

16.05.2023
Item No.02
Court No.6.
S. De

**M.A.T. 875 of 2023
with
I.A. No. CAN/1/2023**

**Sri Sambhu Das.
Vs
Goutam Dey.**

Mr. Debojyoti Basu,
Mr. Tanmoy Sett,
Mr. Pran Gopal Das,
...for the appellant.
Mr. Alok Kumar Ghosh,
Mr. Swapan Kr. Debnath,
...for the K.M.C.
Mr. Anirban Majumder,
Mr. Somnath De,
...for the respondent/writ petitioner.

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

An order dated May 3, 2023, interim in nature in the sense that the writ petition on which such order was passed by the learned Single Judge, is still pending, is under challenge in this appeal.

The appellant as developer had constructed a building without obtaining sanctioned plan from the Corporation. Proceedings having been initiated, demolition order was passed by the Corporation.

The present writ petition was filed for demolition of the unauthorized building in implementation of the order of demolition.

Several earlier orders were passed on the writ petition which may not be relevant today.

By the order impugned the learned Judge recorded, on the basis of a report filed by the Executive Engineer (Civil)/Building Department, Borough-III, Kolkata Municipal Corporation signed on May 2, 2023, that substantial portions of the building in question have been demolished. The floors have become unfit for human habitation. It was submitted before the learned Judge on behalf of the appellant herein that he was the developer of the property. After the development was complete, the development agreement stood terminated and possession was handed over to the occupants.

The learned Judge directed the present appellant, as the person responsible, to take the responsibility for removing the unauthorized pillars which are still standing. The learned Judge observed as follows in the order impugned.

“As the respondent no.11 was the person responsible for making such unauthorized construction, accordingly, he ought to take the responsibility for removing the unauthorized pillars.

The respondent no.11 is directed to take steps for demolishing the pillars at once. The demolition work shall be done by maintaining proper safe

and security of the adjacent properties.

The matter is directed to appear in the list once again on 16th May, 2023.

A report shall be filed by the Corporation upon inspection of the property as to whether the pillars have been removed or not.

In the event the pillars are not removed, the respondent no.11 shall appear personally before this Court on the adjourned date.”

Being aggrieved, the respondent no.11 in the writ petition has come up by way of this appeal.

The appellant says that proceedings having been initiated under Section 400(8) of the Kolkata Municipal Corporation Act, it is the responsibility of the Corporation to demolish the unauthorized construction. The appellant should not be directed to do so. Further, the appellant has been acquitted of charges in a criminal proceeding under Section 401A of the Kolkata Municipal Corporation Act. In any event, the appellant should not be foisted with the costs of demolition of whatever remains of the unauthorized construction.

We do not find any apparent infirmity in the order impugned before us. The appellant admits to be the developer. He was acquitted in the criminal

proceeding because the learned Magistrate was not satisfied that the unauthorized construction was likely to endanger human life or any property of the Corporation. Even in the judgment of the learned Magistrate, it is mentioned that the construction is unauthorized. The learned Single Judge rightly directed the appellant as the person responsible to remove the remainder of the unauthorized construction.

However, we see that the appellant is reluctant to demolish the structure. We are also of the view that it may be better if the Corporation carries out the demolition activity as the same will be more systematic and safe for the adjacent premises. The structural stabilities of the adjacent premises are less likely to be adversely affected if the experts from the Corporation carry out the demolition activity. However, this will be obviously at the cost of the appellant.

Accordingly, in partial modification of the order of the learned Single Judge which is under challenge in this appeal, we direct the Kolkata Municipal Corporation to carry out the demolition activity at the earliest. We request the learned Single Judge to pass necessary orders to ensure that the Corporation carries out the demolition activity within the time period to be stipulated by the learned Judge. The Corporation will be at liberty to raise bills for the cost

incurred by it for the demolition, on the respondent no.11 in the writ petition along with the progress of the work. Such bills will be paid by the respondent no.11 promptly.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondent.

Accordingly, MAT 875 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)