

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA No. GA/1/2022
With
OCOT/5/2022
WPO/2125/2022
In APO/77/2022

HAMIDUL HAQUE
-VS-
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date : December 15, 2022.

Appearance

Mr. Utpal Bose, Sr. Adv.
Mr. Rajdeep Mantha, Adv.
Mr. Anirudhya Dutta, Adv.
Mr. Bhupendra Gupta, Adv.
...for the appellant

Mr. Gopal Chandra Das, Adv.
Mr. Debangshu Mondal, Adv.
...for the KMC

Mr. Ranajit Chatterjee, Adv.
Mr. Aniruddha Mitra, Adv.
...for the respondent no.6

The Court : A judgment and order dated June 16, 2022 whereby the appellant's writ petition was disposed of, is under challenge in this appeal.

The writ petitioner/appellant had approached the learned Single Judge challenging a notice issued by the Kolkata Municipal Corporation (in short 'KMC') under Section 401 of the KMC Act, 1980 on April 18, 2022. By the said notice, the writ petitioner was called upon to stop construction work at

premises no.6, Kasai Para Lane, Ward No.60, Borough-VI, Kolkata-700017, as the same was allegedly being made in violation of the sanctioned plan.

Before the learned Single Judge, the writ petitioner argued that no recent construction has been made. The construction that stands is a very old one.

The respondent no.6, who claims to be the Mutwali of the auqaf which is said to be the owner of the premises in question, submitted before the learned Single Judge that the concerned building has been constructed without obtaining any sanctioned plan therefor.

The learned Single Judge observed that *“it appears that lately the petitioner is not making any construction in the said premises. The construction appears to be in existence for quite some time.”* Having so observed, the learned Judge disposed of the writ petition with the following direction:

“In view of the above, the Municipal Commissioner is directed to appoint an Engineer from the Head Office of the Building Department of the Kolkata Municipal Corporation but not from the concerned Borough to make a spot inspection upon prior notice to both the parties, to ascertain the nature of the construction that is standing on the said premises.

If the Corporation is of the opinion that the construction is in existence for quite some time then the concerned authority of the Corporation shall take a decision as to whether the said construction is required to be removed or may be regularized in accordance with law.

Kolkata Municipal Corporation shall conduct the inspection preferably within a period of four weeks and take a decision in the matter within a fortnight thereafter. The fate of the inspection shall be intimated to both the parties immediately thereafter.”

Being aggrieved, the writ petitioner has come up in appeal.

Mr. Bose, learned senior advocate appearing for the appellant, contended that the learned Judge having found that no construction work is going on presently, that should have been the end of the matter and no further direction could have been given to the Engineer as the learned Judge has done. The order is without jurisdiction.

The respondent no.6 in the writ petition, who is the respondent no.6 in this appeal also, being the Mutwali of the concerned auqaf, is also aggrieved by the order impugned and has filed a cross objection. The contention of the Mutwali is that the learned Judge should not have given any discretion to the Corporation to regularize the construction in question, which is wholly unauthorized. To that extent, the Mutwali also assails the order of the learned Single Judge.

It is a matter of record that when the appeal was moved, an order dated August 25, 2022 was passed by a Co-ordinate Bench. By way of interim order, it was directed that *“No further action shall be taken by the Corporation, pursuant to or on the basis of the order impugned herein, till the end of September, 2022 or until further order, whichever is earlier.”*

It appears that soon thereafter a notice under Section 400 (1) of the KMC Act was served by KMC on the appellant. Since the appeal was pending and there was a subsisting interim order, the appellant immediately approached this Court by filing GA/2/2022. A Co-ordinate Bench by an order dated September 8, 2022 directed that no action will be taken on the basis of the said notice under Section 400(1) of the KMC Act.

We are of the view that since a notice under Section 400(1) has been issued, the same should be carried to its logical conclusion in accordance with law. Both the appellant and the respondent no.6 would be entitled to participate in the proceeding under Section 400(1) of the KMC Act. We have not gone into the merits of the case at all.

However, in view of the notice under Section 400(1), the notice under Section 401 of the KMC Act has lost its force. This does not of course mean that anybody including the appellant or the respondent no.6 can make any unauthorized construction. The order of the learned Single Judge is set aside.

Accordingly, the appeal being APO/77/2022, cross objection being OCOT/5/2022 along with application being IA No. GA/1/2022 are disposed of.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)