

OD-2

IA No. GA 1 of 2021
in
WPO 240 of 2021

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

D & I TAXCON SERVICES PVT. LTD.
Versus
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 22nd July, 2021.
(Via Video Conference)

Appearance:
Mr. Tapas Dutta, Adv.
...for the petitioner.
Mr. Ranajit Chatterjee, Adv.
Mr. Mihir Kundu, Adv.
Mr. S. Panda, Adv.
...for the KMC.
Mr. Suddhasatva Banerjee, Adv.
Ms. Sanjukta Ray, Adv.
...for the added party.
Ms. Amrita Das, Adv.
...for the Official liquidator.

Re.: IA No. GA 1 of 2021

The Court: This is an application for addition of party filed by one Narnolia Financial Services Limited (formerly known as Narnolia Financial Advisors Limited). The applicant claims to be a representative of the consortium of purchasers who submitted the bid through the applicant for purchase of the property initiated by the liquidator for sale of Nicco House. The possession of the said property has been made over by the liquidator to the applicant. Such contention is not disputed by the liquidator. Moreover, the petitioners in WPO 240 of 2021 have admitted in a suit filed by them before the learned City Civil Court at Calcutta that the applicant

is the auction purchaser and one Pankaj Harlalka is the Managing Director of the applicant company. Reliance is also placed on orders of this Court from which it appears that a Co-ordinate Bench of this Court considered the applicant necessary and proper party and upheld the notice sent by the Kolkata Municipal Corporation to the said applicant under Section 400(1) of the Kolkata Municipal Corporation Act. The writ petition is with regard to a demolition proceeding and the prayers in the writ petition are with regard to errors in the notice. It is the specific contention of the writ petitioner that not only the floor of Nicco House as mentioned in the demolition notice are unauthorised but the entire building is unauthorised and the notice of demolition should be issued in favour of the entire building.

Under such circumstances, the prayers in the writ petition, if allowed, would directly affect the rights of the applicant. Thus, in my opinion, the applicant is a necessary party to this proceeding. A Co-ordinate Bench of this Court has already held in a different proceeding arising out of the same building that the applicant is a necessary party. The Municipal authorities have come to the finding that notice should also be issued to the applicant as 'person responsible'. I do not find any reason not to allow the applicant for addition of parties.

Having considered the rival contentions, GA No.1 of 2021 is allowed. The applicant be added as the respondent no.7 to the writ petition.

The office is directed to take steps on the basis of this order.

Re.: WPO 240 of 2021

This writ petition has been filed by the complainant, on the basis of whose complaint the demolition proceedings have been initiated. It is the contention of

the complainant that the demolition proceeding should not continue until and unless the allegations of the writ petitioner that the entire Nicco House is unauthorized, is decided by the Kolkata Municipal Corporation.

Mr. Ranajit Chatterjee, learned advocate appearing on behalf of the Kolkata Municipal Corporation, submits that a building plan has been traced out, issued by the Central Board in 1961, showing five floors had been sanctioned. The nature of 6th, 7th and 8th floor was not on record. The demolition proceeding has been initiated on the basis of the records and available documents with the Municipal Corporation and there was no bar for the KMC to proceed in accordance with law. Other allegations of the petitioner with regard to unauthorised construction of the entire Nicco House is not to be decided in this proceeding.

Mr. Banerjee, learned advocate appearing on behalf of the added respondents, submits that the petitioner has also initiated parallel proceedings by filing a suit praying for cancellation of the building plan sanctioning the five floors. Whether the demolition proceedings should be initiated in respect of the entire Nicco House or whether the Kolkata Municipal Corporation was justified in issuing such notice are not matters to be decided by this Court. It is the Kolkata Municipal Corporation which is the expert body empowered by law to detect and take action against any unauthorised construction. For the time being, the Kolkata Municipal Corporation has found certain floors to be unauthorised and has initiated proceedings in accordance with law, pursuant to a direction of this Court. Any further interference with the demolition proceeding which has been initiated on the basis of an order of this Court, would amount to a re-writing a decision of a Co-ordinate Bench. The petitioner has also prayed for demolition and declaration

in the civil suit in respect of the sanction plan and entire construction of 4th to 7th floor and the asbestos shed on the 8th floor, to be unauthorized. Similar prayer has also been made with regard to the ground, 1st, 2nd and 3rd floor. Thus, the issues raised in the writ petition are also subject matters of the suit. The suit was filed prior to filing of the writ petition, but was suppressed by the petitioner.

Under such circumstances, this writ petition is disposed of without any order.

The demolition proceeding as initiated by the Kolkata Municipal Corporation shall continue in accordance with law upon hearing all the parties concerned including the added respondents. The proceedings shall be reached to its logical conclusion.

(SHAMPA SARKAR, J.)