

ORDER

WPO/963/2016
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

JYOTI PROKAS SIL
VERSUS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE

The Hon'ble Justice SAUGATA BHATTACHARYYA
Date: 14th September, 2022

Apperance
Mr. Pradip Dutta, Sr. Advocate
Mr. Chanchal Kumar Dutta, Advocate
Ms. Krishna Mullick, Advocate
.....for the petitioner
Mr. Barin Banerjee, Advocate
Mr. Debangshu Mondal, Advocate
...for the respondents

The Court: Affidavit of service filed in Court on behalf of the petitioner is taken on record. In spite of service upon the respondent no.5, no one appears for the said respondent.

The writ petition is presented, inter alia, challenging the order of the Joint Municipal Commissioner (G & D), Kolkata Municipal Corporation dated 22nd July, 2016. It has been pointed out by Mr. Pradip Kumar Dutta, learned Senior Advocate representing the petitioner that such decision of the Joint Municipal Commissioner (G & D) being the respondent no.2 was taken pursuant to the order passed by the Hon'ble Division Bench on an intra Court appeal being APOT/191/2016 dated 23rd June, 2016. The

relevant part of the order of the Hon'ble Division Bench dated 23rd June, 2016 runs infra:-

“Apparently, this exercise was not completed within the time frame as indicated, therefore, contempt petition came to be filed by the very same writ petitioner in CC 32 of 2016. During the pendency of the contempt proceeding the Executive Engineer mentioned above, completed the exercise of inspection and even passed order of demolition and the same came to be placed on record. At that point of time, the appellant came before this Court. So far as the order of demolition is concerned, the appellant also filed a statutory appeal and the same is pending. No doubt the statutory appellate authority may exercise all powers of the authority empowered to pass an order of demolition, that is, the Municipal Commissioner in the instant case, we are of the considered opinion that it would be in the interest of justice that the authority which could have inspected and passed demolition order is the Municipal Commissioner looks into the representation of the petitioner dated 20.11.2015 and take an independent view thereon in the first place after considering the entire factual situation without being influenced by any of the observations made by the Executive Engineer (Building), Borough V, Kolkata Municipal Corporation in any manner whatsoever. The order impugned is modified to that extent. The entire exercise has to be completed within four weeks after giving opportunity of hearing to all the parties.”

Pursuant to the direction of the Hon'ble Division Bench, the respondent no.2 passed an order dated 22nd July, 2016 whereby it has been decided by the said respondent no.2 that considering the size of the temple and the position of the construction of temple, demolition work was not required to be carried out.

Being aggrieved by such decision of the respondent no.2, the present writ petition is preferred questioning the decision of the respondent no.2. While throwing challenge to such decision of the respondent no.2 as contained in the order dated 22nd July, 2016, notice of this Court has also been drawn to the decision of the Executive Engineer (Civil), Building dated 20th April, 2016 wherein it was decided by the said Executive Engineer that construction of the temple adjacent to the rear side of the premises of the petitioner would cause hindrance in carrying out repairing work and finally it was decided by the said Executive Engineer that the said temple is required to be demolished since the construction of the temple is not backed by any sanctioned plan or the approval of Kolkata Municipal Corporation.

Mr. Barin Banerjee, learned Advocate representing the Kolkata Municipal Corporation has taken point of maintainability of the writ petition in view of availability of alternative remedy as envisaged under Section 400(3) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the said Act of 1980"). It has been contended on behalf of the KMC that if the petitioner is aggrieved by the decision of the respondent no.2, the proper course left open to the petitioner is to approach the Municipal Building Tribunal.

This Court has heard learned Advocates for the parties and perused the relevant materials available on record. Since the subject matter of challenge in this writ petition is the order of the respondent no.2 which has been passed by the statutory authority under the said Act of 1980

pursuant to the order passed by the Hon'ble Division Bench dated 23rd June, 2016; the petitioner ought to have challenged the same by preferring appeal before the Municipal Building Tribunal in terms of Section 400 (3) of the said Act of 1980. Furthermore, on perusal of the order of the Hon'ble Division Bench dated 23rd June, 2016, it appears that the appellant being respondent no.5 in the present writ petition preferred one statutory appeal against the order of the Executive Engineer (Civil), Building and the same stood disposed of vide an order dated 22nd July, 2016 passed by the respondent no.2.

In view of the above scenario and in consideration of availability of appellate authority as contemplated under Section 400 (3) of the said Act of 1980, this Court grants leave to the petitioner to prefer appeal before the Municipal Building Tribunal questioning the order passed by the respondent no.2 dated 22nd July, 2016. If such appeal is preferred by the petitioner within a period of four weeks from this date, the same shall be decided by the Municipal Building Tribunal within six months thereafter and while deciding the appeal the point of limitation shall not be a relevant consideration.

The interim order passed by the co-ordinate Bench on 3rd October, 2016 on this writ petition will continue till disposal of the appeal by the Municipal Building Tribunal.

However, it is made clear that if the petitioner fails to prefer appeal within the aforesaid period of four weeks from this date, the interim

order shall stand vacated after expiry of four weeks without reference to this Court.

It is also made clear that the petitioner shall make respondent no.5 as party to the appeal to be preferred before the learned Tribunal.

With the above observations and directions, the writ petition stands disposed of.

There will be no order as to costs.

(SAUGATA BHATTACHARYYA, J.)

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