

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA NO: GA/1/2022
APOT/160/2022

MILAN KUMAR BANERJEE

VS

KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 7TH SEPTEMBER 2022.

Appearance:

Mr. Raghunath Chakraborty, Advocate
Ms. Anjana Banerjee, Advocate
..for appellant

Mr. Rananit Chatterjee, Advocate
Mr. Arijit Dey, Advocate
...for KMC

THE COURT: The judgement and order dated September 6, 2022, whereby the appellant's writ application being WPO/2489 of 2022 was dismissed, is under challenge in this appeal.

The appellant/writ petitioner approached the learned single Judge assailing a notice dated August 27, 2022, issued by the Kolkata Municipal Corporation (KMC) under Sections 544 and 546 of the Kolkata

Municipal Corporation Act, 1980. By the said notice, the Executive Engineer (Civil)/Building Department, Borough-III of the Kolkata Municipal Corporation has intimated the owners and occupiers of premises No.30/1E, Latafat Hossain Lane, Ward-34, Borough-III that the KMC people shall enter the premises on September 8, 2022, for demolishing the unauthorised structure at the second and third floors of the building, in implementation of the direction passed by the Municipal Magistrate, 2nd Court, Calcutta on July 29, 2022, in Criminal Misc. Case No.2807 of 2016.

The learned Judge recorded that the persons responsible had obtained sanction for a G+1 storied building. However, two additional floors were constructed. The writ petitioner is a subsequent purchaser of one of the flats on the allegedly unauthorised portion of the building. Since admittedly no sanctioned plan exists in respect of the construction, the same is illegal and the Municipal Magistrate rightly directed demolition thereof. The learned Judge refused to interfere and dismissed the writ petition.

We notice that the learned Judge's attention was drawn to the fact that the question as to whether or not the Municipal Magistrate has the power to pass demolition order, is pending consideration before a Special Bench of this Court.

Section 401A of the KMC Act, 1980, does not seem to empower the Municipal Magistrate to pass an order of demolition. It is also doubtful whether or not Section 584 of the Act gives such power to the Municipal

Magistrate. This issue being under consideration before a Special Bench of this Court, in our opinion, the learned Single Judge ought not to have directed implementation of the demolition order passed by the Municipal Magistrate. Instead, the learned Judge should have clarified that the Corporation would be at liberty to proceed against the alleged illegal construction in accordance with law including the other provisions of the KMC Act, 1980.

Accordingly, we allow this appeal. The order under appeal is set aside. The order of the Municipal Magistrate directing demolition is also set aside. This order will not, however, prevent the KMC from initiating appropriate proceedings in respect of the alleged illegal construction in accordance with law including the other provisions of the KMC Act, 1980 and carrying such proceedings to its logical conclusion.

Since the demolition order of the Municipal Magistrate has been set aside, the consequential notice dated August 27, 2022, issued by the KMC under Sections 544 & 546 of the KMC Act, 1980 is also set aside.

Liberty is granted to the learned advocate for the appellant to communicate the gist of this order to the appropriate officer in the Corporation.

The learned advocate for the Corporation is also requested to communicate this order to the relevant officer of the Corporation.

The appeal and the stay application are accordingly disposed of.

Since we have not called for affidavits, the averments in the stay application shall be deemed to have been not admitted by the respondents.

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)

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