

D/L
Item No. 7
19.07.2022
KOLE

**FMA 223 of 2022
With
IA No. CAN 1 of 2022**

**Sri Prohlad De & Ors.
-Vs.-
The Kolkata Municipal Corporation & Ors.**

*Mr. Gopal Ch. Ghosh,
Mr. R. Mondal,*

...for the appellants.

*Mr. Srijan Nayak,
Mrs. T. Dasgupta,*

...for the KMC.

*Mr. Aniruddha Chatterjee,
Mr. C. Gupta,
Mr. S. Chatterjee,
Mrs. D. Das,*

...for the respondent nos. 5 and 6.

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

An order dated November 10, 2021 passed in WPA 14498 of 2021 is the subject matter of challenge in this appeal. The writ petition is pending before the learned Single Judge.

The operative portion of the impugned order reads as follows:-

“Let affidavit-in-opposition be filed within two weeks from date. Reply thereto, if any, to be filed within one week thereafter.

The Kolkata Municipal Corporation shall specifically furnish details of the policy followed by the Corporation with regard to permitting retention of unauthorized portions

against payment of charges and clarify whether an entire floor can be retained.

No further steps shall be taken by the Kolkata Municipal Corporation for regularization. However, status quo with regard to the running of the petrol pump be maintained.

With regard to other allegation of violation of the civil court's order, the petitioner is at liberty to approach the appropriate civil court and pray for such orders so that it may be ascertained whether the construction allegedly made was in violation of the order of the civil court and on the area over which the status quo order had been passed by the civil court. Pendency of this writ petition shall not prevent the civil court from passing appropriate orders as may be necessary in this regard."

We do not see as to how the appellants are aggrieved by this order. Certain protections have been granted to them by the learned Single Judge. All other points including whether permission granted to the private respondents to retain unauthorized construction was in accordance with law or not, have been left open by the learned Judge to be decided upon exchange of affidavits. We are told that affidavit-in-opposition has been filed by the private respondents.

We are not inclined to entertain this appeal at this stage. The writ petition should be decided by the learned Judge at the first instance.

The Corporation will be at liberty to file its affidavit in opposition before the learned Single Judge within a fortnight from date wherein it shall specifically furnish details of the

policy followed by it with regard to permitting retention of unauthorized constructions against payment of charges and the Corporation shall also clarify whether an entire floor can be retained. The petitioners will be at liberty to file their reply within two weeks thereafter.

The parties will be at liberty to request the learned Judge for an early hearing to the extent the business of the Court may permit.

We have not gone into the merits of the case. Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

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

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

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)