

26.09.2022
Item No.6
Court No.6.
S. De

**M.A.T. 1437 of 2022
with
I.A. No. CAN/1/2022**

**Saraswati Ghosh.
Vs
The Kolkata Municipal Corporation & Ors.**

Mr. Subhojit Seal
...for the appellant.
Mr. Pradyot Kumar Nandi,
Mr. A. Sen Gupta,
...for the respondent no.9.
Mr. Fazlul Haque,
Mr. S. Panda,
Ms. Ina Bhattacharyya,
...for the K.M.C.
Mr. Tapas Kr. Adhikari,
Mr. S. Dhar,
...for the State.

The appellant approached the learned Single Judge with the grievance that the respondent no.9 has constructed a toilet just above her bedroom without obtaining sanction therefor from the Kolkata Municipal Corporation (K.M.C.). She said that in spite of having issued notice under Section 400(1) of the K.M.C. Act, the K.M.C. authorities did not take any further step in the matter.

The learned Judge recorded that a notice dated August 4, 2021 was issued under Section 400 of the K.M.C. Act by the Executive Engineer, Borough No.VI. Subsequently, there was a hearing before the Special

Officer (Building). The respondent no.9 was permitted to retain the toilet upon payment of certain fees.

The grievance of the appellant was that after having issued the notice dated August 4, 2021, which required the respondent no.9 to demolish the toilet and, in default, demolition by the K.M.C. authorities, the Corporation Authorities could not have permitted the respondent no.9 to retain the toilet. The learned Judge did not accept such contention. Hence, this appeal.

We have heard learned counsel for the parties. The fact remains that the respondent no.9 has been allowed to retain the impugned construction. In other words, such construction stands regularized by reason of the order dated October 28, 2021 passed by the Special Officer (Building). The last two lines of the said order reads as follows :-

“Any person aggrieved by this order U/S 400(1) may appeal against this order to Municipal Building Tribunal within stipulated time in accordance with the provision of KMC Act 1980.”

The appellant, therefore, has alternative statutory remedy available to her and she may pursue the same if so advised. The learned Judge rightly did

not pass orders as prayed for. We see no infirmity in the order under appeal which warrants no interference.

The appeal being MAT 1437 of 2022 is, accordingly, dismissed along with the application being I.A. No. CAN 1 of 2022.

This will obviously not prevent the appellant from availing of any other remedy that she may have in law including the remedy of appeal before the Municipal Building Tribunal.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)