

03.04.2023
Item no.6
Court No.6.
AB

**M.A.T. 195 of 2023
With
I A CAN 1 of 2023**

**Dulal Krishna Kar
Vs
The State of West Bengal & Others**

Mr. Varun Kothari,
Mr. Hemanta Kr. Das,
Mr. Arya Bhattacharya,
Ms. Ijee Bhattacharya,
Ms. Saolini Bosefor the Appellant.

Mr. Partha Pratim Roy,
Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Dasfor the Respondent No.10.

Mr. Barin Banerjee,
Ms. Sima Chakraborty.....for the KMC.

Md. T. M. Siddiqui,
Mr. Nilotpal Chatterjeefor the State.

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

Affidavit of Service filed in Court today be kept with the records.

A Judgment and Order dated January 2, 2023, whereby the appellant's writ petition was, in effect, dismissed, is under challenge in this appeal.

The appellant and the private respondent no.10 occupied two flats in the same building. The flat occupied by the private respondent is immediately above the flat occupied by the appellant. The appellant approached the learned Single Judge with the grievance that the private respondent has not kept the

washroom in his flat in proper state of repair, as a result whereof there is leakage of water through the ceiling of the flat of the appellant. The appellant submitted before the learned Judge that his representation filed before the Kolkata Municipal Corporation (in short “KMC”) has not been considered.

On behalf of the private respondent, it was submitted before the learned Single Judge that the pipeline in question is a private one and KMC does not have any role to play.

Upon hearing learned Advocates for the parties, the learned Judge was of the opinion that the dispute in question cannot be decided either by KMC or by the Writ Court. Accordingly, the learned Judge disposed of the writ petition by granting liberty to the petitioner to approach the appropriate forum for relief, if so advised.

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned Advocate for KMC files a written instruction, the material portion whereof reads as follows:

“Department has inspected the premises and observed that there is an existing Three storied Residential Building. During inspection both the Petitioner and Respondent No.9 were present. It is a matter related to dampness of Toilet’s roof slab in between first floor and second floor. At the time of inspection no new construction or unauthorized works were detected.”

Learned Advocate for the appellant draws our attention to Sections 314 to 316 of the KMC Act, 1980. Section 314 pertains to the power of the Municipal Commissioner or any Officer authorized by him to inspect and examine any house drain, bathing or washing place or by tap fitting etc. of any premises. Section 315 pertains to the power of the Municipal Commissioner to require repairs etc. to be made by the person responsible if it is found that there is any default on the part of such person. Section 316 empowers the Municipal Commissioner to execute the work at the cost of the person responsible in the event such person fails to comply with the direction of the Municipal Commissioner to effect necessary repairs.

Learned Advocate for the private respondent says that the writ petition involves disputed questions of fact. The allegation of the writ petitioner, that he is suffering seepage of water due to the private respondent not maintaining his washroom properly, is incorrect. The Writ Court should not go into such factual disputes.

Having heard learned Advocates for the parties, we are of the view that the ends of justice will be served if we pass the following directions:

- (i) The Municipal Commissioner, KMC shall depute a competent officer to inspect the concerned premises of the appellant as well as the private respondent for the purpose of finding out

whether there is any default on the part of the private respondent, which is causing seepage of water through the ceiling of the appellant/writ petitioner.

- (ii) Such officer shall prepare a written report upon inspection to be made in the presence of both the parties and make over copies of such report to the appellant as well as the private respondent.
- (iii) This exercise will be completed upon prior notice to the parties within a fortnight from a copy of this order being communicated to the Municipal Commissioner. If the competent officer's report is that there is no merit in the allegation of the appellant/writ petitioner, the matter will end there. However, in the event the competent officer's report is to the effect that the appellant's complaint is justified, the private respondent shall take necessary steps for removing the cause of such complaint immediately and definitely within a period of 10 days from the date of receiving copy of the report from the competent officer of the Corporation.
- (iv) In default of the private respondent carrying out necessary repairs, the appellant will be at liberty to do so at his own cost. For this purpose, the private respondent shall render full cooperation to the appellant.

No useful purpose will be served by keeping the appeal pending.

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

M.A.T. No.195 of 2023 is, accordingly, disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Prasenjit Biswas, J.)

(Arijit Banerjee, J.)