

6.9.2023
104
Ct. no. 652
sb

CO 1768 of 2019

**Thakur Shree Shree Ishwar Baladejeu &
Thakur Shree Shree Ishwar Gopaljeu
Vs.
Kolkata Municipal Corporation & Ors.**

Mr. D. Mitra
Mr. R. Mitra
Mr. Rajdeep Bhattacharya ...for the Petitioner

Mr. Biswajit Mukherjee
Mr. Subhrangsu Panda
Ms. Ina Bhattacharya ...for the Opposite parties

Affidavit of service filed by the petitioner is taken on record.

This is an application under Article 227 of the Constitution of India against order no. 10 dated 12.3.2019 passed by the learned Chairman, Municipal Building Tribunal, Kolkata in B.T. Appeal no. 35 of 2018.

The petitioner contended that the opposite party no. 4 as appellant filed an appeal under Section 400 (3) of the Kolkata Municipal Corporation Act, 1980 from an order passed by Special Officer Building, Kolkata Municipal Corporation (K.M.C.), on 17.1.2017 in Demolition Case no. 31-D/Br. 111/2016-17. In the said proceeding, the petitioner herein filed one application under Order I Rule 10 (2) of the Code of Civil Procedure for impleading him as a party in the said proceeding. Petitioner further

contended that he is the owner of the said property and the appellant with mala fide intention, knowing fully well that there is no sanction plan for the construction and the construction is illegal and that the suit premises is the property of deities has filed the instant appeal, without making the petitioner as a party in the said appeal. Accordingly, he contended that unless the said proceeding is heard in presence of the petitioner herein, it will be prejudicial to the interest of the deity as well as the petitioner. However, learned Chairman, Municipal Building Tribunal had taken up said application on 12.3.2019 and rejected petitioner's prayer for impleading him party in the proceeding.

On perusal of the order impugned, it appears that the Tribunal below had disposed of said application without assigning any reason whatsoever. The relevant portion of the order may be reproduced below:

“Seen and heard the petition along with an affidavit as filed by Sri Dwaipayana Mitra by an application u/o 1 R 10(2) read with Sec. 151 of the C.P.C. bears no merit and the said ptn. Dt. 12.11. 2018 stands rejected.”

An order passed without the existence of a reason is arbitrary and unreasonable. The party or the parties must know why and on what grounds an order has been passed against him. Speaking orders are essential for judicial review. Even for a Tribunal speaking order is a must to show it's fairness. The purpose of recording the

reasons is to serve the wider aspect of the principles of natural justice, which states that justice must not only be done, it must also appear to be done as well.

Since the order impugned is not a speaking order and not supported by any reason whatsoever, the order is not sustainable and liable to be set aside. In such view of the matter, invoking jurisdiction of this court under Article 227 of the Constitution of India, the aforesaid quoted portion in the order dated 12.3.2019 is hereby set aside. The Tribunal below is hereby directed to hear the said application filed by the petitioner under Order I Rule 10 (2) read with Section 151 of the Code of Civil Procedure, afresh after giving an opportunity to contest to all the concerned parties and to dispose of the same within a period of 30 days from the date of communication of the order.

C.O. 1768 of 2019 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)