

09. 08.09.2022
Ct. No.6
Tanmoy

F.M.A. 306 of 2022

**Kanai Prasad
-Versus-
The State of West Bengal & Ors.**

**With
IA No: C.A.N. 1 of 2021**

Mr. Uday Shankar Bhattacharya, Adv.,
Mr. Mrityunjay Saha, Adv.

...for the appellant.

Ms. Tanushree Dasgupta, Adv.

...for the K.M.C.

Affidavit of service filed in Court today be kept with the records. In spite of service neither the State, nor the private respondents have appeared even in the second call.

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

A judgment and order dated September 28, 2021, whereby the appellant's writ petition being W.P.A. 9080 of 2020 was in effect, dismissed, is under challenge in the present appeal.

The appellant/writ petitioner contended before the learned Single Judge that he is a tenant under the private respondent no. 10. The private respondents are making construction in the premises in question where

the appellant resides as a tenant under the private respondent no.10. The sanctioned Building Plan obtained by the private respondents does not conform to the provisions of law. It has been sanctioned in breach of the relevant provisions of the Kolkata Municipal Corporation Building Rules, 2009.

The learned Single Judge noted that a suit being Title Suit No.164 of 2016 is pending between the parties in respect of the same property. The learned Judge disposed of the writ petition with the following observations:-

“The allegation that the construction has caused an obstruction to the use of the tenanted property and exercise of the tenancy rights of the petitioner cannot be decided in the writ proceeding. The writ proceeding can only be restricted to the allegations of inaction or non-action on the part of the Kolkata Municipal Corporation. In this case, the allegation in the writ petition and the pleadings do not reveal that there has been any infraction of law by the Kolkata Municipal Corporation. Whether the landlord has been constructing in a particular way that the tenant’s enjoyment of the tenanted portion has been hampered, is a landlord tenant dispute and must be decided in an appropriate civil proceeding. Restrictive and preemptive orders, if any, may be passed by the civil court in this situation, upon satisfaction of the facts in dispute. Thus, this writ petition is disposed of without any orders. This order shall not prevent the petitioner from availing all remedies available under the law and the appropriate forum will deal with the issues without being influenced by this order.”

Being aggrieved the writ petitioner is before us by way of the present appeal.

We have heard learned Advocate for the appellant and learned Advocate for Kolkata Municipal Corporation (K.M.C.).

It is not in dispute that the construction that is being made by the private respondents is pursuant to a Building Plan sanctioned by K.M.C. The grievance of the appellant is that such Building Plan ought not to have been sanctioned without obtaining his consent as the relevant provisions of the Kolkata Municipal Corporation Building Rules, 2009 require.

We are told that the appellant has made representations to various Officers of K.M.C. including the Municipal Commissioner, the D.G. (Building) and the Executive Engineer (Civil), Borough-V, K.M.C., 22, Surya Sen Street, Kolkata – 700009. One of such representations is dated October 4, 2020 (page 37 of the stay petition). We are of the view that since the appellant has ventilated his grievance to the Authorities in the form of the aforesaid representation, the same should be considered and a decision should be taken thereon.

Accordingly, we direct the respondent no.5 or any competent Officer authorized by him to take a reasoned decision on the aforesaid representation of the appellant/writ petitioner, in accordance with law and the applicable rules, within a period of eight (8) weeks from the date of receipt of a copy of this order along with a copy of the aforesaid representation, after giving an

opportunity of hearing to the appellant or his authorized representative as well as to the private respondents or their authorized representatives. The decision so taken shall be communicated to the parties within a week from the date of the decision. Needless to say that if the Officer finds that there is merit in the complaint of the appellant, appropriate consequential orders will be passed.

We have not gone into the merits of the disputes between the parties. The Commissioner, or the Officer to be authorized by him, shall take an informed decision in accordance with law.

Since we have not called for affidavits, the allegations made in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being F.M.A. 306 of 2022 and the connected application being IA No: C.A.N. 1 of 2021 are accordingly disposed of.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)