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08-05-2023
debajyoti
(Ct. no.06)

MAT 704 of 2023
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IA NO:CAN/1/2023

Smt. Tagarbala Mondal
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Nitai Ch. Saha,
Mr. Abhijit Ch. Majumder
... For the Appellant.

Mr. Alak Kumar Ghosh,
Mr. Swapan Kumar Debnath
... For K.M.C.

Mr. Subhradip Roy
... For Respondent No.6.

Defect, as noted by the Additional Stamp Reporter, shall be removed by the appellant forthwith.

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

A judgment and order dated April 17, 2023 whereby the writ petition of the appellant was dismissed, is under challenge in this appeal.

It appears that the appellant sought certain information with respect to what she says is illegal construction made by the private respondents, from the Executive Engineer (Building Department), Borough-XII, Kolkata Municipal Corporation, under the Right to Information Act, 2005. Not having received response to such query, the appellant herein approached the learned Single Judge for *inter alia* a direction on the Kolkata Municipal Corporation officers to furnish the information that she is looking for.

The learned Judge dismissed the writ petition observing that the writ petitioner has a remedy under the provisions of the Right to Information Act. Hence, this appeal.

Learned advocate for the appellant/writ petitioner says that the private respondents have made unauthorized construction without obtaining requisite sanction from the concerned authorities. The appellant has made several representations to the Corporation, which remain unanswered. The learned Single Judge should have directed Kolkata Municipal Corporation to furnish the necessary information.

Learned advocate, appearing for the respondent no.6, being one of the private respondents, strongly disputes the allegation of the appellant that the private respondents have made unauthorized construction.

Mr. Ghosh, learned counsel, appearing for the Corporation, says that the representations that have hitherto been made by the appellant are devoid of material particulars and are vague. If a comprehensive representation with necessary particulars is made, the same shall be considered and disposed of by the Competent Authority.

We see nothing wrong with the order assailed before us. The Right to Information Act itself provides a remedy in the event the query of a person is not answered by the concerned SPIO. In view of availability of such effective alternative statutory remedy, the learned Single Judge rightly declined to issue a mandamus on the Corporation authorities to furnish any information.

However, if the appellant makes a comprehensive representation with sufficient details as regards the property concerned and the nature of the construction, to the Executive Engineer (Building Department), Borough-XII, Kolkata Municipal Corporation, within a fortnight from date, the same shall be considered and disposed of by the Executive Engineer in accordance with law and the applicable rules and regulations within a period of eight weeks from the date of receipt of the representation after giving an opportunity of hearing to all concerned parties including the appellant and the private respondents herein and/or their authorized representatives. The decision arrived at by the Engineer shall be communicated to the concerned authorities within a week from the date of the decision. Needless to say, if the Executive Engineer, after hearing the parties and considering the material that may be produced before him, comes to the conclusion that there is merit in the appellant's complaint and unauthorized construction has been made by the private respondents or any of them, he shall take necessary steps for removal of such illegal construction following due process of law.

We have not gone into the merits of the appellant's complaint. The Executive Engineer shall take an informed decision in accordance with law.

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

Affidavits not having been called for, the allegations in the injunction 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.)