

09.01.2023
Item No.14.
Court No.6.
S. De

**M.A.T. 2 of 2023
with
I.A. No. CAN/1/2023**

**Feroze Ahmed.
Vs
The Kolkata Municipal Corporation & Ors.**

Md. Sabir Ahmed,
Mr. Shuvro Prasun Lahiri,
Mr. Biswajit Sarkar,
Mr. Dhiman Banerjee,
...for the appellant.

Mr. Barin Banerjee,
Mrs. Sima Chakraborty,
...for the K.M.C.

Mr. Sumitava Chakraborty,
...for the respondent nos. 5 & 6.

This appeal is directed against a judgment and order dated December 23, 2022, whereby the appellant's writ petition being WPA 27233 of 2022 was dismissed.

It appears that premises no. 1N, Sapgachi, 1st Lane, Kolkata-39 is a joint property of the appellant/writ petitioner and the private respondents. A partition suit is admittedly pending in the relevant Civil Court at the instance of the private respondents herein. There is also an order of *status quo* passed by the learned Civil Judge in that suit.

It appears that a complaint was received by the Kolkata Municipal Corporation (K.M.C.) on February 22, 2013, from some of the private respondents herein, to the effect that the appellant/writ petitioner and one other person had made unauthorized construction at the premises referred to above.

On the basis of such complaint, the Deputy Chief Engineer (Building)/South, K.M.C., initiated Demolition Case no. D/VII/2013-14 against the appellant herein and the said other person by the name of Md. Salahuddin. Such proceedings culminated in an order of demolition dated December 10, 2013. The persons responsible were called upon to demolish the unauthorized construction within fifteen days from the date of communication of the demolition order, failing which, the K.M.C. authority was to demolish the same at the risk and cost of the persons responsible.

This order was carried in appeal by the appellant herein and Md. Salahuddin before the Municipal Building Tribunal by way of B.T. Appeal No.133 of 2013. The appeal unfortunately was kept pending for about nine years. This is most unfortunate.

By an order dated June 24, 2022, the appeal was dismissed on contest and the demolition order was affirmed.

Being aggrieved by the order of the Tribunal, the writ petitioner approached the learned Single Judge in the present round of litigation.

The learned Single Judge noticed that pursuant to the order of the Tribunal, a notice under Sections 544 and 546 of the K.M.C. Act 1982 had been issued. The learned Judge recorded the submission made on behalf of the petitioner that the structure in question has been there for a considerable period of time. It is a factory-shed and several workers are working thereat. Livelihood of several workers would be jeopardized if the demolition order was carried out. The learned Judge noticed that the extent of unauthorized construction was 1063.47 sq.mts. approximately.

The learned Judge dismissed the writ petition with the following observations :-

“The order of demolition was passed way back in the year 2013 but till date the same could not be executed as the appeal was pending consideration before the Municipal Building Tribunal.

The Tribunal heard the matter in details and as such, the submission of the petitioner that fair opportunity was not given to the petitioner to defend the construction cannot be accepted. Construction made unauthorizedly, suffering an order of

demolition, ought not to stand any further.

It has been submitted that there is an order of injunction passed by the Learned Civil Court in respect of the selfsame structure.

The order of injunction cannot be made applicable and bind any structure which is unauthorized and suffering an order of demolition passed by the Corporation, affirmed by the Municipal Building Tribunal.

Even though the structure is in existence for a long period, the same cannot be ratified by way of passage of time. As the respondent authority has come to a conclusive finding that the structure is unauthorized and the said finding has been affirmed by the Tribunal, accordingly, the unauthorized structure is liable to be demolished immediately.

The instruction provided by the engineers of the Corporation reveals that part demolition has been conducted but there are still some portions which cannot be demolished as it is occupied. The men and agents of the Kolkata Municipal Corporation will be at liberty to seek assistance from the jurisdictional police station for executing the order of demolition.

In the event, a request is made by the Corporation to the police, then

necessary assistance shall be provided by the police to the men and agents of the Corporation for executing the order of demolition.”

Being aggrieved, the writ petitioner has come up by way of the instant appeal.

We have heard Mr. Lahiri, learned counsel for the appellant, at length. We have also heard learned counsel for the private respondents and learned counsel for the K.M.C.

The demolition order was passed by the officer at the first instance after hearing all the concerned parties. The Tribunal also disposed of the appeal after hearing all the concerned parties. Principles of natural justice have been duly observed. Admittedly no sanctioned plan was obtained by the appellant before the structure in question was put up. Passage of time cannot legitimize something which at its inception was illegal. Mr. Lahiri strenuously argued that the structure impugned has been there for the last forty years. According to us, the same is irrelevant. If the structure was put up without obtaining due sanction from K.M.C., then it was an unauthorized construction which cannot become authorized or lawful just by reason of passage of time, even a considerable time period.

Mr. Lahiri also tried to impress upon us that livelihood of a huge number of workers is at stake. If

the impugned structure is demolished, more than hundred workers will lose their jobs. We have full sympathy for the workers but sympathy cannot be the basis for passing Court orders. If we accept Mr. Lahiri's submission, we will have to set aside the order of demolition. This would create a dangerous precedent. Unscrupulous persons would put up unauthorized structures, start doing business therefrom, employ people and when faced with demolition proceedings would argue that livelihood of people would be jeopardized if the unauthorized construction was demolished. This cannot be countenanced.

Mr. Lahiri also urged that there is an order of *status quo* in the partition suit which is still in force. We are not impressed. Apart from the fact that K.M.C. is not a party to the partition suit and the *status quo* order is not binding on K.M.C., even if K.M.C. was a party to the partition suit, we would have clarified as the learned Single Judge has done, that such order cannot stand in the way of K.M.C. discharging its statutory duties which would include demolishing unauthorized constructions.

Learned advocate for the private respondents submitted that previously a writ petition had been filed by the appellant herein and Md. Salahuddin being W.P.A. 16887 of 2022, challenging the Tribunal's

order. The Court found out that the appellant had forged the signature of Md. Salahuddin on the Vakalatnama. Upon such forgery being detected, the writ petition was dismissed with costs assessed at Rs.25,000/-. The appellant says that the cost has been paid.

Mr. Chakraborty, learned advocate representing the private respondents says that while disposing of the writ petition, the learned Single Judge did not grant liberty to the writ petitioner to file afresh on the selfsame cause of action. Accordingly, this writ petition is hit by the principles of *res judicata*. We have recorded the aforesaid submission of Mr. Chakraborty. However, since we propose to dismiss the appeal on merits, we need not make any comment on such submission.

We find absolutely no infirmity in the order under appeal. The order warrants no interference.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

The appeal being MAT 2 of 2023 fails and is dismissed along with the application being I.A. No. CAN 1 of 2023.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)