

ORDER SHEET
I.A. No: G.A. No. 1 of 2021
A.P.O.T. No. 14 of 2021
with
W.P.O. No.628 of 2018
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

Surajit Biswas
Versus
The Kolkata Municipal Corporation & Ors.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 11th February, 2021.

Mr. Raghunath Chakravarty with Ms. Amita De, Adv.
... for appellant/petitioner

Mr. Alok Kr. Ghosh with Ms. Manisha Nath, Adv.
... for KMC

Ms. Tapati Samanta, Adv.
... for respondent no.5

Mr. Saumyajit Ghosal with Ms. Ishita Chatterjee, Adv.
... for respondent no.6

Mr. Milan Kanti Mondal with Mr. Diptyendu Kr. Pal, Adv.
... for respondent no.17

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

The case has a real chequered history. This Court is taken to several orders passed by the Hon'ble Single Bench dated 21st November, 2019, 15th January, 2020, 13th January, 2021, 14th January, 2021 and finally the said impugned order dated 21st January, 2021.

In each of the above stated orders, the Hon'ble Single Bench endeavoured to arrive at a just consideration on the nature of the alleged unauthorised construction made on the roof top of the premises-in-issue which is 43/1B, Ramdulal Sarkar Street, P.S. Girish Park, Kolkata 700 006 (hereinafter referred to as 'the said premises').

This Court also notices that by the above stated orders, the Corporation was repeatedly directed from time to time to file its reports on the nature of the alleged unauthorised construction, for law to take its proper course.

This Court also observes that in spite of the repeated opportunities, as granted by the Hon'ble Single Bench, the Corporation has been unable to assist the Hon'ble Single Bench on the clear steps taken by it in relation to the unauthorised construction.

For ready reference this Court refers to an order of the Special Officer (Building) of the Corporation dated 17th February, 2020, signed on 19th February, 2020 and a report of three officers of the Corporation dated 11th January, 2021. In the order dated 17th of February, 2020, the persons responsible have been directed to remove a portion of the tin shed as marked in the sketch map whereas the WC also with a shed as on the roof of the said premises has been permitted to be retained.

By the Report dated 11th January, 2021, it has been reported that the order of 17th February, 2020 has been complied with. However, the Corporation was represented before the Hon'ble Single Bench and, in the order dated 13th January, 2021, the Hon'ble Single Bench was pleased to record that the unauthorised construction has been demolished.

The diversity of the stand emanating from the submissions made by the learned Counsel appearing for the appellant and for the Corporation are difficult to be reconciled at the hearing today. The back-to-back orders of the Hon'ble Single Bench dated 16th of January, 2020, 27th February, 2020 and 21st November, 2019 and finally, the 21st of January, 2021 show the opacity in the conduct of the concerned officers of the Corporation.

It is further recorded that on the 5th of February, 2020, the learned Counsel for the Corporation apprised the Hon'ble Single Bench that the demolition would be completed soon. Accordingly, the order impugned dated 21st January, 2021 was issued.

Mr. Ghoshal and Mr. Milan Kanti Mondal, learned Advocates, appear for the respondent nos. 6 and 17 respectively.

From the several submissions made by the learned Advocates for the respective parties, one singular fact is noticed by this Court from the records. The fact pertains to the address of the appellant which is 39/2, Ram Dulal Sarkar Street, P.S. Girish Park, Kolkata – 700006. The address

of the appellant is starkly different from the address of the said premises which is 43/1B, Ram Dulal Sarkar Street, P.S. Girish Park, Kolkata – 700 006 over which the petitioner claims to be an occupier. The attention of this Court is further drawn to paragraph 3 of the stay application filed by the appellant being G.A. No. 01 of 2021. For the benefit of this discussion, paragraph 3 is quoted hereinbelow –

“3. That admittedly the Appellant/Petitioner hereof is a bonafide tenant in respect of a portion measuring about 2.12 sq.ft. consisting with one rook attached with kitchen at the 2nd floor together with a temporary tin shaded bathrooms on the terrace of the premises in question lying and situates at 43/1B, Ram Dulal Sarkar Street, P.S. Girish Park, Kolkata – 700006, inducted by the brother of the writ petitioner being the Respondent No. 7 hereof on and from 31.08.2018 i.e., after surrendering of the tenancy of the said portion by the Respondent No.17 hereof.”

No documentary evidence is brought to the notice of this Court on behalf of the appellant in support of his pleadings in paragraph 3 (supra). The so-called nexus between the appellant and the WC over which the appellant claims possession, located at altogether different premises negates the contention of the appellant sought to be exerted over the WC in

issue. This Court also finds that earlier orders of the Hon'ble Single Bench quoted above have not been challenged.

In the light of the above reasoning, this Court does not find merit in interfering the order impugned of the Hon'ble Single Bench dated 21st January, 2021. Since the order of the Hon'ble Single Bench has not been interfered with for the reasons as stated above, keeping this appeal and the application pending will be an idle formality.

Accordingly, both **A.P.O.T. No. 14 of 2021** and **G.A. No. 01 of 2021** stand **dismissed**.

Since affidavits have not been invited, all other allegations made, are deemed to be denied.

Parties to act on a server copy of this order.

(HIRANMAY BHATTACHARYYA, J.)

(SUBRATA TALUKDAR, J.)