

S/L 5
13.10.2022
Court. No. 28
*Sourav/
Suwayan*

**MAT 1705 of 2022
With
IA No. CAN 1 of 2022
Mortaja Ali Molla & Ors.
Vs.
Delwar Hossain Molla & Ors.**

*Mr. Saikat Chatterjee
Md. Abdur Rakit*

...for the appellants.

Mr. Bibek Jyoti Basu

...for the respondent no. 1.

*Mr. Swapan Debnath
Mr. Gopal Chandra Das*

...for the KMC

Heard the learned Advocates for both the parties.

Learned Advocate for the appellants submits that the order was passed on the basis of contradictory pleadings filed before the first court. While in the prayer portion of the writ petition, it is prayed illegal construction in premises No. Y-195, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018 be demolished, relevant annexures to the petition refer to the premises belonging to the appellants, that is, Y-194, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018. He further submits the Assistant Engineer made inspection of the premises No. Y-195, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018 and not his premises.

Learned Counsel appearing for the writ petitioners/respondents submits the reference to premises

No. Y-195, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018 in the prayer of the writ petition was an inadvertent mistake. Illegal construction is being undertaken in premises of the appellant, that is, Y-194, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018. A stop work notice under 401 of the Kolkata Municipal Corporation Act has been issued upon the appellants.

Learned Advocate for the KMC submits they have no instruction with regard to illegal construction in premises No. Y-194, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018.

Having heard the learned Counsel for the parties, we note the order impugned was passed on the basis of submissions made by the learned Counsel for KMC that departmental inspection of premises No. Y-195, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018 revealed illegal construction in the said premises. On the basis of such submission, the order in appeal came to be passed.

Under such circumstances, we clarify that the order in appeal does not relate to premises No. Y-194, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018.

With this clarification, the appeal is disposed of.

The writ petitioners/respondents seek leave to take out appropriate proceedings in respect of illegal construction in premises No. Y-194, Kanthal Beria Road, Police Station – Nadial, Kolkata – 700018. This is disputed by the

appellants. Be that as it may, in the event any illegal construction is undertaken in the said premises, it shall open to the parties including writ petitioners/respondents and KMC to take appropriate steps in accordance with law.

Accordingly, the appeal being MAT 1705 of 2022 along with interim application being CAN 1 of 2022 are disposed of.

(Supratim Bhattacharya, J.)

(Joymalya Bagchi, J.)