

IN THE HIGH COURT AT CALCUTTA
CIVIL APPEALLATE JURISDICTION
ORIGINAL SIDE

APOT 221 of 2022
with
WPO/3076/2022
IA NO:GA/1/2022

CHANDAN PAUL
VS
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 1ST DECEMBER, 2022.

Appearance:

*Mr. Somnath Gangopadhyay, Advocate
...for appellant*

*Mr. Gurudas Mitra, Advocate
Mr. Jayanta Kr. Dhar, Advocate
...for KMC*

THE COURT: A judgement and order dated November 28, 2022,
whereby the appellant's writ petition was dismissed, is under challenge
in this appeal.

The appellant appears to be a co-owner of premises No.86/1C, Gopi Mohan Dutt Lane, Ward No.7, Borough-I, Kolkata-700003 (hereinafter referred to as “the said premises”). The appellant says that the building, which stood on the said premises, is more than hundred years old. It needed repairs. Repeatedly permission was sought for from the Kolkata Municipal Corporation (in short “KMC”) for carrying out repairing works. Such permission was not granted. For the safety and security of the occupants of the building and the people in the immediate vicinity of the building, the appellant started repairing works. A ‘Stop Work’ notice was issued by the KMC on August 6, 2019. He says that immediately he stopped work. Even thereafter he approached the KMC authorities, time without numbers, for allowing him to resume repairing work. However, all his requests fell on deaf ears.

Ultimately, he had to resume work to protect the interest of his family members. Suddenly, an order of demolition was passed by the KMC authorities under Section 400(8) of the KMC Act, 1980. The demolition activities started on November 28, 2022 and are going on.

Learned advocate for KMC denies that at any point of time the appellant approached the Corporation for permission to repair.

The appellant admits that he has constructed one floor unauthorizedly, without obtaining sanction of any Building Plan.

However, the other floors have been there for a very long time. The authorities can exercise power under Section 400(8) of the KMC Act only after recording in writing the reasons why immediate demolition of a structure is necessary. There must be such emergent situation that giving prior notice or an opportunity of hearing to the owner of the property in question is dispensed with.

We had adjourned the matter in the morning and had fixed the matter again at 12 noon to enable the learned advocate for KMC to produce the order of demolition. The same has been produced and let the same be kept with the records.

It appears from the resolution of the Mayor-in-Council and also from the written instruction that learned advocate for KMC has obtained that the appellant indulged in unauthorised construction of a two storied RCC framed structured building along with extended RCC columns over first floor roof level (III storied) without obtaining requisite permission. It further appears that at the time of execution of demolition order, it has been found that in course of time, the person responsible has constructed second floor slab and also raised another floor along with extended RCC columns over third floor roof level. A copy of the said resolution has been made over to learned advocate for the appellant. Let the written instruction be also kept with the records.

Be that as it may, Section 400(8) of the KMC Act is an emergency power granted to the Mayor-in-Council. The Mayor-in-Council did resolve that exercise of such power is necessary in respect of the said premises. Accordingly, the demolition work is in progress. We have noticed that the resolution for immediate demolition of the building in question was taken by the Mayor-in-Council on or about October 18, 2019. We are amazed that it has taken the KMC authorities three years to implement its own demolition order. Section 400(8) of the KMC Act is a draconian power with which KMC has been armed, to be exercised in situations of emergency, when demolition of a building cannot wait at all in the interest of public safety. Any decision taken under Section 400(8) of the KMC Act must be and is meant to be implemented immediately, without any delay, and not after three years. The whole object and purpose of Section 400(8) of the KMC Act stands defeated if there is undue delay in execution of a demolition order issued under that section. We direct the Municipal Commissioner to look into the matter and take appropriate action against the irresponsible officers, who are responsible for this delay in execution of the demolition order. The Municipal Commissioner shall send a report in this regard to the Learned Registrar, Original Side of this Court within a month from the date of receipt of a copy of this order. Upon receipt of such report, the same will be placed before us by

the Learned Registrar. Let a copy of this order be served on the Municipal Commissioner by the Learned Registrar, Original Side of this Court immediately. We reiterate that emergency powers are given to public authorities to be exercised effectively and in public interest. Indolent and recalcitrant officers should not have any place in public institutions such as the KMC.

We find no infirmity in the order under appeal.

The appeal and the connected application are accordingly dismissed.

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)