

21.11.2022
23
ns Ct.25

W.P.A No. 23423 of 2006

President, Golf Towers Residents Welfare Association.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Biplab Guha,
Ms. Srilekha Chattopadhyay ... for the petitioner.

Mr. Alak Kr. Ghosh,
Mr. Achintya Kr. Banerjee,
Mr. Tarun Chatterjee .. for the K.M.C.

Mr. Deepan Kr. Sarkar,
Mr. Dinobandhu Dan,
Mr. Dipayan Dan .. for the respondent no.4.

The petitioner has challenged the order dated June 29, 2005 passed by the Special Officer (Building), Kolkata Municipal Corporation by virtue of which it was held that no demolition order is required to be passed and the person responsible (P.R.) was directed to comply with the pre-conditions specifically mentioned in the said order.

The learned Advocate appearing for the petitioner draws attention of the Court to the aforesaid order dated June 29, 2005 and submits that the Special Officer (Building) in spite of making specific observation in the said order that there has been violation of the

several provisions of the Building Rules but chose not to pass any order of demolition. He further submits that the writ petition was filed sometimes in the year 2006 and the Kolkata Municipal Corporation did not communicate to the petitioner that the Special Officer (Building) has passed the aforesaid order. He further submits that immediately after he was made aware of the said order, he has amended the writ petition and copies of the amended writ petition has been served upon the necessary parties.

Mr. Banerjee, learned Advocate representing the Kolkata Municipal Corporation submits that the order dated June 29, 2005 passed by the Special Officer (Building) is an appealable order and an appeal lies before the Municipal Building Tribunal.

Heard the Learned Advocates for the parties and perused the materials on record.

Records reveal that the Special Officer (Building) in a proceeding initiated under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 read with Section 416 of the said Act passed an order dated June 29, 2005. It further appears from the said order that the retention charges, which was assessed by the Kolkata Municipal Corporation was also paid by the person responsible, namely, S. P. Jhunjhunwala on September 10, 2005. The order further records that no complaint

was received by the Kolkata Municipal Corporation for such alleged violation of the Building Rules.

It has been specifically stated in paragraph 1 of the writ petition that the flat owners / residents of the building-in-question formed a welfare association, which has filed this instant writ petition. The members of the association claiming to be the residents of the building shall be deemed to be aware of such alleged deviations at the time when the same was made but did not protest at the relevant point of time and chose to approach this Court after the deviations were regularised and the retention charges were paid. It appears from the record that the writ petition was filed on November 8, 2006, i.e., more than a year after the retention charges pursuant to the order passed by the Special Officer (Building) was paid.

The order passed under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 is an appealable order under Sub-Section (3) of Section 400. The order passed under Section 416(1) is also appealable under Sub-Section (6) of Section 416 thereof. Since the order is appealable before the Municipal Building Tribunal, this Court is not inclined to exercise its powers under Article 226 of the Constitution of India and the petitioner is left free to approach the appropriate forum in accordance with law.

With the above observations, W.P.A. No.23423 of 2006 stands disposed of without, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)