

OD-3

APOT /229/2022
IA No.GA/1/2022
WPO/2753/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

AXIS INSURANCE BROKING
PRIVATE LIMITED
-Versus-
SANJOY MULLICK & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date: 19th December, 2022.

Appearance:

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Sumanta Biswas, Adv.
Mr. Bikash Shaw, Adv.
...for the appellant.
Mr. Rupak Ghosh, Adv.
Mr. Avijit Dey, Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. Bani Ghosh, Adv.
...for the respondent nos.1 & 2.
Mr. Gopal Chandra Das, Adv.
Mr. Debangsu Mondal, Adv.
...for the KMC.
Mrs. Nilofer Siddique Alam, Advocate
...for the respondent no.9

The Court: A judgement and order dated December 6, 2022, whereby the learned Single Judge directed implementation of an order of demolition of a construction, is under challenge in this appeal.

One Nilambar Mullick, father of the writ petitioner, was the owner of premises no.80, Bidhan Sarani, Kolkata- 700 006. The property in question with regard whereto the present dispute arises had

been given on lease to one JMB Chain Stores Private Limited. The lessee was carrying on business from the said property under the name and style "Leather World India Ltd."

The said lessee made certain constructions at the said premises including a projected varandah over KMC footpath open to the sky.

The Director General (Building), on February 17, 2007, passed an order of demolition of the projected structure, since the same was unauthorised. The Assistant Engineer (Civil), Building Department, by a letter dated March 20, 2007, called upon the persons responsible to demolish the projected portion.

Subsequently, a notice under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 was issued on October 14, 2009 calling upon the persons responsible to immediately stop all construction works at the said premises. However, the order of demolition of the projected portion remained unimplemented.

For implementation of the order of demolition, the present writ petition was filed. In the meantime, the lessee being JMB Chain Stores Private Limited went into liquidation. Its leasehold interest in respect of the said premises was sold in auction sale under the supervision of the National Company Law Tribunal, Kolkata Bench. The present appellant purchased the leasehold interest in such auction.

By an order dated November 3, 2022, the learned Judge directed the Kolkata Municipal Corporation to file a short report in the form of an affidavit. The other parties were granted liberty to file their responses to such report. On December 6, 2022, when the matter came up again before the learned Judge, a report was filed by Kolkata Municipal Corporation. The report is to the following effect:

“I, the Executive Engineer, Building Department/Borough – II, solemnly affirm as follows:

- 1) That the projected portion over the covered KMC footpath on the second storey attached to the building in question measuring around 42.5 Sq.m. is suffering a demolition notice under Section 401 since 2007. We are ready to demolish the same under the instruction of the learned court.*
- 2) Notice u/s 401 of C.M.C. Act, 1980 issued on 13th September, 2022 is for reconstructing the intermittent floor and reinstallation of two stair ways i.e. at Ground floor to 1st floor and another 1st floor to intermittent floor. One toilet has constructed at the north west corner on the projected portion (at 1st floor) over KMC covered footpath.*
- 3) Notice u/S 401 of C.M.C. Act, 1980 issued in 2009 as because of some internal changes. We are sending both the notices u/S. 401 for onward transmission for disposal within KMC.*
- 4) Also four numbers of tanks to the tune of 5000 Liters each is placed atop the building whose Structural Stability is unknown on the existing building.”*

The learned Judge recorded anguish and rightly so for the order of demolition having remained unexecuted since the year 2007. The learned Judge directed immediate demolition of the impugned construction. Being aggrieved, the respondent no.8 in the writ petition has come up by way of instant appeal.

We have heard learned counsel for the parties at length. It is not clear as to whether or not the order of demolition was passed in the year 2007 after affording an opportunity of hearing to all concerned including the present appellant. We enquired from the learned Advocate for the Corporation, as to whether or not, in the KMC records there would be any resolution under Section 400(8) of the Kolkata Municipal Corporation Act, 1980. The learned counsel frankly confessed that no such resolution could be traced in the records.

To obviate all confusion and controversy, we deem it proper to grant a fresh opportunity of hearing to all concerned parties before the appropriate officer of the Corporation.

The Director General (Building) or any officer authorised by him not below the rank of Executive Engineer (Building) shall hear the authorised representatives of the appellant and the writ petitioners on 30th December, 2022 at 12 noon at the office of such officer. No further notice of such hearing will be given. This order will be deemed to be sufficient notice to the parties. The parties will be at liberty to rely on documents as they may be advised. The hearing officer shall pass a

reasoned order upon hearing the parties without being influenced by the earlier order of demolition or any observation in the order of the learned Single Judge in the present round of litigation. The concerned officer in the Corporation shall take an informed decision in accordance with law.

We emphasize that public safety is of utmost importance. If the officer in the Corporation comes to the conclusion that the impugned projected portion cannot be allowed to remain, without compromising public safety, the same should be definitely demolished at the earliest.

The matter is pending before the learned single Judge. No useful purpose will be served by keeping the appeal pending. The concerned officer of the Corporation shall definitely pass an order by January 7, 2023. The same will be placed before the learned single Judge as and when the matter comes up before Her Lordship.

Needless to say, the appellant shall not carry on with any unauthorised/illegal construction in the meantime or at any point of time. The demolition order shall be kept in abeyance till the concerned officer passes a fresh order as directed above. When the matter comes up before the learned single Judge, we request Her Lordship to decide the writ petition on merits. We have not gone into the merits of the case at all.

The appeal (APOT/229/2022) and the connected application for stay (IA No.GA/1/2022) are disposed of.

Since the appellant is a subsequent purchaser of the leasehold interest of the original lessee, it says that it does not have relevant documents in his possession. It has, by a letter dated December 9, 2022, requested the Kolkata Municipal Corporation for copies of such documents. Such request of the appellant should be considered by Kolkata Municipal Corporation immediately.

Let this order be communicated by Mr. Das, learned Advocate for the Corporation to the Director-General (Building) immediately.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)

Dg/sm.