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06.10.2023
Ct. No. 11
rrc

FMA 180 of 2023
with
IA No. CAN 1 of 2023

(Ramendra Kumar Roy Vs. Deb Kumar Dey & Ors.)

Mr. Tanmoy Mukherjee
Mr. Amal Kumar Saha
Mr. Iresh Paul

..... For the appellant

Mr. Raghunath Chakraborty
Mr. Manojit Pal

..... For the respondent
nos. 1, 3 & 4

Mr. Atis Kumar Biswas
Mr. Sourav Chowdhury

..... For the KMC

Legality and propriety of the order vide No. 24 dated 8th February, 2023 have been called in question in this appeal.

San unnecessary details, the facts leading to filing this appeal are that one Deb Kumar Dey and three others instituted a suit for declaration, permanent injunction and also for mandatory injunction in the Court learned Judge, 3rd Bench, City Civil Court, Calcutta. Along with the plaint, an application under Order 39 Rules 1 & 2 read with Section 151 of the Code (hereafter referred to as the application) was preferred contending, *inter alia*, that the defendant nos. 6 and 7 therein who happen to be the owners of the premises no. 115, Netaji Subhas Chandra Bose Road, P.S. – Burrabazar, Kolkata – 700

001 which stand on the eastern side of the premises no. 117 were making construction encroaching the common passage lying in between the two premises and hence, the residents and inmates of the premises no. 117 were deprived from enjoying the free air and light and the common passage for ingress and egress to the premises no. 117.

Record reveals that on the said application, initially one *ad- interim* order of injunction was passed on 4th March, 2023 and upon receipt of notice, the defendant nos. 6 and 7 who happened to be the appellants herein, filed an application under Order 39 Rule 4 of the Code praying for vacating the ad-interim order of injunction and the said two applications were heard analogously along with another application taken out under Section 151 of the Code for extension of the ad-interim order of injunction.

Upon hearing the respective parties and upon perusal of the records, the application under Order 39 Rules 1 & 2 of the Code was allowed and the application under Order 39 Rule 4 of the Code was rejected on contest by passing an order dated 8.2.2023 which is under challenge in the appeal. By that order, the defendants were restrained from giving any effect and further effect to the sanctioned building plan and the defendants were also restrained from making construction at the suit premises encroaching the common passage mentioned in

the Schedule B, as appended to the plaint till the disposal of the suit.

Aggrieved by the said order, the defendant no. 6 thereto has preferred this appeal.

Mr. Mukherjee, learned advocate appearing for the appellant submits that admittedly, the building was declared to be a dangerous building by the Kolkata Municipal Corporation (in short, the Corporation) and the Corporation issued a notice asking the appellant to renovate the building. He contends that the roof of the building was badly damaged and hence, for reconstruction of the damaged roof, the petitioner submitted a building plan before the Corporation and after observing all the requisite formalities, the Corporation permitted the appellant to reconstruct the damaged roof and accordingly, the appellants started construction but on receipt of certain complaints, the Corporation issued notice Under Section 401 of the Kolkata Municipal Act, 1980 directing the appellants to stop the construction.

Drawing our attention to the order passed by this Court in a writ petition he submits that a learned Single Bench of this Court got an occasion to intervene into the dispute in a writ petition being WPA 8598 of 2023 which was preferred by one of the appellants. He submits that the writ petition was disposed of by directing the executive engineer of the concerned borough to cause a

spot inspection upon notice to all the necessary parties and prepare a D-sketch and forward the same to the writ petitioner so that the steps could be taken to demolish the unauthorized construction by the petitioner. He further submits that in compliance with the order passed by the learned Single Bench in the writ petition, an inspection was held, D-sketch was prepared and the unauthorized construction was demolished and after demolition, another joint inspection was held on 8th September, 2023 in presence of one of the plaintiffs/respondents. After being satisfied that the unauthorized construction has been demolished, the Corporation withdrew the stop-work notice and dropped the demolition proceedings. He further submits that taking note of such subsequent event, the order impugned may be set aside and the appellant may be permitted to continue his construction work since the building is still in dilapidated condition.

Mr. Chakraborty, learned advocate appearing on behalf of the plaintiffs/respondent nos. 1, 3 and 4 submits that in the guise of reconstruction, the appellants have started making a new construction and the appellants have constructed numerous pillars. He strenuously contends that only three pillars have been removed and other pillars have not been removed. Mr. Chakraborty further submits that here, the permission to reconstruct the damaged roof was given by the

Corporation in exercise of his power under Rule 3(2)(e) of the building rules of 2009, but in exercise of such power, permission cannot be accorded to make a fresh construction. He submits that the Corporation has acted in derogation of the building rules. He also submits that if the order impugned is set aside, the respondent nos. 1, 3 and 4 will be highly prejudiced.

Mr. Biswas, learned advocate appearing for the Corporation submits that in consonance with the order passed in the writ petition, a joint inspection was held, D- sketch was prepared and the appellant removed the construction which was made in deviation of the sanctioned building plan and thereafter again a joint inspection was held on 8.9.2023 in presence of the one of the plaintiffs/respondents. He submits upon such joint inspection, it revealed that the unauthorised construction had been removed by the appellants and accordingly, the demolition proceedings was dropped and the stop-work notice was withdrawn. Report as produced by Mr. Biswas, is taken on record.

Heard the learned advocates appearing for the respective parties. Perused the materials on record and the documents placed before us.

Admittedly, after the order impugned herein was passed on 8.2.2023, a learned Single Bench of this Court intervened into the matter while dealing with a writ petition being WPA 8598 of 2023 preferred by one of the

appellants herein. In compliance with the order passed in the writ petition, a joint inspection was held, D- sketch was prepared and the appellants removed the unauthorized construction. The appellants informed the fact of removal of unauthorised construction to the concerned official of the KMC and then again a joint inspection was held in presence of one of the plaintiffs/respondents on 8.9.2023. Upon being satisfied that the unauthorized construction had been removed by the appellants, the demolition proceeding was dropped and the notice issued Under Section 401(1) of the 1980 Act which is being coined as stop-work notice by the parties hereto was withdrawn. The plaintiffs/respondents did not challenge the sanctioned building plan and they did not challenge the D-sketch and they did not make any complaint during the joint inspection held on 8.9.2023.

Taking such subsequent events in consideration and considering the facts and circumstances of this case and the arguments advanced by the respective parties, we are of the view that there is no necessity of continuance of the interim order impugned in the appeal.

In view thereof, the order impugned in the appeal is set aside and the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)