

OD-1

ORDER SHEET

APOT/24/2021
WITH
WPO/379/2019
IA NO. GA/1/2021

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

ALTABUR RAHMAN MOLLAH AND ANR.
Versus
MAYOR IN COUNCIL AND ORS.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR
AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 4th March, 2021.

Appearance:

Mr. Mayukh Maitra, Adv.

Mr. Rajesh Naskar, Adv.

Ms. Suchismita Chatterjee (Ghosh), Adv.

Mr. Malay Kr. Seal, Adv.

...for appellants

Mr. Alok Kumar Ghosh, Adv.

Mr. Dilip Chatterjee, Adv.

Mr. Gopal Ch. Das, Adv.

...for KMC

Mr. Dilip Kr. Chatterjee, Adv.

...for respondent no.6

Mr. Subrata Basu, Adv.

Mr. Kumar Gupta, Adv.

Mr. Deepak Jain, Adv.

...for respondent nos.

9, 10, 11 & 12

The Court: Under challenge in this appeal is the order dated 11th February, 2021 passed by the Hon'ble Single Bench in GA 1 of 2020 (Old No.GA 1007 of 2020) and GA 2 of 2020 filed by the present appellants/ the writ petitioners in WPO 379 of 2019.

Before venturing into the contents of the order dated 11th February, 2021, it would be necessary for this Court to examine the reliefs claimed by the present appellants/ the writ petitioners in the writ petition itself. The primary prayers in the writ petition read as follows:-

“a) A declaration that impugned decision and the impugned order dated 18.3.2018 passed by the respondent nos.1 to 5 as pleaded in paragraph 41 herein above are illegal unconstitutional and null and void;

b) A writ of or in the nature of mandamus do issue commanding and/or directing the respondent nos.1 to 5 to forthwith withdraw and/or recall and/or rescind and/or cancelling and/or impugned decision as pleaded in paragraph 41 herein above;

c) A writ of or in the nature of mandamus do issue permanently restraining the respondent nos.1 to 5 from permitting the private respondent nos.9 and 10 being the owners of flat no.1A (in the first floor) and respondent nos. 7 and 8 being the owners of flat no.3A (in the third floor) and the Respondent Nos. 11 and 12 being Owners of flat No. 1B from using the said flats which were meant for residential use for commercial purpose.”

The prayers for *Certiorari*, *Rule Nisi* and interim reliefs were also made in support of the primary prayers as recorded above. The present appellants/writ petitioners, thereafter, filed GA 2 of 2020, which was an application praying for amendment of the writ petition. The Hon'ble Single Bench noticed the fact,

while dismissing GA 2 of 2020, that the non-supply of filtered water in the premises of the writ petitioners/the present appellants is absolutely a fresh cause of action since the prayers in the writ petition were confined to the alleged conversion of the flats in the building in issue from residential to commercial use. The Hon'ble Single Bench, therefore, held that the writ petitioners will be at liberty to initiate appropriate proceedings connected to their fresh cause of action regarding non-supply of potable water before the appropriate forum.

Next, the Hon'ble Single Bench considered the scope of GA 1 of 2020. The scope of GA 1 of 2020 was in *sync* with the prayer for amendment connected to water supply to the premises in issue. The writ petitioners/the present appellants complained of the fact that they were not receiving adequate filtered water supply from the underground reservoir of the building in issue.

The Hon'ble Single Bench held that in view of the nature of the dispute raised by the writ petitioners/the present appellants in GA 1 of 2020, the same again is required to be raised before the appropriate forum. Accordingly, GA 1 of 2020 also stood dismissed.

Mr. Maitra, learned Counsel appearing for the appellants, submits that the supply of clear filtered potable water is essentially in discharge of statutory obligations by the respondents/the Kolkata Municipal Corporation (for short the KMC). It is submitted that the Hon'ble Single Bench could not have dismissed at the threshold the prayer of the writ petitioners/the present appellants to get an essential supply such as filtered piped water.

Attention of this Court is drawn to several provisions of the Kolkata Municipal Corporation Act, 1980. The said provisions namely, are Sections 257 and 258 of the Kolkata Municipal Corporation Act, 1980. For a better understanding of this discussion, it is relevant to reproduce the sections in full:-

“257. Water pipes etc., not to be placed where water will be polluted.- No water pipe shall be laid in a drain or on the surface of an open channel or house gully or within twenty feet of a cesspool or in any position where the pipe is likely to be injured or the water therein polluted; and no well or tank and, except with the consent of the Municipal Commissioner, no cistern shall be constructed within twenty feet of a latrine or cesspool.

(2) No latrine or cesspool shall be constructed or made within twenty feet of any well, tank, water pipe or cistern or in any position where pipe, well, tank or cistern is likely to be injured or the water therein polluted.

258. Supply pipes to be kept in efficient repair.- It shall be incumbent on the owner or the occupier of any premises to which water is supplied from any waterworks belonging to the Corporation to keep in a thoroughly clean condition, and to maintain and keep in efficient repair, every supply pipe connecting the premises to the supply mains of the Corporation and any other water-fittings in the premises:

Provided that upon an inspection, the Municipal Commissioner may, by written notice, require the owner or the occupier of the premises to remedy any defect which he may find:

Provided further that when an occupier of any premises is served with a notice under this section, he may, after giving three days' notice in writing to the owner or to the person to whom he is responsible for the payment of his rent, himself have the repairs executed and deduct the expenses thereof from any rent which is due from him to such person.”

Further, the attention of this Court is drawn to Section 267 of the Kolkata Municipal Corporation Act, 1980 which again is reproduced for the benefit of this discussion:-

“267. Power to require water supply to be taken.- *If it appears to the Municipal Commissioner that any premises in Kolkata are without supply of wholesome water for domestic purposes or that the existing supply of water for domestic purposes available for the persons usually occupying or employed in such premises is inadequate or on any sanitary grounds objectionable, the Municipal Commissioner may by notice in writing require the owner of the premises or the persons primarily liable for the payment of the [property tax] in respect of the same –*

(a) to take a connection from the supply mains of the Corporation adequate for the requirements of the person occupying or employed in the premises or to take such additional or enlarged connection or connections from the supply mains; and

(b) to provide supply pipes and water-fittings and install and work a pump and do all such works and take all such measures as may, in the opinion of the Municipal Commissioner, be necessary for the above purposes.”

It is, therefore, reiterated by Mr. Maitra that the prayer for supply of filtered piped water is a prayer which is consequential to the main prayers in the writ petition and, arguably, are in the nature of subsequent developments which must be taken notice of by the Courts sitting in constitutional writ jurisdiction.

Fortifying his above stand, Mr. Maitra relies upon the decisions reported in **(1989) 2 SCC 691**, **(2004) 2 Cal LJ 154** and **AIR 2005 Cal 129**. It is

argued that the three decisions speak of the inherent jurisdiction of the writ court to take into notice subsequent developments and, to remedy injustice whenever brought to the notice of the writ court in exercise of its plenary jurisdiction.

An additional point is also taken by Mr. Maitra that the premises in issue are not equipped with the requisite fire safety measures.

Mr. Kumar Gupta, learned Counsel led by Mr. Basu, learned Counsel, submits that the dispute between the parties are purely personal and, therefore, civil in nature.

It is submitted that there are special statutes governing the relationship *inter se* landlords/promoters/purchasers of flats in any building which is constructed by promoters/developers. It is also submitted that the amendments sought by the writ petitioners/the present appellants is *de hors* the original action pleaded in the writ petition.

It is pointed out that the Hon'ble Single Bench permitted a Report to be filed by the appropriate officer of the KMC. Such Report speaks of the fact that filtered water supply is being provided to the premises in issue by the KMC to the public distribution point required to be maintained by KMC under the law.

Mr. Ghosh, learned Counsel appearing for the KMC, submits that the responsibility of the respondents/KMC under the statute, viz. the KMC Act, 1980 is to the extent of maintaining the ferrule point of connection to every building in the locality which is eligible to receive filtered water from the Corporation. It is submitted that no dispute has been raised by the writ

petitioners/ the present appellants of any irregularity at the point of common supply maintained by the KMC. It is also submitted by Mr. Ghosh that the alleged dispute raised by the present appellants is to the quality, quantity and regularity of the supply from the underground reservoir of the building in issue to the respective flats, including the flats of the writ petitioner/the present appellants. Such a supply arrangement from the building's own reservoir, is purely an internal arrangement of the flat owners and the KMC has no legal obligation beyond the statutory prescription to oversee the internal water supply arrangements of any premises.

Having heard the parties and considering the materials placed, this Court first brings its attention to the portion of the order of the Hon'ble Single Bench dated 11th February, 2021 dismissing GA 2 of 2020. Undoubtedly, to the mind of this Court, there was no whisper in the writ petition connected to the feasibility of the water supply. Admittedly, to the mind of this Court, the prayers in the writ petition are purely directed to the alleged conversion of the residential areas into commercial use. No prayer is directed against the filtered water supply connection which is claimed in GA 2 of 2020 and through GA 1 of 2020.

Accordingly, to the further mind of this Court, the amendment, if allowed, would change the very basis of the writ petition itself. The Hon'ble Single Bench, therefore, committed no error in dismissing GA 2 of 2020 and also GA 1 of 2020.

Considering the argument of Mr. Maitra that the prayers connected to supply of filtered water is a subsequent development which can be taken notice of while deciding the writ petition itself, this Court is of the clear view that the provisions of the KMC Act, 1980 prescribe the extent to which the obligations of the KMC arise to supply water connection to any building in the locality.

Again, to the mind of this Court, there can be no subsequent developments which are *de hors* the statutory prescription.

The judgments, therefore, as relied upon by Mr. Maita, do not support the point that in order to seek reliefs based on subsequent developments, the Court has to pass any direction to an Authority (such as KMC) which is beyond the statutory prescription of such Authority itself.

Accordingly, this Court also does not find reason to interfere with the above referred portion of the order dismissing GA 1 of 2020.

With reference to the prayer for fire safety norms, this Court finds that no material in support thereof is pleaded in either GA 1 of 2020 or GA 2 of 2020. Although Mr. Maitra submits that the point is pleaded in GA 1 of 2020, it does not appear more than a bald statement. Neither do the prayers in GA 1 of 2020 relate to such a bald pleading which was not pressed before the Hon'ble Single Bench.

In the backdrop of the above discussion, this Court holds that the order impugned dated 11th February, 2021 requires no intervention.

APOT 24 of 2021 with IA No.GA/1/2021 stand thus dismissed.

Affidavits have not been called for connected to the application filed in this appeal for the simple reason that the points urged on behalf of the parties are based on interpretation of a given state of facts which turn on the related legal provisions. Accordingly, all other allegations beyond the discussion made in this order, are deemed to have been denied and disputed.

Leave is granted to the appellants to file the certified copy of the order impugned in this appeal.

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

(HIRANMAY BHATTACHARYYA, J.)

(SUBRATA TALUKDAR, J.)