

04.08.2023
Item No.4.
Court No.6.
AB

M.A.T. 912 of 2023
With
I A CAN 1 of 2023

Sagir Ahmed & Anr.
Vs
The Kolkata Municipal Corporation & Others

Mr. Masud Karim ...for the Appellants.

Mr. Gopal Das,
Ms. Susmita Chatterjee ...for the KMC.

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

A judgment and order dated May 10, 2023, whereby the appellants' writ petition being WPA 10938 of 2023 was dismissed by a learned Single Judge of this Court, is the subject matter of challenge in this appeal.

It appears that the appellants/writ petitioners made construction in deviation from the building plan that was sanctioned by the Kolkata Municipal Corporation. Demolition proceedings were initiated. An order of demolition dated February 17, 2023, was passed by the Executive Engineer(C)/Building, Borough -IX, under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

Thereafter, a notice dated March 18, 2023, was issued by the Executive Engineer (C)/Building,

Borough –IX, under Sections 544/546 of the KMC Act, 1980, requiring the appellants to vacate the premises in question so that the unauthorized portion could be demolished. Challenging such notice, the appellants approached the learned Single Judge by way of the instant writ petition. The learned Judge dismissed the writ petition with the following observations:

“It has been submitted that on the scheduled date i.e. March 30, 2023, the demolition programme did not take place and the next date of demolition was fixed on May 8, 2023. It has been submitted that on May 8, 2023 partial demolition did take place. The petitioner prays for stay of further demolition proceeding.

Learned advocate representing the Kolkata Municipal Corporation admits that the unauthorized portions have already been demolished.

Upon hearing the parties it appears that the demolition programme has already concluded.

At this stage, there is no scope for entertaining the writ petition. The same stands dismissed.”

Being aggrieved, the writ petitioners are before us by way of the present appeal.

Learned Advocate for the appellants says that the engagement notice under Sections 544/546 of the KMC Act, 1980, was issued by a person, who did not have the authority to issue such notice. To our query as to whether the demolition order has been assailed by the appellants before any forum, learned Advocate says that he has no instructions on that score. Hence, we have to proceed on the basis that there is no challenge to the demolition notice or in any event,

there is no order staying operation of the demolition notice.

If that be so, nothing stood in the way of Kolkata Municipal Corporation in executing the demolition notice and to that end, the notice under Sections 544/546 of the KMC Act, 1980, was issued. We are unable to appreciate as to why the Executive Engineer (C)/Building, Borough -IX was not competent to issue such notice. The demolition order was passed by that person obviously being a delegate of the Municipal Commissioner. We are unable to agree with the learned Advocate for the appellants that the engagement notice was issued by a person not having authority to do so.

In any event, a submission was made on behalf of the Corporation before the learned Single Judge, as recorded by Her Ladyship, that the unauthorized portion of the building in question has been removed already. If that be so, no further action from the end of the Corporation would be required.

However, in the event such instruction of learned Advocate for the Corporation was incorrect and unauthorized portion of the building in question has not been entirely demolished, the Corporation should complete demolition of the unauthorized portion at the earliest, without affecting the portion that has been raised in accordance with the sanctioned plan. This is obviously subject to any

competent forum staying operation of the demolition order.

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

MAT 912 of 2023 stands disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)