

22.03.2022
Item No.01
Court No.6.
S. De

Through Video Conference

**M.A.T. 325 of 2022
I.A. No. CAN 1 of 2022**

**Mrs. Naseem Ara Begum & Ors.
Vs
Shadab Jahan Begum & Ors.**

Mr. Arindam Banerjee,
Mr. Arif Ali,
Mr. Yusuf Ali Mirza,
...for the appellants.
Mr. Biswajit Mukherjee,
Ms. Manisha Nath,
...for the K.M.C.
Mrs. Sonal Sinha
...for the Board of Auqaf.
Mr. Rauf Rahim,
Mr. Arkadeb Biswas
...for the respondent nos. 1 to 4.
Sk. Md. Galib,
Ms. Subra Nag,
...for the State respondents.

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

The appellants before us were the private respondents before the learned Single Judge.

The dispute in this writ petition revolves around an alleged unauthorised construction in the Imambara Mosque at premises no. 123 Karl Marx Sarani, Kolkata – 700023.

The writ petitioners alleged before the learned Single Judge that some residential complexes and a

shopping complex have been erected in the said premises without any sanction from the Kolkata Municipal Corporation. It was the grievance of the writ petitioners that despite numerous complaints being filed before the concerned authority of the Corporation, they did not take any steps.

The learned Single Judge after hearing all the parties disposed of the writ petition with the following directions :-

“a) An inspection shall be conducted of the market complex. Such inspection shall be held in the presence of the petitioner no.1, the representative of the respondent nos.13 and 16 and the wakf board within three weeks. Advance notice of the inspection shall be served upon the petitioner no.1 and the respondent nos.13 and 16. If the parties are not available to accept notice, the authorities shall affix the notice of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take such interim measures by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties.

e) The enquiry of the Corporation will be restricted to whether the premises named and styled as “Golden Arcade” has been constructed in accordance with a building plan and the building rules. No other dispute with regard to the

rights of the parties, the nature or usage of the Imambara, etc., shall be gone into.

f) A hearing shall be given to the petitioner no.1 and the respondent nos.13 and 16 and the wakf board. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.

g) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute. The court has not gone into the merits of the claims and counter claims and the issues involved shall be decided independently.”

Though initially it was argued by the appellants before us that the writ petitioners had no locus standi to move this writ petition, in view of the subsequent developments which emerged during the pendency of this appeal, the point of locus standi has not been seriously pressed by the appellants before us.

It appears that the Corporation on the basis of the complaints lodged by the writ petitioners has issued a notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

The only grievance that has been canvassed before us by the appellants is that the learned Single Judge was not justified in allowing the writ petitioners to participate in the proceedings and giving elaborate

directions to the Corporation authorities as regards the manner in which to discharge their statutory responsibilities.

Mr. Arindam Banerjee, learned advocate appearing for the appellants has relied upon a decision reported at **(2006) 2 Calcutta Law Journal 574 (Sanjay Mehta Vs. The Kolkata Municipal Corporation)** to suggest that only the person at whose instance an allegedly unauthorised construction has commenced should be heard before the hearing officer and no other person. By referring to Sub-Section 400(3) Mr. Banerjee argues that while the right of appeal has been given to any person who may feel aggrieved by an order of the hearing officer, but before the hearing officer, being the forum of first instance, right of hearing has been restricted only “to such person” at whose instance the alleged unauthorised construction has commenced.

Mr. Rauf Rahim, learned advocate appearing for the writ petitioners submits that the directions, issued by the learned Single Judge, were necessary in view of the facts involved in the case and the learned Judge having considered the factual aspects of the matter rightly passed those directions for the effective adjudication of the disputes.

The relevant part of Section 400(1) of the Kolkata Municipal Corporation Act, 1980, reads thus:

“400. Order of demolition and stoppage of buildings and works in certain cases and appeal. – (1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 396 or in contravention of any of the provisions of this Act or the rules and regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made :

.....

Explanation. – In this chapter, "the person at whose instance" shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations if any, or does it by himself.”

The aforesaid explanation of Section 400 of the Act makes it clear that in a proceeding under Section 400(1) of the Act, “the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations if any, or does it by himself” must be heard. They are the necessary parties in the proceeding.

We are of the view that in the statutory scheme of the Kolkata Municipal Corporation Act, 1980, the hearing officer is, however, not precluded from hearing any person other than the persons at whose instance the alleged construction has been commenced.

The hearing officer while exercising his power under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, is required to act as a quasi-judicial authority and is required to take decisions fairly and reasonably upon finding of facts. In such a proceeding the authority in arriving at a just decision should be at liberty to hear any person whose presence he may deem necessary for effective adjudication of the disputes.

In view of the discussion above, we are of the opinion that the ratio of the judgment reported at **(2006) 2 Cal LJ 574 (*Sanjay Mehta v. The Kolkata Municipal Corporation*)** does not apply to the facts of the present case. In that case a learned Single Judge dealt with the issue as to whether the expression “any person” means or includes all persons affected by the order of demolition. The answer was given in the negative holding that the owner or occupier who is not responsible for the unauthorised construction cannot prefer any appeal under Section 400(3) of the Act.

The learned Single Judge was, perhaps, not justified in giving elaborate guidelines or directions in

the impugned order which were to be followed by the statutory authority to discharge their statutory obligations. The writ Court may issue directions upon the authorities to act in terms of the statute, but the writ Court should not arrogate to itself the role of the statutory authority.

In that view of the matter, the order of the learned Single Judge is modified by giving a direction upon the hearing officer to take the notice issued under Section 400(1) of the KMC Act, 1980, to its logical conclusion after hearing all the parties as he deems fit and proper.

It is expected that the hearing officer shall complete the proceedings as soon as possible and preferably within a period of twelve weeks from the date of communication of this order to him.

M.A.T. 325 of 2022 is, accordingly, disposed of along with the connected application being I.A. No. CAN 1 of 2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)