

24.07.2023  
Item No.04  
Court No.6.  
S. De

**M.A.T. 1145 of 2023**  
**With**  
**I.A. No. CAN/1/2023**

**Devise Construction.**  
**Vs**  
**Kolkata Municipal Corporation & Ors.**

Mr. Subrata Mukhopadhyay,  
Mr. Amitabha Ghosh,  
Mr. Bandhu Brata Bhula,  
...for the appellant.  
Mr. Shuvro Prokash Lahiri,  
Ms. Debolina Sarkar,  
...for the respondent no.7.  
Mr. Amrita Panja Moulick,  
...for the State.  
Mr. Debjit Mukherjee,  
Ms. Susmita Chatterjee,  
...for the K.M.C.

This appeal is directed against a judgment and order dated June 16, 2023, whereby the writ petition of the respondent no.7 in this appeal being WPA 5283 of 2023, was disposed of.

The respondent no.7/writ petitioner had approached the learned Single Judge with the grievance that although a demolition order was passed by Kolkata Municipal Corporation in respect of the third floor of the building at premises no. 45A, Banku Behari Chatterjee Road, Kasba, Kolkata, long time back, the order was not being implemented. It appears that neither the writ petitioner nor the present appellant who was the respondent no.7 in the writ

petition, was represented before the learned Single Judge on the day the impugned order was passed. The learned Judge disposed of the writ petition with the following observations and directions :

*“Learned advocate representing the KMC has submitted instruction from the engineers of the KMC signed on 16.06.2023 that as per the order of the Special Officer (Building), the department took up the demolition programme for the unauthorised construction at the third floor as well as the unauthorised construction over the car parking space by issuing notice under Section 544 and 546 of the KMC Act, 1980 but demolition could not take place as the unauthorised portions are fully occupied.*

*Request has been made to the Deputy Commissioner of Police and the Officer-in-Charge, Kasba Police Station to vacate the unauthorised construction so that the demolition programme can be fixed.*

*As it appears that the KMC has already requested for providing police help for vacating the subject premises, accordingly, the Deputy Commissioner of*

*Police (SSD) being the respondent no.5 herein is directed to take steps for vacating the subject structure and intimate the date of vacation to the KMC so that the men and agents of the Corporation may remain present at the spot and the demolition can continue simultaneously.*

*The Deputy Commissioner of Police (SSD) and the KMC shall take steps to implement the order of demolition in accordance with law at the earliest but positively within a period of twelve weeks from the date of communication of this order.”*

Being aggrieved, the respondent no.7 in the writ petition has come up by way of this appeal.

Learned advocate for the appellant says that service of the writ petition was not effected on the appellant.

Learned advocate for the respondent no.7/writ petitioner says that the present appellant was very much served. Affidavit of service was affirmed for being filed before the learned Single Judge but could not be filed as learned advocate for the writ petitioner was unable to attend the hearing. The original and a copy of such affidavit of service have been produced

before us today. We find from such affidavit of service that on the first two attempts, the postman could not serve the appellant but on the third attempt service could be effected. Hence, there is no merit in the contention of the appellant that he was not served.

We find from records that a demolition order was passed way back in October 18, 2012. The appellant herein assailed such order before the Municipal Building Tribunal. Such appeal was dismissed in 2014. Learned advocate for the Corporation says that thereafter attempts were made to implement the demolition order. The entire third floor is unauthorized but occupied by various persons. Till date only a portion of the unauthorized structure has been demolished.

Learned advocate for the appellant says that an application for review of the Tribunal's order dismissing the appellant's appeal is pending. The demolition should be stayed till the disposal of the review application.

We find from records that way back in 2018, the Tribunal recorded an order on July 23, 2018 directing the review petition to be listed on September 11, 2018, as last chance. Thereafter on September 11, 2018, both sides were heard. The matter was adjourned till October 4, 2018 for passing necessary order. On October 4, 2018, the Tribunal recorded that the order

was not ready and hence, the matter was adjourned till November 14, 2018, obviously for the purpose of pronouncing the order.

The aforesaid would show that the review petition was disposed of and is no more pending. This would also be supported by the communication dated March 5, 2021 sent by the Executive Engineer (C)/Building/Borough/VII to the Deputy Commissioner of Police (SSD), Kolkata calling upon the Deputy Commissioner to cause the third floor and ground floor of the building in question to be vacated so that the demolition order could be executed. The said communication would indubitably indicate that the review application of the present appellant stood rejected.

The demolition order was passed eleven years ago. It is high time that the same is executed. The learned Judge was perfectly justified in passing the order that the appellant is seeking to impugn in this appeal.

The appeal being M.A.T. 1145 of 2023 is completely meritless and is dismissed along with the connected application being I.A. No. CAN/1/2023.

There is no order as to costs.

After the judgment is pronounced, a prayer is made for stay of operation of this order. The prayer is considered and refused.

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.)**