

OD-7

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

I.A. NO: GA/1/2022

IN

APOT/119/2022

MD. EHTESHAM UDDIN

VS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 19TH JULY, 2022.

Appearance:

Mr. Arif Ali, Advocate

Mr. Sarban Bhattacharjee, Advocate

...for appellant

Mr. Debojyoti Basu, Advocate

Mr. Pran Gopal Das, Advocate

...for respondent no.13

Mr. Ranajit Chatterjee, Advocate

Ms. Piyal Sengupta, Advocate

....for KMC

Mr. Manoj Malhotra, Advocate

Mr. Sagnik Chatterjee, Advocate

.. for State

THE COURT: An order dated June 22, 2022, whereby WPO/2211/2022 was disposed of, is the subject matter of challenge in this appeal.

The appellant had approached the learned Single Judge complaining of unauthorised/illegal construction without any sanctioned

plan, being made on the premises in question. The learned Single Judge by an order dated June 6, 2022 recorded that the Executive Engineer (Civil), Building Department of Kolkata Municipal Corporation has specifically found that the impugned construction has been made without obtaining necessary sanction and an order of demolition has been issued by the Corporation on April 19, 2022. The learned Single Judge directed execution of such order of demolition.

The present respondent no.13 was originally not a party in the writ petition. However, alleging that he would be the party effected by demolition of the impugned construction, he preferred an appeal against the order dated June 6, 2022 with an application for leave to appeal. This Court by an order dated June 15, 2022 set aside the order impugned in that appeal being APOT 103 of 2022 only on the ground of breach of the principles of natural justice and remanded the matter back to the learned Single Judge for being decided afresh after adding the present respondent no.13 as a party and after giving him an opportunity of hearing.

Pursuant to such order, the respondent no.13 was added as a party respondent in the writ petition. The matter was heard and the order impugned in this appeal has been passed. The impugned order again records that a show cause notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued to the persons responsible for making the impugned construction and thereafter a

demolition order was passed by the competent authority on April 19, 2022. It is further recorded that an appeal has been preferred against the demolition order before the Municipal Building Tribunal being BT Appeal No.87/2022. The learned Single Judge disposed of the writ petition by granting liberty to the parties to approach the Tribunal for necessary orders. Being aggrieved, the writ petitioner is before us by way of this appeal.

Mr. Ali, learned advocate appearing for the appellant/writ petitioner says that his client is aggrieved by the fact that though in the earlier order dated June 6, 2022, which was subsequently set aside, the learned Single Judge had directed the Officer-in-Charge, Narkeldanga Police Station to keep strict vigil over the property in question and to ensure that no further construction is made thereon and the Officer-in-Charge was required to file a report indicating whether any unauthorised construction has been made on the premises in question after the demolition order dated April 19, 2022 was issued, in the order impugned in the present appeal, no such safeguard was provided for.

We are not impressed with the said grievance of the appellant. It may not be possible for the police to ascertain as to whether or not a construction is unauthorised or has been done in accordance with a sanctioned plan. We agree with the learned Single Judge's view that since the Tribunal is in seisin of the appeal, which has been preferred by

the respondent no.13 herein, parties should approach the Tribunal for necessary directions.

We enquired as to whether or not the appellant is the immediate neighbour of the respondent no.13. The answer was in the negative. The appellant says that he resides in the locality. This is also disputed by the respondent no.13. Be that as it may, we are not inclined to go into such matters. We, however, direct the Municipal Building Tribunal to dispose of the BT Appeal No.87/2022 as expeditiously as possible, without granting unnecessary adjournment and definitely within three months from the date of communication of this order to the Tribunal.

We have not gone into the merits of the respective contentions of the parties. The Tribunal shall decide the appeal in accordance with law.

Since we have not called for affidavits, the allegations in the Stay Petition are deemed not to be admitted by the respondents.

The appeal and the connected application being GA/1/2022 are accordingly disposed of.

(ARIJIT BANERJEE, J)

(RAI CHATTOPADHYAY, J.)