

18.02.2022
Item no.11.
Court No.6.
AB

M.A.T. 1359 of 2021
With
IA CAN 1 of 2021

Anjali Dhar

Vs

Kolkata Municipal Corporation & Others

Mr. Sounak Bhattacharya,
Mr. Sounak Mondalfor the Appellant.

Mr. Rajdeep Bhattacharya,
Mr. Tirthankar Dhali...for the Respondent No.6.

Mr. Alok Kumar Ghosh,
Mr. Subhrangsu Panda ...for the K.M.C.

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

The dispute is between two neighbours. One is Sripati Kumar Shaw and the other is Anjali Dhar.

Sripati made a construction on a plot adjacent to Anjali's plot. Anjali made a complaint before the Corporation to the effect that such construction was completely unauthorised and there was no sanctioned plan for such construction. The Executive Engineer passed an order on October 25, 2002, the operative portion whereof reads as follows:

"The P.R. must demolish the entire 1st floor unauthorised structure within 15 days from the date of the communication of this order, in

default, C.M.C. shall demolish the same at the cost and at the risk of the P.R.

On demolishing the same the P.R. will be permitted to retain the entire ground floor structure subject to complying certain preconditions within 30 days from the date of communication of this order. Those conditions are (1) P.R. must produce a certificate from the C.M.C. permitted L.B.S. certifying that the structural stability and the foundation of the impugned constructions are safe and sound the materials used as well as workmanship are as per the latest addition of National Building Code of India, (2) P.R. must furnish an affidavit declaring on that he will not make any construction whatsoever in the impugned premises without prior sanction from the C.M.C. authority, and (3) he will pay the necessary retention charge of the C.M.C. as calculated by the depts. In a separate sheet of paper attached and supplied with this final order. On non compliance of either of the conditions within above states specified period the C.M.C. authority shall demolish the same at the cost and at the risk of the P.R.”

Sripati preferred an appeal before the Municipal Building Tribunal against the portion of the order of the Executive Engineer, which directed demolition of the first floor of his building. By an order dated June 4, 2005, the Tribunal affirmed the order of the Executive Engineer.

Being aggrieved, Sripati filed a writ petition challenging such order being W.P. No.13153 (W) of

2005, which was dismissed for default on June 25, 2015.

A further complaint dated October 17, 2019 was made by Anjali Dhar to the Chairman of the concerned Borough of Kolkata Municipal Corporation to the effect that Sripati was carrying on with further unauthorised construction.

Thereafter, it appears that Anjali found out by making an application under the Right to Information Act, 2005 that Sripati was making construction without any sanctioned plan.

In view of alleged inaction on the part of the Kolkata Municipal Corporation, Anjali approached this Court by filing W.P.A. 3108 of 2020. The writ petition is still pending. On that writ petition, the learned Single Judge called for a report from the Corporation. Such report was filed and it appeared from such report that the first floor of Sripati's building has not yet been demolished. Retention charges for the ground floor were paid in December, 2002. Kolkata Municipal Corporation said that November 17, 2021 was fixed as the date for demolition of the first floor of Sripati's building. All these were recorded in the learned Judge's order dated November 10, 2021.

It appears that Sripati filed a writ petition being WPA 17970 of 2021 praying for certain directions on Kolkata Municipal Corporation. In such writ petition,

Sripati did not implead Anjali Dhar as a party. An order came to be passed on November 22, 2021, the operative portion whereof reads as follows:

“i. In view of the finality attained by the order of the Court dated October 25, 2002, nothing remains to be decided with regard to the proceeding initiated by the Kolkata Municipal Corporation for demolition of the unauthorized portion of premises no.393/3F/4, Prince Anwar Shaw Road.

ii. As the petitioner prays for some breathing time to bring down the unauthorized first floor in compliance of the order, three months time from today is given to the petitioner to demolish the same at his own costs.

iii. On the expiry of the aforementioned period of three months, the Corporation shall be at liberty to demolish the structures and recover the costs from the petitioner. The order of partial demolition was passed. The same was challenged before the Building Tribunal. The Tribunal affirmed the order of demolition and a writ petition was preferred which was dismissed for default. No steps were taken for restoration. Thus the petitioner has accepted the order of demolition.

iv. Other portions of the order with regard to retention shall be reached to its logical conclusion as the petitioner has already paid retention charges within a month from such demolition subject to compliance of the directions of the special officer building.

v. As the petitioner has undertaken before this Court to comply with the order of the

Corporation, no coercive measure shall be taken for the aforementioned three months as indicated in the order itself.

Accordingly, the writ petition is disposed of.”

Anjali is aggrieved by the above order. She has come up in appeal. We have granted her leave to prefer appeal since she was not a party in the proceedings before the learned Single Judge. According to Anjali, the order impugned, which was passed in her absence, will make her writ petition infructuous. In her writ petition being W.P. No.3108 of 2020, she has challenged the order of the Corporation allowing Sripati to retain the ground floor. This is her short grievance.

We clarify that since Anjali Dhar was not a party to WPA No.17970 of 2021, the order passed therein, which is impugned in the present appeal, cannot have any adverse effect on any right that Anjali may have or any adverse effect on the writ petition of Anjali Dhar, which is pending before the learned Single Judge. Anjali's writ petition shall be decided on its own merit.

We have not gone into the merits of the claims of the parties.

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

MAT 1359 of 2021 along with IA CAN 1 of 2021 is, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)