

15.12.2022
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SB
Ct. No.236

CRR 1327 of 2008

In the matter of : Subir Roy

Mr. Sabyasachi Banerjee
Mr. Nigam Ashis Chakraborty
Ms. Ankita Paul
Mr. Joydeb Ghorai
Mr. Suman Chatterjee
Mr. Diptesh Ghorai ... for the petitioner

Mr. N.P. Agarwala
Mr. Pratick Bose ... for the State

Mr. Goutam Dinda
Mr. Anindya Sundar Chatterjee .. for the KMC

Supplementary affidavit filed by the petitioner is taken on record.

This is an application under Section 482 of the Code of Criminal Procedure seeking an order of quashment of proceeding being Case No. MF 436 of 2005 under Section 401A of the Calcutta Municipal Corporation Act pending before the learned Municipal Magistrate, 4th Municipal Tribunal, Calcutta.

Briefly stated M/S. Exide Industries Limited has acquired property at 6A, Hatibagan Road, Entally, Kolkata – 700014 on lease and the company is being possessing for the last 40 years with an intention to carry out certain superficial repairs and for the purpose of renovating and refurbishing the building of the said premises. The company decided to approach the Kolkata Municipal Corporation to allow the company to proceed with the work of painting, repairing ceiling, walls and flooring of the building

to upgrade the same to the modern standards, plastering and patch work including new ventilation systems for the building etc. by writing a letter dated 22.9.2005. The Kolkata Municipal Corporation in reply vide a letter dated 05.10.2005 made the company understand that no permission is required from the building department in terms of Rule 3 of the CMC Building Rules. Having heard of Calcutta Municipal Corporation the company undertook the work of renovation after engaging appropriate architect engineers on the basis of the response of Municipal Commissioner. Suddenly a notice was received under Section 401 of the Kolkata Municipal Corporation Act dated 18.10.2005 upon the petitioner who is representing the company directing the company to stop all construction including addition alteration at the premises which was adhered to, the company had given an undertaking to the municipal authorities as well and as directed by the municipal corporation the company where the petitioner has been working for gain submitted two plans on 11.9.2005 indicating the proposed work but inaction on the part of the Kolkata Municipal Corporation prompted the company to take out an application under Section 226 of the Constitution of India before the appropriate Court. While the matter was under consideration of municipal corporation and the company expressed its willingness to comply with the mandate of the act in its letter on spirit, to officer in charge of Beniapukur police station informed the petitioner that warrant of arrest was issued against the petitioner and advised him to go to the police station to obtain bail. The petitioner found that at

the instance of the Kolkata Municipal Corporation a complaint case was filed before the appropriate authority.

Police, subsequently, on the basis of such petition of complaint registered F.I.R. took up investigation which culminated into submission of charge sheet and charge has been framed by the learned Trial Court.

Mr. Banerjee, learned counsel appearing on behalf of the petitioner submits that the petitioner with all fairness approached the municipal corporation in order to obtain necessary permission to undertake certain works which were absolutely necessary not only for the interest of the company but also the welfare of the worker as well as member of the public for the simple reason that the condition of the building was almost out of bounds. The Municipal Corporation having given the permission to go ahead with the proposed work had no reason to take out criminal proceeding against the petitioner particularly when time and again the company through the petitioner has made it clear that the company is ready and willing to comply in condition either in the form of statue or under the rules of Kolkata Municipal Corporation. But it was categorically stated by the Municipal Corporation that no permission is required to undertake the propose work.

To buttress his point Mr. Banerjee, makes me go though the letter dated 05.10.2005 addressed to Exide Industries Limited by Assistant Engineer Building Department, Borough – VI, KMC. The report of Mr. Manohar Dey, council of architecture indicates that the company took the service of Tag Architectonics Private Limited and the report clearly speaks of the work undertaken by the

company following Rule 3(2) of the Building Rule of Kolkata Municipal Corporation no attempt was made to erect new construction whatsoever. The letter dated 05.10.2005 is eloquent enough to suggest that the company was permitted to undertake the work. The company proposed to carry out though Mr. Dinda learned counsel representing the K.M.C strenuously argues that the company is drifted away from the undertaking as well as nothing misled the K.M.C. The company carried out certain works of construction. Mr. Dinda also relied upon a copy of the report filed before the learned Municipal Magistrate, 4th Municipal Tribunal, Calcutta indicates "Premises under reference was inspected by the department found RCC / Frame / Brick machinery structure with C.I. roof is being erected at the ground floor level."

Apart from this report there is nothing to show that infraction of rule caused by the petitioner or the employer company. The letter addressed to Municipal Commissioner by Mr. Subir Kumar Roy for Exide Industries, suggests that the company intended to carry out the work of painting and replacing and repairing damaged asbestos and G.I. Sheet for the roof and refurbishing surface of damaged and eroded flooring and also to repair the walls and replacement of walls with cinder mortar construction.

Thus prima facie I do not find anything justifying invocation of provision of Section 401A of the K.M.C. Act. In order to invoke the provision of Section 401 the Corporation needs to make out a case of construction or attempts or conspiracy to construct a new

building or additional floor or any building in contravention of the provision of Act or the rule made thereunder.

Though the employer company of the petitioner is a lessee, in respect of the premises in question in absence of any material to indicate that an attempt was ever made to construct a new building or additional floor(s) within the meaning of Section 401A of the KMC Act, the Corporation cannot initiate any action.

In my view the complaint filed on behalf of the KMC under Section 401A of the KMC Act is bereft of any reasonable cause and if the proceeding is allowed to remain in force before the learned Tribunal it would amount to an abuse of the process of law.

Accordingly the proceeding stands quashed.

The application, if any, thus disposed of.

This order, however, shall not preclude the KMC from taking any action in accordance with law in the event any illegality is committed.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)