

03. 09.08.2023
Court No.6
Tanmoy Ghosh

MAT 876 of 2023

Zulfequar Ali
-Versus-
The Kolkata Municipal Corporation & Ors.

With
IA No: CAN/1/2023

Mr. Mansoor Alam, Adv.

...for the appellant/
writ petitioner.

Mr. Dilip Chatterjee, Adv.,
Mr. Mihir Kundu, Adv.,
Ms. Manisha Nath, Adv.

...for the Kolkata Municipal
Corporation.

Affidavit of service filed in Court today be kept with
the records.

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

A judgment and order dated April 4, 2023, whereby
the appellant's writ petition being WPA 25820 of 2022
was disposed of by a learned Single Judge of this Court,
is under challenge in this appeal at the instance of the
writ petitioner.

The appellant/writ petitioner approached the
learned Single Judge with the case that unauthorized
construction has been put up at premises no. 1/4/1D,
Jiban Krishna Ghosh Road, Kolkata – 700037.

The learned Judge noted that a demolition case had been initiated in respect of certain portions of the building at the concerned premises in the year 1975-76. An order was passed by the Special Officer (Buildings) I on August 19, 1983 for demolition of the first floor of the said building.

The grievance of the writ petitioner is that the order of demolition has not yet been implemented. A representation dated November 4, 2022, has been made by the writ petitioner, addressed to the Municipal Commissioner, the D.G. Building and the Executive Engineer Building Department, Borough-I, Kolkata Municipal Corporation. However, such representation has not yet been considered. The writ petitioner further alleged that the unauthorized portion of the concerned premises is being used for commercial purpose without requisite permission having been obtained in that regard from the Corporation Authorities.

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

“There is nothing on record to suggest that in the interregnum, that is, after the passing of the order in 1983 till the filing of the representation in November 2022, the petitioner took any step for implementing the order of demolition.

The Executive Engineer (Civil) of the concerned authority has forwarded instruction that the premises was inspected and it was found that there is an existing two storied old brick built building with tin shed supported by bamboo structure at the subject premises. The age of the building is more than forty years and no new construction has been found.

The petitioner has not been able to show that any new construction has been made which is not in accordance with the Municipal Building laws.

The alleged unauthorised construction is in existence from 1973-74.

At this stage it will not be proper to direct the Corporation to initiate any proceeding for demolition of the unauthorised construction in respect of a two storied brick built tin shed structure constructed approximately forty years back.

As regards use of the premises for commercial purpose without obtaining any permission, it will be open for the petitioner to raise appropriate objection before the concerned authority.

In the event such representation is filed, the same shall be taken up for consideration by the concerned authority in accordance with law after giving reasonable opportunity of hearing to all the necessary parties .”

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the appellant as well as learned Counsel for the Corporation. From the affidavit of service filed in Court today, we find that the private respondent has been served but he has chosen not to appear.

The learned Judge was justified in observing that the appellant/writ petitioner or his predecessor-in-interest slept tight over the matter from 1973-74, when the alleged unauthorized construction was made. However, we are unable to agree with the learned Single Judge that only because considerable time has passed since the alleged unauthorized construction was made, no action should be taken against the same. An illegal construction cannot become legal merely by passage of

time, however lengthy the time period be. The Corporation's own Officer passed a demolition order. It was found that the entire structure is unauthorized. However, considering the facts and circumstances of the case, the Special Officer (Building) directed demolition of only the first floor along with the staircase and permitted retention of the remaining portion upon payment of applicable charges. To our mind, the Corporation ought to have implemented its own demolition order without any delay at all.

However, it appears that 40 years have passed by after the demolition order was passed and the order remains on paper only. It has not been executed.

Learned Advocate for the Corporation says that he has no instruction as to why the order could not be implemented. He has no instructions if there were restraint orders of any competent forum in that regard. The case is 50 years old. It may not be possible to trace out all necessary documents.

We appreciate the practical difficulty. This difficulty could have been avoided had the writ petitioner or his predecessor been more diligent in the matter of approaching Court for implementation of the demolition order.

Be that as it may, a representation has been made by the appellant/writ petitioner to the Corporation, as indicated above. In the representation dated November

4, 2022, the writ petitioner/appellant herein has expressed his apprehension that the unauthorized structure may be in such a condition so as to pose a real threat to the safety and security of the people in occupation thereof or the people in its vicinity. We are of the considered opinion that the Corporation should apply its mind and consider such representation and take a decision thereon. After all, it is the statutory duty of the Corporation to ensure that illegal/unauthorized buildings/structures are removed in public interest. It is also the duty of the Corporation to ensure that if for unavoidable reasons, an unauthorized construction cannot be demolished, the same is at least in a condition so as not to jeopardize the safety and security of people in or around such construction. The Corporation should revisit the issue of the impugned construction being an unauthorized one. An appropriate reasoned decision should be taken by the Corporation in the matter, after granting an opportunity of hearing to the appellant herein, the private respondent and the occupiers of the premises in question or their authorized representatives. Let the entire exercise be completed within eight weeks from the date of communication of this order by the appellant to the respondent no.4, being the Executive Engineer (Building), Borough-I, Kolkata Municipal Corporation. The respondent no.4 shall take an informed

and reasoned decision in the matter, in accordance with law, keeping public interest in mind.

The order of the learned Single Judge stands modified to the above extent.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 876 of 2023 and the connected application being IA No: CAN/1/2023 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)