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10-11-2022
debajyoti
(Ct. no.06)

MAT 1347 of 2017
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IA NO:CAN/1/2022

Kolkata Municipal Corporation
Vs.
RDB Realty & Infrastructure Limited & Ors.

Mr. Alak Kumar Ghosh,
Mr. Achintya Kumar Banerjee,
Mr. Gopal Ch. Das

... For the Appellant.

Mr. Debrup Bhattacharya,
Mr. R. N. Ghose

... For the Respondents/
Writ Petitioners.

Mr. Dipak Kumar Mukherjee,
Mr. Rajib Mukherjee

... For Uttarpara Kotrang
Municipality.

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

This appeal has been preferred against a judgment and order dated July 07, 2017, whereby W.P.32511(W) of 2013 and the connected application were allowed by the learned Single Judge.

The appellant, Kolkata Municipal Corporation (in short 'KMC'), owned certain properties within the territorial limits of Uttarpara Kotrang Municipality (in short 'the said Municipality').

Upon noticing that certain construction activities were in progress on such land, KMC wrote a letter to the said Municipality to issue notice to the person responsible for stopping the construction work. Such a notice dated October 01, 2013 was issued by the said Municipality. Challenging such stop-work notice,

the respondents/writ petitioners approached the learned Single Judge.

The learned Judge disposed of the writ petition by the impugned judgment and order, the operative portion whereof reads as follows:

“ In view of the narrations above, in my opinion the Municipality has no authority to direct the petitioners to stop work by issuing the impugned order dated 1st October, 2013 being dictated by the KMC.

The Kotrung Municipality being a statutory body should act on the basis of the law laid down under the said West Bengal Municipal Act, 1993 and not at the dictate of KMC. Curiously enough the power provided under Section 220 of the said Act to issue notice to stop unauthorised construction has not been exercised. The said Municipality has no other recognized in law to issue the impugned order.

Court has no scope or occasion to disbelieve any registered instrument unless it is upset by any competent Court of law.

Therefore, in my opinion, the impugned notice dated 1st October, 2013 issued by the Chairperson cannot be sustained in the eye of law as well as the facts and circumstances of the case.

Accordingly the notice dated 1st October, 2013 is hereby quashed and set aside. The respondent No.1 and 2 are directed to forthwith allow the petitioners to recommence, continue and complete the work of construction at the said property in accordance with the saction building plan. ”

Being aggrieved by certain observations in the said judgment and order, KMC has come up in appeal.

Appearing for KMC, Mr. Ghosh, learned counsel, points out that at paragraph 40 (page 32 of the

judgment), the learned Judge has made the following observations:

“ It is also evident from record that in C.S Record published after 1926 there also the KMC's name has not been recorded against such plots of land. In my considered view even if it is accepted that the KMC's name has been recorded in the BLRO Record that record does not create any title in favour of the KMC. Title to the property is created only by deed of conveyance and not by recording of name in the BLRO Record. ”

Mr. Ghosh says that it was completely unnecessary for the learned Judge to make those observations for deciding the writ petition. Such observations may be interpreted as casting a doubt on KMC's title to the concerned property. Such observations should be expunged from the judgment.

Mr. Ghosh further submits that the Hon'ble Supreme Court in the case of **Girija Prasad Paul Vs. The Corporation of Calcutta**, reported at **AIR 1972 SC 2391**, where the same property was involved, recognized KMC's title to the property. There cannot be an iota of doubt that KMC is the absolute owner of the said property.

Mr. Ghosh also points out that KMC has since, relinquished its right, title and interest in respect of the said property in favour of the State, but the process of relinquishment is yet to be completed.

We have heard learned counsel for the parties.

Learned advocate for the writ petitioners says that the observations quoted above need not be expunged, since the learned Judge did not decide the issue of title to the property in question. He says that

the writ petitioners are the actual owners of the concerned property.

We are of the view that we need not expunge the observations of the learned Single Judge quoted above. It will suffice if we clarify that those observations will not in any manner be construed as being any pronouncement on the title to the concerned property or casting any doubt on the actual owner's title to the said property (whoever the actual owner be). It is trite law that the Writ Court cannot decide a question of title to property. Hence, the aforesaid observations cannot in any manner adversely affect the actual owner's right, title and interest in respect of the property in question.

No useful purpose will be served by keeping the appeal pending. The appeal and the application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)