

05. 07.03.2022
Ct. No.06
Tanmoy

M.A.T. 293 of 2022
With
IA No: C.A.N. 1 of 2022

Smt. Nibedita Saha
-Versus-
Kolkata Municipal Corporation & Ors.

Mr. Arindam Banerjee, Adv.,
Mr. Sarvapriya Mukherjee, Adv.,
Mr. T.K. Roy, Adv.

...for the appellant/writ petitioner.

Mr. Debjit Mukherjee, Adv.,
Ms. Manisha Nath, Adv.

...for the Kolkata Municipal Corporation.

Mr. Partha Sarathi Bhattacharyya, Ld. Sr. Adv.,
Mr. Sounak Bhattacharyya, Adv.,
Mr. Raju Bhattacharyya, Adv.,
Mr. Himadri Chakraborty, Adv.,
Mr. Arunava Maiti, Adv.,
Mr. Chandranath Sarkar, Adv.

...for the respondent nos. 6, 7 & 8.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

The writ petitioner approached the learned Single Judge with the following prayers:

“ a) A writ of or a writ in the nature of Mandamus commanding the respondent authorities to act upon and implementation of notice and/or communication dated 11.01.2022 issued by the Executive Engineer Civil (Building), Borough No. IV & V, Building Department, Kolkata Municipal Corporation in respect of premises no. 26,

Buddhu Ostagar Lane, Ward No. 37, Borough – V, Kolkata – 700 009.

- b) A writ of or in the nature of Mandamus quashing and/or setting aside the order dated 31.12.2021 passed by the respondent no.4 and 5 and further setting aside and/or quashing the building plan sanction in respect of the premises no.26, Buddhu Ostagar Lane, Ward No. 37, Borough – V, Kolkata – 700 009.*
- c) A writ of or in the nature of Mandamus Commanding the respondent authorities to provide the opportunity to the petitioner to comply the notice dated 25/12/2020 issued under Section 411(1) of the Act of 1980 with the presence of enlisted LBS/ESE for super vision and guidance.*
- d) A writ of or in the nature of certiorari commanding the respondent authorities, it associates, servants and agents to produce or cause to be produced the records of the case and to certify the same so that conscionable justice may be done by commanding the respondent authorities to cancel/rescind/withdraw and/or quash the order dated 31.12.21 and sanctioned building plan in respect of premises no. 26, Buddhu Ostagar Lane, Ward No. 37, Borough – V, Kolkata – 700 009.*
- e) A writ of or in the nature of prohibition restraining the private respondent from making any construction in respect of premises no. 26, Buddhu Ostagar Lane, Ward No. 37, Borough – V, Kolkata – 700 009.*
- f) Rule NISI in terms of prayer (a), (b), (c), (d) and (e) as above;*
- g) Ad-interim order directing the respondent authorities, its associates, servants and agents*

to act and implement the notice and/or communication dated 11.01.2022 issued by the respondent no.4;

- h) Ad-interim order in terms of prayer (g) as above;*
- i) Cost and incidental thereto.*
- j) To pass further order/orders and/or direction/directions as Your Lordships may seem fit and proper.”*

The writ petition was disposed of by the learned Single Judge on February 7, 2022, giving direction to the Kolkata Municipal Corporation as follows:

“Having heard the rival contentions of the parties and in view of the fair submission made by Mr. Mukherjee, no further order needs to be passed. The Corporation shall only take steps to ensure that the stop work notice is obeyed by the respondent no.6, unless the same is modified or set aside or stayed by an order of court. Police authority shall render all cooperation to the Corporation.

Accordingly, the writ petition is disposed of. However, there will be no order as to costs.”

The only grievance that the appellant/writ petitioner canvasses before us is that despite there being prayers (b) and (d), and pleadings in support thereof in the writ petition, there was no adjudication on such prayers by the learned Single Judge. The appellant suggests that in future proceedings, if any, it may be deemed that such prayers have been rejected by the learned Single Judge, causing serious prejudice to her.

Mr. Debjit Mukherjee, learned advocate appearing for the Kolkata Municipal Corporation (K.M.C.), on the other hand, submits that there were no documents or the required pleadings in the writ petition in support of prayers (b) and (d). Therefore, there was no error in the impugned order in not adjudicating prayers (b) and (d) of the writ petition.

Mr. Partha Sarathi Bhattacharyya, learned senior advocate, appearing for the respondent nos. 6,7 and 8, draws our attention to page 182 of the stay application and submits that the grievance of the writ petitioner already stood adjudicated by the order of the Executive Engineer (Civil/Building/Br-IV&V) following an order passed by this Court on July 23, 2021 in W.P.A. 10228 of 2021 (*Shek Developers -Vs.- The Kolkata Municipal Corporation & Ors.*)

We find substance in the submission of Mr. Mukherjee that the documents annexed to the stay petition (pages 42 to 45) were not the part of the writ petition filed before the learned Single Judge and therefore, no decision could be rendered on prayers (b) and (d) relying upon the said documents.

We, however, take note of the pleadings made in paragraph 9 and paragraph 14 of the writ petition, where an allegation has been made that, the sanction of the building plan has been obtained without any 'No Objection' from the tenants. We accept the submission

of Mr. Banerjee representing the appellant that in the said paragraphs, the relevant rule has been misquoted and should be read as Sub-Rule (3) of Rule 142 of the Kolkata Municipal Corporation Building Rules, 2009.

Since there was no adjudication on prayers (b) and (d) of the writ petition, we remand the writ petition back to the learned Single Judge for a decision on prayers (b) and (d). We make it absolutely clear that we have not gone into the merits of the writ petition. Learned Single Judge will be at liberty to decide the matter as he deems fit and proper.

We also make it clear that the writ petitioner/appellant will not rely upon any document that has not been annexed to the writ petition.

With these observations, M.A.T. 293 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)