

28.11.2022  
Item No.20.  
Court No.6.  
AB

**F.M.A. 1097 of 2019**

**Bivabati Sadhukhan & Others  
Vs  
The State of West Bengal & Ors.**

Mr. Ujjal Kr. Ray                      ...for the Appellants.

Mr. Alok Kr. Ghosh,  
Ms. Sima Chakraborty...for the K.M.C.

Mr. Saptangshu Basu, Sr. Adv,  
Mr. N. C. Bihani    ...for the Private Respondent  
No.8 and 9.

This appeal is directed against a Judgment and Order dated July 12, 2018, whereby the appellants' writ petition being W. P. No.27316 (W) of 2015 was dismissed.

The appellants had approached the learned Single Judge alleging infraction of Building Rules by the private respondents and also seeking cancellation of the building plan that had been sanctioned in favour of the private respondents in respect of premises no.6/1, Shyampukur Lane, Kolkata – 700004.

The learned Judge observed that the sanctioned building plan is not on record and the so-called infraction of the Building Rules has not been specified. Accordingly, the learned Judge dismissed the writ petition without entering into the merits thereof. Being

aggrieved, the writ petitioners are before us by way of this appeal.

Mr. Basu, learned Senior Counsel representing the private respondents has drawn our attention to paragraph 4 of the supplementary affidavit affirmed on behalf of the private respondents on April 22, 2022, which reads as follows:

*“4. That a proceeding was undertaken under Sections 400(1) and 416 of the Kolkata Municipal Corporation Act of 1980, being Demolition Case No.41-D/Bldg/Br-II/16-17. An Order was passed by the Deputy Chief Engineer (Bldg)/North dated March 24, 2017. A Retention Order was, inter alia, passed in respect of the impugned unauthorized construction subject to compliance of certain pre condition stated therein. Furthermore, no Order was passed for stopping the impugned change of use subject to compliance of certain pre conditions stated therein.”*

Since a proceeding under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, read with Section 416 thereof, was initiated against the private respondents and since the same has culminated in a final order dated March 24, 2017, the present appeal has really become infructuous. If the appellants are aggrieved by the order dated March 24, 2017, they would be at liberty to challenge the same before the appropriate forum in accordance with law.

Insofar as the cancellation of the sanctioned plan is concerned, that is not a prayer that the Writ Court should entertain at the first instance. Section

397 of the Kolkata Municipal Corporation Act, 1980, provides the appellants with a sufficient remedy.

We have not gone into the merits of the case at all. If the appellants challenge the legality/validity of the building plan sanctioned in favour of the private respondents or if they challenge the order dated March 24, 2017, passed by the Deputy Chief Engineer (Building), North, in the proceedings under Sections 400(1) and 416 of the Kolkata Municipal Corporation Act, 1980, against the private respondents, the same would be decided without being influenced by any observation in this order or in the order of the learned Single Judge.

F.M.A. No.1097 of 2019 is, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

**(Apurba Sinha Ray, J.)**

**(Arijit Banerjee, J.)**