

03.05.2023
Item No.06
Court No.6.
S. De

**M.A.T. 186 of 2023
with
I.A. No. CAN/1/2023**

**Mina Shaw.
Vs
Soumen Bhattacharya & Ors.**

Mr. Anupam Dasadhikari,
Mr. Sannidhya Datta,
...for the appellant.

Mr. Jahar Dutta,
Mr. Bipin Ghosh,
..for the State.

Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya,
...for the K.M.C.

Affidavit-of-service filed in Court be taken on record. In spite of service, nobody appears for the respondent no.1/writ petitioner.

By consent of the parties the appeal and the connected application are taken up together for hearing.

A judgment and order dated December 12, 2022 is under challenge in this appeal.

The appellant is one of the private respondents in the writ petition. The writ petitioner, who is the respondent no.1 in this appeal, approached the learned Single Judge by filing WPA 21797 of 2022, with the grievance that the private respondents in the writ petition had made illegal and unauthorized construction.

The learned Judge noted that local inspection had been conducted and a single-storied structure was found to have been illegally constructed encroaching upon the mandatory open spaces. It was submitted on behalf of Kolkata Municipal Corporation that notice under Section 401 of the Kolkata Municipal Corporation Act 1980 had been issued on September 14, 2022, asking the persons responsible to stop work. Proceedings under Section 400(1) of the Kolkata Municipal Corporation Act have also been initiated. Learned advocate for the private respondents submitted before the learned Judge that an application had been filed before the Kolkata Municipal Corporation seeking regularization of the impugned construction. The learned Judge disposed of the writ petition with the following directions :

“It appears from the report filed before this Court that unauthorized construction has been detected. Accordingly, the Executive Engineer (Civil)/Building Department, Borough-III is directed to conclude the demolition proceeding, strictly in accordance with law, after giving a reasonable opportunity of hearing to all the necessary parties at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order. A reasoned order shall be passed and communicated to all

the necessary parties immediately thereafter.

The Officer-in-Charge, Narkeldanga PS is directed to keep strict vigil over the property to ensure that no construction in any manner whatsoever is carried out at the said premises till the conclusion of the demolition proceeding by the Executive Engineer of the Corporation.”

Being aggrieved, one of the private respondents has come up by way of this appeal.

Learned advocate for the Corporation points out that pursuant to the order of the learned Single Judge, the proceedings under Section 400(1) of the Kolkata Municipal Act have been concluded. A demolition order was passed on February 7, 2023.

Learned advocate appearing for the appellant says that the demolition order has been carried in appeal before the Municipal Building Tribunal. Such appeal was filed on April 27, 2023. An application for interim stay of the demolition order has been filed which is yet to be considered by the Tribunal. Learned advocate requests for a direction on the Corporation to dispose of the application for regularization made by the appellant herein. A copy of such application is annexed at page 57 of the stay petition. It is an apology for an application. It contains no particulars at all. However, the eloquence of learned advocate for

the appellant has persuaded us to grant liberty to the appellant to make a fresh comprehensive application for regularization within a week from date (May 10, 2023). If such an application is made within the time period indicated, the Corporation is directed to dispose of the same in accordance with law and the applicable rules and regulations, by a reasoned order, after giving an opportunity of hearing to the writ petitioner and the appellant or their authorized representatives. The decision taken by the concerned officer of the Corporation shall be communicated to the parties within a week from the date of the decision.

Till a decision is taken on the appellant's application for regularization, if made within a week from date, let no coercive action be taken against the impugned construction. If no application is made within a week from date, the Corporation will be entitled to proceed in accordance with law. Even if the application is made within the prescribed time period but is rejected by the Corporation, the Corporation will proceed to implement the demolition order, if the same has not been stayed by an interim order or finally set aside by the Tribunal in the appeal pending before it. Mere pendency of the appeal before the Tribunal, without any interim stay order being passed, will not stand in the way of the Corporation executing the demolition order.

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

Accordingly, MAT 186 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

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.)