

D/L
Item No. 9
05.05.2022
KOLE

**MAT 368 of 2021
With
IA No. CAN 1 of 2021
With
IA No. CAN 2 of 2021
With
IA No. CAN 3 of 2021**

**Barun Das
-Vs.-
The Kolkata Municipal Corporation & Ors.**

Mr. Jaydip Banerjee,

...for the appellant.

*Mr. Ranajit Chatterjee,
Mr. G. Ch. Das,*

...for the KMC.

*Mr. Mr. Raja Saha,
Mr. A. Kr. Ghosh,*

...for the State.

*Mr. Kaushik Dey,
Mr. S. Mishra,*

...for the respondent nos. 7 and 8.

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

The added respondent in the writ petition, one Barun Das, has filed this appeal against the judgment and order dated March 3, 2021, whereby WPA 9873 of 2020 was disposed of by the learned Single Judge.

The writ petitioner approached the learned Single Judge with the grievance that the private respondents were constructing 4th and 5th floor in a building unauthorizedly when the sanction was only for construction of G+3 building. The present appellant was not initially added as a party to

the writ petition. He made an application for being added as party saying that he is a tenant of a portion of the 5th floor of the building in question. He has paid considerable sums of money to the owners of the building and is continuing to pay monthly rent. He will be seriously affected if any adverse order is passed directing demolition of the 5th floor. The learned Single Judge added him as a party respondent.

The learned Judge proceeded to hear all the concerned parties. The learned Judge noted that the present appellant had filed a suit in the City Civil Court at Calcutta impleading the private respondents in the writ petition and KMC as defendants and he has obtained an interim order restraining the Corporation from taking any adverse steps in respect of the alleged unauthorized construction in the building in question. The learned Judge directed the Corporation to demolish the 4th and 5th floors of the concerned building since there was no sanctioned plan for such construction, overriding the injunction order of the City Civil Court. Being aggrieved the added respondent, Barun Das, has come up in appeal before us.

We have heard learned Counsel for the parties. We are of the opinion that this matter may be referred to the Competent Authority who may hear all the concerned parties and take a reasoned decision in the matter.

Accordingly, the Executive Engineer (Building), Borough-IV is directed to issue notices to the writ petitioner, the private respondents, the present appellant and any other concerned person under Section 401 of the Kolkata

Municipal Corporation Act. The said officer of the Corporation shall give full opportunity of hearing to all the concerned parties and permit them to produce necessary documents before him. The said officer shall take a decision in accordance with law as regards whether there is or is not unauthorized construction in the building in question and if so, to what extent. The officer will also consider if regularization of unauthorized construction is possible upon payment of requisite fees. However, we pass no mandate in that regard and it will be up to the Executive Engineer (Building) to take a decision. In case unauthorized construction is found which is incapable of being regularized, consequential action will be taken by the Corporation.

We have not gone into the merits of the matter. We leave it to the aforesaid officer of the Corporation to take a reasoned decision in the matter. In the event the decision is adverse to the owners or the present appellant, the same shall not be given effect to for a period of four weeks from the date of the decision.

Needless to say, till the Executive Engineer (Building) completes the exercise indicated above, which should be completed within twelve weeks from the date of communication of this order, no coercive measures will be taken by the Corporation in respect of the building in question.

The order under appeal is set aside.

The appeal and the connected applications are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)