

OD-12

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO: GA/1/2022
IN
APOT/113/2022

SMRITIKONA NAYOK
-VERSUS-
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 22nd August, 2022.

Appearance:

Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
...for the appellant
Mr. Ranajit Chatterjee, Adv.
Mr. Swapan Kr. Debnath, Adv.
For KMC

The Court : The appellant was the writ petitioner before the learned single Judge. She purchased a flat measuring about 350 Sft. on the 11th floor of premises no.9A, Jatindra Mohan Avenue, Kolkata-700 006, sometime in the year 2009. She contends that her name was mutated in the Corporation records as the owner of the flat way back in 2014.

Her grievance before the learned single Judge was that a demolition case was initiated by the Corporation Authorities in respect of the flat that she owns and occupies without any notice being served on her. A demolition order has also been passed by the Special Officer (Building), Kolkata Municipal Corporation, on May 7, 2021.

The learned Judge noticed from the demolition order dated May 7, 2021, that the writ petitioner/appellant had appeared in the hearing before the Special Officer (Building), Kolkata Municipal Corporation. Accordingly, the learned Judge rejected the writ petitioner's argument that there had been breach of the principles of natural justice. The learned Judge dismissed the writ application. Hence this appeal.

Before us, the appellant has contended that although she had appeared in one of the hearings before the Special Officer (Building), Kolkata Municipal Corporation, no formal notice was issued to her and she did not have full opportunity of putting her case before the Authority. She contends that the Building Rules of Kolkata Municipal Corporation permit regularisation and the present case is one where regularisation should be permitted against payment of applicable charges. This, she could have impressed upon the Special Officer (Building), Kolkata Municipal Corporation, had a formal notice been issued to her and had she been granted an adequate and effective opportunity of hearing.

On the point of hearing, we are not impressed as it is an admitted position that the appellant/writ petitioner appeared in the hearing before the Special Officer (Building), Kolkata Municipal Corporation. We have no reason to assume that the Special Officer(Building), Kolkata Municipal Corporation, did not grant sufficient opportunity to the appellant.

However, the person aggrieved by a demolition order has a statutory remedy by way of appeal under Section 400(3) of the Kolkata Municipal Corporation Act.

The appellant says that no certified copy of the order of demolition was made available to her although she is the owner and occupant of the construction that has been ordered to be demolished. Upon the appellant applying to the Kolkata Municipal Corporation for a certified copy, the same shall be issued to her within a fortnight from the date of the application. The appellant shall be entitled to file statutory appeal against the order of demolition within a fortnight from the date of receipt of certified copy of the demolition order from the Corporation. If such appeal is filed within the time period indicated above, the appellate authority shall dispose of the appeal on merits, in accordance with law, without going into the question of time bar, after giving full opportunity of hearing to the appellant or her authorized representative within three months from the date of filing of such appeal. The appeal will be decided by the

Appellate Authority in accordance with law without being influenced by any observation in this order as we have not gone into the merits of case.

There shall be an unconditional stay of operation of the demolition order in question for a period of two months from date. In the event, the appellant files statutory appeal against the demolition order within such time period, stay of operation of the demolition order shall continue till the disposal of the statutory appeal. In the event the statutory appeal is not filed within the time period indicated above, the stay of operation of the demolition order shall automatically stand vacated.

The appeal and the connected application are accordingly disposed of.

[ARIJIT BANERJEE, J.]

[RAI CHATTOPADHYAY J.]

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