

8.
02-05-2023
debajyoti
(Ct. no.06)

MAT 427 of 2023
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IA NO:CAN/1/2023
+
CAN/2/2023

Swapan Pan
Vs.
Sk. Abdul Karim & Ors.

Mr. Sardar Amjad Ali, Sr. Adv.,
Ms. Manika Sarkar
... For the Appellant.

Mr. Iqbal Hussain
... For Respondent No.1/
Writ Petitioner.

Mr. Alak Kumar Ghosh,
Mrs. Sima Chakraborty
... For K.M.C.

Mr. Amitesh Banerjee, Sr. Standing Counsel,
Mr. Suddhadev Adak
... For the State.

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

The appellant was the private respondent in the writ petition.

A judgment and order dated December 14, 2022 whereby the writ petition of the respondent no.1 herein was disposed of, is under challenge in this appeal.

The respondent no.1 herein approached the learned Single Judge with the grievance that the appellant herein was making unauthorized construction after filling up a water body. The learned

Judge considered a report forwarded by the Director General (Building), Kolkata Municipal Corporation, dated December 13, 2022, which was to the effect that there is a four storied building, constructed nearly seven to eight years back, at the premises in question. A report of the concerned BL&LRO was also considered by the learned Judge, which was to the effect that R.S. Dag No.55 was recorded as tank, but there is no existence of tank at present.

The learned Judge disposed of the writ petition with the following directions:-

“ As the communication reveals certain unauthorized construction, accordingly, the present writ petition is disposed of by directing the Municipal Commissioner to take appropriate steps to deal with such unauthorized construction in accordance with law after giving reasonable opportunity of hearing to all the necessary parties and pass a reasoned order and communicate the same to the parties.

The aforesaid exercise shall be completed positively within a period of three months from the date of communication of a copy of this order.

The writing forwarded by the Director General (Building), KMC signed on December 13, 2022 is retained with the records. ”

Being aggrieved, the private respondent in the writ petition is before us by way of this appeal.

Mr. Ali, learned Senior Advocate, appearing for the appellant/private respondent, submits that the reports of the Director General (Building), Kolkata Municipal Corporation, and of the BL&LRO were not

made over to learned advocate for the private respondent in the writ petition. The impugned order was passed relying on such reports, although the private respondent was kept in the dark as to what was there in the reports.

Learned Senior Advocate further drew our attention to documents annexed to two applications filed in this appeal. In particular, it appears that during the pendency of the appeal, an order has been passed on April 11, 2023, jointly by the Assistant Engineer (C), Building Department, Borough-XV, Kolkata Municipal Corporation and the Executive Engineer (C)/Bldg/Borough-XV, Kolkata Municipal Corporation, which is to the following effect:-

“ That the Person responsible(s) shall demolish the unauthorized construction marked in D/Sketch of D/Case No.20-D/Br-XV/2022-2023 dated 28.11.2022 within 15 days from the date of communication of this order, in default the K.M.C. authority shall demolish the same after taking all sorts of precautionary measures at the risk and cost of the Person responsible(s). The D/Sketch plan to be treated as the part and parcel of this order. ”

Learned Senior Advocate has also complained that the direction of the learned Single Judge was on the Municipal Commissioner to deal with and dispose of the matter. He could not have and should not have delegated the matter to the Executive Engineer.

We are of the view that since the order of the learned Single Judge has been carried out and a demolition order has already been passed, no fruitful purpose will be served by continuing with the present appeal. The appellant has a statutory right of appeal

against the demolition order before the Municipal Building Tribunal. We are of the view that the appellant may approach the Tribunal, if so advised, assailing the demolition order. If the appellant approaches the Tribunal with an appeal against the demolition order within a period of three weeks from date and makes an application therein, for interim relief, the Tribunal shall dispose of such application within four weeks from the date of receipt of the application, in accordance with law and the applicable rules and regulations, without being influenced by anything in this order or in the order of the learned Single Judge, which is under challenge in this appeal. Naturally the Tribunal shall pass a reasoned order after affording full opportunity of hearing to all concerned parties, including the writ petitioner/respondent no.1 herein. Copies of documents that the Corporation may wish to rely upon before the Tribunal, shall be made available to the appellant or his learned advocate well in advance. All points are left open for the appellant to urge before the Tribunal. We have not gone into the merits of the case.

For a period of eight weeks from date, there will be an unconditional stay of operation of the demolition order. If the appellant approaches the Tribunal within the time period indicated above and is successful in obtaining interim stay of operation of the demolition order from the Tribunal, naturally the stay will continue for so long as the Tribunal directs. In the event, the appellant is unsuccessful in obtaining interim relief from the Tribunal, the Corporation will be at liberty to implement the demolition order, subject to interdiction by any competent forum.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition, shall be deemed not to have been admitted by the respondents.

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

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)