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APO 12 of 2022
IA No.GA 1 of 2022
with
WPO 2 of 2022
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

BIMAL PRAKASH SARDA
Vs.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE KAUSIK CHANDA
Date : March 9, 2022.

Appearance:
Mr. R. N. Chakraborty, Advocate
Mrs. Tanusree Das, Advocate
...for the appellants.
Mr. Alok Kumar Ghosh, Advocate.
Mr. Subhrangsu Panda, Advocate
. . . for respondent KMC.
Mr. Ambar Nath Banerjee, Adv. for respondent no.7

The Court : From the report in the form of affidavit filed by the Kolkata Municipal Corporation, it appears that the construction in respect of which the present demolition proceedings have been initiated is the same construction in respect of which demolition proceedings had been initiated earlier in 2003-04 being Demolition Case no. 38-D/2003-04, Br.III. The earlier demolition proceedings had culminated in the Corporation permitting the present appellant to retain the construction in question upon complying with four conditions. One of the conditions was that he must furnish NOC from Thika Controller as required under Tikha Regulation, 13.

Mr. Ghosh, learned Counsel representing the Corporation says that NOC from the Thika Controller has not been furnished till date. Therefore, for

breach of that very important condition on which the appellant was allowed to retain the construction, the construction ought to be demolished. However, he fairly concedes that the second demolition proceedings initiated in respect the same construction are misconceived and may be treated as non-est in the eye of law.

Mr. Chakraborty, learned Advocate appearing for the appellant says that an application has been made before the Thika Controller by his client on January 24, 2022, for issuance of “no objection certificate”.

We are surprised that when the order permitting the appellant to retain the construction in question was passed in 2004, for 18 years the appellant did not approach the Thika Controller. Mr. Chakraborty tries to justify the delay by saying that there was continuous litigation between the parties for the last 18 years. We are not impressed with such explanation.

However, for the ends of justice, we direct the Thika Controller to pass a reasoned order on the application made by the appellant on January 24, 2022. If the Thika Controller issues a no objection certificate as has been asked for by the appellant, The Corporation should accept the same. If the Thika Controller does not issue such no objection, the Corporation may take steps in accordance with law. We have not gone into the merits of the appellant’s claim for no objection from the Thika Controller. The Thika Controller shall decide the appellant’s application/representation in accordance with law. Such decision should be taken as early as possible and definitely within a period of six weeks from the date of receipt of a copy of this order by the Thika Controller from the appellant. The appellant must immediately communicate this order to the Thika Controller. Till the Thika

Controller takes a decision, the Corporation shall hold its hands and not demolish the construction in question. Once a decision is taken by the Thika Controller, the Corporation will act in accordance with law depending on whether or not the Thika Controller has issued no objection certificate in favour of the appellant.

Mr. Ambar Nath Banerjee, learned Advocate appearing for the private respondent says that he is the owner of premises no.84, Canal Circular Road, Kolkata and the appellant is claiming certain rights in respect of a portion of such property. He seeks leave to file a representation before the Thika Controller. His client will be at liberty to file such representation within a week from date.

It is made clear that the parties shall not seek unnecessary adjournment before the Thika Controller and shall extend all cooperation so that the Thika Controller can decide the appellant's representation within the time period indicated above.

No useful purpose will be served by keeping the appeal pending.

The appeal and the connected application are accordingly disposed of.

(ARIJIT BANERJEE, J.)

(KAUSIK CHANDA, J.)