

8.
06-09-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 640 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023**

**M/s. Tarafder Construction & Anr.
Vs.
The Kolkata Municipal Corporation & Ors.**

Mr. Md. Shahjahan Hossain,
Ms. Sanjida Sultana
... For the Appellants.

Mr. Atis Kumar Biswas
... For K.M.C.

Mr. Anindya Chakraborty
... For the Respondent/Writ
Petitioner.

CAN 1 of 2023 is an application for condonation of delay of 59 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 1 of 2023 is, thus, allowed.

Re : MAT/640/2023 & CAN/2/2023

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

The private respondents in the writ petition being WPA 1071 of 2022, which was disposed by a learned Single Judge of this Court by the impugned order dated February 10, 2023, are the appellants in this appeal.

The respondent/writ petitioner approached the learned Single Judge with the complaint that the private respondents in the writ petition, being the developers of the property in question, after completing construction and after obtaining Completion Certificate from Kolkata Municipal Corporation (in short 'KMC'), raised further construction without obtaining requisite sanction from KMC. It was submitted that the representation of the writ petitioner was kept pending by KMC without acting on the basis thereof.

From the Affidavit-of-Service filed in Court, the learned Judge noticed that the private respondents in the writ petition could not be served and the postal envelope returned with the endorsement "no such person in the address". Learned advocate for the writ petitioner submitted that the private respondents in the writ petition were avoiding service.

Be that as it may, the learned Judge noted that proceedings have been initiated by KMC under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, after finding that unauthorized construction has been raised at the concerned premises. The learned Judge disposed of the writ petition with the following observations and directions:-

" It is the duty of the Corporation to ensure that the proceeding relating to demolition of the unauthorized construction is promptly proceeded and the matter reaches its logical conclusion at the earliest.

In view of the above, the present writ petition is disposed of by directing the Executive Engineer (Civil)/Building being the respondent No.3 herein to take steps to ensure that

the demolition proceeding is concluded at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

As the Corporation already detected unauthorized construction and the petitioner submits that construction is going on at the subject premises, accordingly, the Officer-In-Charge of the jurisdictional police station is directed to keep strict vigil over the property to ensure that no construction is carried on at the subject premises till the matter is disposed of by the Corporation. ”

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

We have heard learned advocates for the parties. Since demolition proceedings have been initiated by KMC under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, we direct the same to be carried to its logical conclusion as expeditiously as possible and preferably within a period of eight weeks from the date of communication of this order by the writ petitioner to the concerned Executive Engineer before whom the proceedings are pending.

Learned advocate for the appellants says that the concerned flat has been sold by the appellants to a third party, who should also be heard by the Executive Engineer. We see substance in such submission.

Accordingly, we direct that the name and other particulars of the purchaser of the flat in question be furnished by the appellants herein to the concerned Executive Engineer so that notice can be issued to such purchaser of the flat in question and such person can be heard by the Executive Engineer. Needless to say, the appellants and the writ petitioner

shall also duly participate in the demolition proceedings. If the demolition proceedings culminate in a demolition order, the same will be given effect to in accordance with law.

Till the conclusion of the demolition proceedings, no coercive action will be taken against the impugned construction.

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 the 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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)