

Sl. No.2
14.07.2022
Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 15128 of 2022

Anil Jain @ Anil Nahata
Vs.
Kolkata Municipal Corportion & Ors.

Mr. Srijib Chakraborty
Mr. Tanmay Mukherjee
Mr. Pankaj Agarwal
Ms. Pallavi Ray

... for the Petitioner

Mr. Rudranil De
Mr. Abhishek Sikdar

... for the K. M. C.

The petitioner is aggrieved by the notice dated 4th July, 2022 issued under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 by the Assistant Engineer (Civil), Building Department, Borough – VIII.

By the said notice the petitioner being the person responsible has been intimated that the Assistant Engineer (Civil) will enter into the premises no. 2B, Ramesh Mitra Road under Ward No.72, Borough –VIII, Kolkata- 700 026 with the officers, assistants and workmen on Thursday that is on 14th July, 2022 and following days, if necessary, for the purpose of demolition of the unauthorized construction, namely, three storied building in the rear side and unauthorized construction in the front side constructed without any sanction, in

compliance with the order of the learned Municipal Magistrate, 2nd Court, dated 8th June, 2022 in connection with Case no. 2623 of 2016.

The Officer-in-Charge, Bhawanipur Police Station was requested to make necessary arrangement to provide sufficient police officers/personnel so that the demolition work can be carried out properly and peacefully and civic officers/employees as well as workmen to be engaged for the said demolition work, be protected.

The petitioner has annexed the copy of the judgment dated 21st March, 2022 passed by the Municipal Magistrate. The facts of the case are narrated in details in the said judgment.

It appears therefrom that a proceeding under Section 401(A) of the Kolkata Municipal Act, 1980 was initiated on the basis of a complaint lodged by the Assistant Engineer, Building Department, Borough- VIII of the K. M. C. The complaint mentions that the person responsible is making construction of a building in the aforesaid premises without obtaining any sanction plan. If such construction is allowed to stand, it may collapse on any date and it is likely to endanger human lives or property of KMC like water supply, sewerage, drainage or disrupt road traffic or likely to cause fire hazards.

The complaint was to be treated as F. I. R. and necessary action to be taken on the basis of the same. Charge sheet was filed under Section 401(A) of the Act

against the F. I. R. named accused person. The accused appeared before the Court to face the trial. The trial was a detailed one.

Learned Municipal Magistrate recorded the evidence of the parties and the points for determination. The Magistrate took into consideration the provisions of Section 401A of the Act along with the provisions of Sections 583 and 584 and the provisions of the Kolkata Municipal Act, 1923 and the provisions of the Criminal Procedure Code.

The Municipal Magistrate took into consideration the power of the Magistrate to issue an order of demolition. Details have been mentioned therein as to wherefrom the Municipal Magistrate derived powers under the Act to pass order of demolition.

Provisions of Kolkata Municipal Corporation Act, 1899 and 1923 were also taken into consideration. Learned Court below took into consideration the precedents of the Hon'ble Supreme Court as well as this Court and arrived at a specific finding that the Municipal Magistrate has the power and the authority to pass order of demolition.

The Magistrate was of the opinion that the Court had power under Sections 583 and 584 of the K. M. C. Act, 1980 to pass an order of demolition regarding unlawful and unauthorized construction on the case property.

The Court took note of the fact that the offence under Section 401(A), sub-section 1 is cognizable and non-bailable within the meaning of the Code of Criminal Procedure.

The Court took note of the fact that on inspection of the premises in question it was found construction of three storied building on the back side of the case premises and there was reconstruction work of the slabs at the existing building which was situated in the front side of the case premises without sanction plan. The unauthorized construction was approximately 141.96 square meter and 183.52 square meter respectively.

The Court took note of the fact that the case premises is situated in the slum area of Kolkata. So due to such unauthorized construction, there is likelihood of disruption of road traffic, drainage, sewerage, and water supply apart from fire hazards. In spite of stop work notice the person responsible reconstructed the front part of the premises. A three storied R.C.C. frame structure was erected on the vacant land which is situated in the back side of the case premises and there was reconstruction work of the slabs at the existing building which was situated in the front side of the case premises. R. C. C. columns were raised over the existing one storied building at the case premises.

After scanning the entire evidence, the Municipal Magistrate passed judgment ordering that the Municipal

Commissioner of K. M. C. is to demolish the unauthorized /unlawful construction of three storied building in the rear side and unauthorized construction in the front side of the case premises as per the procedure established by law and to recover the costs of demolition from the person responsible.

The Court directed the Municipal Commissioner to depute requisite number of workmen for demolition of the unauthorized and unlawful construction and to complete the same within ninety days.

The order of the learned Magistrate was supplied to the person responsible free of cost as per the provision of Section 363 of the Code of Criminal Procedure.

An application for bail was filed and the sentence was suspended and the person responsible was released on bail bond.

The person responsible being aggrieved by the judgment passed by the learned Magistrate preferred an appeal before the learned City Sessions Court, Calcutta being Criminal Appeal No. 60 of 2022. The person responsible prayed for stay of the impugned judgment and execution of sentence.

The appeal Court initially passed an order of stay of the judgment passed by the learned Magistrate. Thereafter the matter stood relegated before the Lok Adalat as per the request of the accused.

Learned appeal Court in the order dated 10th May, 2022 records that a petition has been filed praying for extension of stay of the impugned order. Another petition has been filed by the appellant stating that there is a possibility of settlement between the parties and prayed for passing order for placing the case record before the Lok Adalat to be held on 14th May, 2022. On the prayer made by the appellant the appeal court directed that the records be placed before the Lok Adalat. The interim order of the Court was extended till 21st May, 2022.

The matter was heard by the Lok Adalat on 14th May, 2022 and the appellant was directed to pay the fine of Rs.50,000/- within 10th June, 2022 and to suffer simple imprisonment till rising of the Court and the order of demolition and the other fine remained the same.

The petitioner at this stage raises an issue with the jurisdiction of the Municipal Magistrate to pass an order of demolition. It has been submitted that under the provisions of the Kolkata Municipal Corporation Act, 1980, the Municipal Magistrate does not have jurisdiction to pass any order for demolition. The order of demolition can be passed only by the Municipal Commissioner and not by the Municipal Magistrate.

It has further been contended that the order of demolition is a vague one as the details of the unauthorised construction is not mentioned therein. In

the absence of the details, the petitioner will not be in a position to identify the area which is to be demolished.

In support of the aforesaid stand with regard to the jurisdiction of the Municipal Magistrate to pass an order of demolition, the petitioner relies upon an unreported order dated 19th November, 2019 passed by a coordinate Bench of this Court in W.P No.20157 (W) of 2019 in the matter of Minu Dutta vs. Kolkata Municipal Corporation & Ors., wherein the Court was pleased to set aside the portion of the judgment directing demolition.

With regard to vagueness in the order of demolition, the petitioner relies upon the judgment delivered by this Court in the matter of Laddu Gopal Bajoria & Anr. vs. Kolkata Municipal Corporation & Ors. reported in 2006 (4) CHN 136, wherein the Court held on perusal of the notice under Section 400 (1) of the Kolkata Municipal Corporation Act, 1980, that the notice is a vague one and does not specify construction in respect of which such proceeding was initiated.

The petitioner contends that as the order passed by the Municipal Magistrate is a nullity in the eye of law since the Magistrate did not have the power to issue the order of demolition, accordingly, the subsequent notice issued under Sections 544 and 546 by the Assistant Engineer (Civil) is bad in law and is liable to be set aside.

Learned advocate representing the Corporation opposes the submission made on behalf of the petitioner.

It has been submitted that the power to pass order of demolition flows from the provision of Sections 583 and 584 of the Kolkata Municipal Corporation Act, 1980.

It has been submitted that the petitioner already preferred an appeal against the order passed by the learned Municipal Magistrate and the petitioner ought not to be permitted to pursue parallel proceeding by filing the present writ petition under Article 226 of the Constitution of India.

It has been submitted that the Municipal Magistrate has the power to pass an order of demolition.

I have heard the submissions made on behalf of both the parties and have perused the materials on record. The impugned notice has been served in compliance of the order passed by the Municipal Magistrate. The judgment of the Municipal Magistrate is explicitly clear with regard to the unauthorised construction that has been made in the subject premises.

Notice was issued to the person responsible for making construction. The trial before the Magistrate initiated in the year 2016 continued till the date of

passing the judgment in March, 2022. Detailed evidences were recorded. The parties including the person responsible were given ample opportunity to defend the case.

The judgment of the learned Municipal Magistrate clearly records that construction has been made without obtaining the plan sanctioned by the Kolkata Municipal Corporation and the construction has been made in such a manner that it may endanger human life and property. The same has been done in a slum area by making RCC columns raised over the existing one storied building on the vacant land situated in the back side of the premises.

During the entire trial process the person responsible never raised any dispute with regard to identification of the unauthorised construction. The person responsible defended his case clearly having knowledge of the unauthorised construction, which was sought to be demolished in the proceeding.

An appeal was also carried from the order passed by the Municipal Magistrate. The appeal Court recorded that talks for settlement were going on. It appears that only after the talks for settlement failed that it dawned upon the petitioner to approach this Court under Article 226 with the allegation that the impugned notice does not specify the area which is to be demolished as being unauthorised.

The contention of vagueness in the notice for demolition cannot be accepted by the Court at this stage. The person responsible all along knew the area in question which was considered and held to be unauthorised.

The Court in *Laddu Gopal Bajoria* (supra) mentioned that notice under Section 400(1) is a vague one and observed that the order of demolition cannot be passed on the basis of such vague notice. Such is not the fact in the present case. The petitioner all along had full knowledge of the portion that was considered to be unauthorised. Accordingly, the ratio of the judgment in *Laddu Gopal Bajoria* (supra) will not be applicable in the facts and circumstances of the instant case.

In *Minu Dutta* (supra), the Court observed that there is a procedure for trial of the offence.

The Court was unable to understand as to how there has been conviction of an offence which has not been tried. In the present case, there was a complete trial of the proceeding. The petitioner failed to come out clean in the said trial and an order of demolition has been passed.

The contention of the petitioner that the Municipal Magistrate assumed the jurisdiction and passed order of demolition also cannot be accepted.

The Kolkata Municipal Corporation Act clearly laid down that upon receipt of a complaint the

Municipal Magistrate, after making such an enquiry, if he thinks fit, may by a written order direct the person responsible for such nuisance to prevent, remove or remedy such nuisance.

The Act provides that the Municipal Magistrate may direct demolition of such work if the same is unlawful. The Magistrate in the judgment has made detailed reasoning as to how the Municipal Magistrate derived the power to pass the order of demolition.

The petitioner being aggrieved by the same approached the learned appeal Court but thereafter requested the matter to be placed before the Lok Adalat for settlement. Had the petitioner being aggrieved by the order passed by the Municipal Magistrate assuming jurisdiction to pass the order of demolition, the petitioner ought to have proceeded with the appeal in the right earnest.

At this stage, it appears that only because settlement between the parties have failed, the petitioner has filed the present writ application praying for setting aside the order of demolition.

The Court is not inclined to accept such submissions made on behalf of the petitioner.

The Court refrains from exercising jurisdiction in the matter.

The writ petition accordingly fails and is hereby dismissed.

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

(Amrita Sinha, J.)