal Corporation came to the scheduled property for demolishing the tenanted portion, as the tenanted portion is not a legal one. The applicant alleged before the learned Civil Court that no notice was served upon them.

The Court below after considering the submission made on behalf of the applicant, restrained the Kolkata Municipal Corporation, by an order of ad interim injunction, from demolishing the tenanted portion of the applicant till August 20, 2019. It has been submitted by the parties that the order of injunction has been extended and the same is subsisting till date.

As the applicant is one of the parties who will be directly affected if the order of demolition is passed in the instant writ petition, accordingly, his prayer for being added as party respondent in the instant writ application is allowed.

The learned advocate appearing on behalf of the respondent nos. 7 to 10 submits that an application for regularization of the building plan has been submitted before the Kolkata Municipal Corporation and the same is pending till date.

The learned advocate appearing on behalf of the Kolkata Municipal Corporation submits, upon instruction, that a plan was sanctioned by the department for construction of a G+3 storied residential building. On detection of the unauthorized construction beyond sanctioned plan notice under Section 401 of the Kolkata Municipal Corporation Act was served to stop further progress of the unauthorized construction. The department lodged FIR under Section 401A of the said Act. Further inspection reveals that the persons responsible continued with the unauthorized construction, despite service of the order to stop work.

Proceeding under Section 400 of the Kolkata Municipal Corporation Act was initiated and placed before the higher authority and order of demolition of the unauthorized construction of RCC columns, beam, roof and brick wall on the 4th and 5th floors and covering of the mandatory open space by RCC beam and roof without sanction under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 was passed. The demolition gang visited the site for conducting the

demolition work but was unable to do so in view of the interim order passed by the Ld. City Civil Court on July 30, 2019.

From the submissions made on behalf of the Corporation it is crystal clear that the private respondents have constructed the 4th and 5th floors of the building in question without obtaining any sanction from the Kolkata Municipal Corporation.

The landlord makes the unauthorized construction and lets out the same to the tenant upon payment of a considerable sum of money. The tenant thereafter approaches the civil court and files a Suit against the landlord alleging dispossession without due process of law. The court below without being apprised of the proper facts protects the interest of the tenant. The interim order passed on 30th July 2019 gets extended and the unauthorized construction is allowed to remain. The unholy nexus between the landlord and the tenant cannot be lost sight of.

An order stalling demolition ought not to be passed in respect of any construction, which has been made without obtaining sanction from the competent authority, otherwise unscrupulous builders will invariably try to defeat the action of the authority by taking recourse to legal proceedings, and create third party rights causing multiplicity of proceedings. The

process of law ought not to be abused in the hands of dishonest litigants. The writ court cannot turn a blind eye and allow the illegality to be perpetuated. The wrong done, albeit unknowingly, by the court below is liable to be set right by the constitutional court at once.

Accordingly, the Kolkata Municipal Corporation is directed to proceed with the demolition proceeding which got held up in view of the interim order passed by the learned Civil Court and shall take steps to conclude the demolition proceeding at the earliest, but positively within a period of six months from the date of communication of a copy of this order.

The writ petition and the connected application are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)