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**I.A./GA 2 OF 2021
APOT/151/2021
With
WPO 1117 OF 2016
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

SOUMEN DAS & ANR
VS
MUNICIPAL COMMISSIONER & ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE SUBHENDU SAMANTA
Date : 9TH JUNE, 2022.

Appearance:

Mr. Gopal Ghosh, Advocate
Ms.Kuhu Roy, Advocate
....for appellant/petitioner.
Mr.Barin Banerjee, Advocate
Mr.S.K.Debnath, Advocate
Mr.D.Mondal, Advocate
....for KMC.

THE COURT: This appeal is directed against a judgment and order dated February 27, 2020 whereby WP 1117 of 2016 was dismissed by the learned single Judge.

The writ petitioners had challenged by way of an appeal before the Municipal Building Tribunal, an order dated October 8, 2002 passed by the Special Officer (Building), CMC in Demolition Case No.84-D/2001-02, Br.III, whereby the writ petitioners were directed to demolish certain unauthorized constructions.

The point urged by the writ petitioners before the Tribunal essentially was that certain structures which had been allowed to be retained upon payment of applicable fees in an earlier Demolition Case, have been included again in the present Demolition Case.

The Tribunal dismissed the appeal being B.T.Appeal No.10 of 2003, negating the contention of the writ petitioners. This order of the Tribunal was under challenge before the learned single Judge.

The learned single Judge in the impugned order observed, inter alia, as follows :-

“I have perused the petition and the pleadings filed on behalf of the parties. I have also considered the case of the petitioners and the respondents. On a perusal of the impugned order, I find that the same has been passed upon hearing both the parties and considering the relevant facts and circumstances of the instant case. The impugned order is a reasoned order and considers the entire case of the petitioners. There is no procedural impropriety alleged on behalf of the petitioners nor is there any other infirmity which the petitioners have been able to demonstrate warranting any interference with the impugned order. It is the categorical finding of the Appellate Authority that the petitioners have carried out constructions subsequent to the revised sanction plan prepared in compliance with the earlier order dated 19th December, 1997 which was passed in the earlier demolition case, being No.14-D/97-98. It is further alleged by the respondent Corporation that the petitioners

have violated the undertaking which had been furnished by the petitioners in terms of the earlier order. The petitioners were categorically directed by the earlier order not to carry out any construction in violation of the undertaking which they had given on the earlier occasion. There is a clear finding by the Chairman in the impugned order that the petitioners have carried out further construction without the permission of the Kolkata Municipal Corporation. The impugned order also records that the height of the wooden floor was raised contrary to the revised plan sanctioned on the strength of the earlier order dated 19th December, 1997. There is also a clear finding that the cubicals on the mezzanine floor which have been prepared are also in violation of the Kolkata Municipal Corporation Building Rules. The impugned order also records that the mandatory open space has been constructed upon which is in serious violation of the Kolkata Municipal Corporation Rules 56 and 57.”

Having observed as above, the learned Judge concluded that the writ petitioners have not been able to substantiate any ground warranting interference with the Tribunal's order. Accordingly, the writ petition was dismissed.

We have heard learned counsel for the parties. The point that was urged by the writ petitioners before the Tribunal as also before the learned single Judge and which has also been argued before us is one of disputed facts. Whether or not, structures which were permitted to be

retained in an earlier Demolition Case have been included in the present Demolition Case, is a pure question of fact. The Special Officer (Building), CMC has found against the writ petitioner. The Tribunal, in appeal, has also found against the writ petitioners. The learned Judge, in our view, correctly refused to interfere with such factual findings in exercise of writ jurisdiction.

In view of the aforesaid, we see no reason to interfere with the order impugned. The appeal and the application are dismissed.

This order, however, will not prevent the appellants from availing of any other remedy that they may be entitled to in law including filing a civil suit.

(ARIJIT BANERJEE, J)

(SUBHENDU SAMANTA, J.)