

APOT 31 of 2021
IA GA No. 1 of 2021

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SAMIMULLAH
VERSUS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 22nd April, 2021.

Appearance :

Mr. Alope Ghosh,Adv.

Mr. A.K.Lala,Adv.

Mr. Bidyut Kr. Bhattacharya,Adv.

Mr. Syed Nasir Hassan,Adv.

...for the appellant.

Mr. Debjit Mukherjee,Adv.

Ms. Susmita Chatterjee,Adv.

...for the State.

Mr. Ranajit Chatterjee,Adv.

...for KMC.

Mr. Kaustav Bhattacharya,Adv.

Mr. Saurabha Prasad,Adv.

..for respondent.

The Court: The respondent no. 6 to the writ petition has preferred the instant appeal challenging an order dated October 9, 2020 passed in WPO No. 114 of 2020.

By the order impugned, Kolkata Municipal Corporation(for short “the KMC”) was directed to ensure that the proceeding under Section 400 of the Kolkata Municipal Corporation Act, 1980(for short ‘the 1980 Act’) reaches its logical conclusion at the earliest, but positively within December 9, 2020.

Mr. Ghosh, learned Advocate appearing for the appellant submits that although the Hon’ble Single Judge directed the Corporation to conclude the proceedings under Section 400 of the 1980 Act but no direction was passed upon the KMC to issue notice upon the appellant herein against whom an allegation of making an unauthorised construction has been levelled. He further submits that the KMC failed to conclude such proceeding within the aforesaid time frame.

Mr. Chatterjee, learned Advocate appearing for the KMC submits that no order of demolition can be passed without issuing a notice upon the person who is alleged to have raised or is raising an illegal construction. He submits that Section 400 of the 1980 Act provides for service of notice upon such person. He further submits that the order impugned is perfectly justified and no interference is called for in the instant appeal.

Mr. Mukherjee, learned Advocate assisted by Ms. Susmita Chatterjee, Advocate appears for the State and makes submission in support of the order impugned.

We have heard the learned Advocates for the parties and perused the materials on record. The Hon’ble Single Judge, by the order impugned, directed the proceedings under Section 400 of the 1980 Act to be concluded within a specified timeframe. Section 400 of the 1980 Act provides that no order of

demolition shall be made unless the person at whose instance the erection of the work has been commenced has been served with the notice to enable him to show cause why such order shall not be made. When by the order impugned the KMC was directed to conclude the proceeding under Section 400 of the 1980 Act, the apprehension of Mr. Ghosh that the appellant would be deprived of the opportunity to defend himself in such proceedings is without any basis.

However, since it has been submitted by Mr. Chatterjee that the proceedings under Section 400 of the 1980 Act could not be commenced in view of the pendency of the appeal and also that Mr. Ghosh's client is entitled to a notice as provided under the 1980 Act, the instant appeal is disposed of by only observing that the KMC shall follow the provisions laid down under the 1980 Act in its true letter and spirit while bringing the proceeding under Section 400 of the 1980 Act to its logical conclusion.

In view of the submissions advanced by the respective parties to the appeal, affidavits are neither necessary and hence not called for.

With the above observation, APOT No. 31 of 2021 along with GA No. 1 of 2021 are disposed of without any order as to costs.

(HIRANMAY BHATTACHARYYA,J.)

(SUBRATA TALUKDAR,J.)