

D/L
Item No. 22
18.08.2023
KOLE

MAT 1166 of 2022

**Swami Santadas Institute of Culture & Ors.
-Vs.-
The Kolkata Municipal Corporation & Ors.**

*Mr. Raghunath Chakraborty,
Mr. Bratin Kumar Dey,
Ms. Anjana Banerjee,,*

... for the appellant.

*Mr. Alok Kr. Ghosh,
Mr. Swapan Ke. Debnath,*

... for the KMC.

*Mr. Sanjoy Bose,
Mr. S. Dey,
Mr. S. Basak,*

... for the private respondents.

A judgment and order dated July 20, 2022, whereby the writ petition of the appellants being WPA 5763 of 2016 was dismissed by a learned Single Judge of this Court, is the subject matter of challenge in this appeal.

The appellants claim to be tenants of the premises in question which was previously known as 200 CIT Scheme and subsequently came to be known as 101 Southern Avenue and again renamed as 101 Dr. Meghnad Saha Sarani.

On the complaint lodged by the private respondents, a demolition case was initiated by the Corporation against the appellants for alleged unauthorized construction at the said premises. This resulted in an order of demolition. The order was challenged by the appellants before the Municipal Building Tribunal. The Tribunal dismissed the appeal on merits after hearing all concerned parties. Challenging the order of the Tribunal which upheld the demolition order

issued by the Special Officer (Building), KMC, the appellants approached the learned Single Judge by filing the present writ petition.

A number of arguments were advanced by learned Counsel for the appellants/writ petitioners before the learned Single Judge which we need not advert to in view of the nature of the order that we propose to pass.

The learned Single Judge had called for a report from the Corporation indicating as to whether the nature of unauthorized construction was such that it could be regularized under the third proviso of Section 400(1) of Kolkata Municipal Corporation Act read with the Regulations made thereunder. A report was filed by the Municipal Commissioner. The report indicated that the sanctioned plan was for approximately an area of 7677 sq. ft. and additional unauthorized construction has been made to the extent of about 3212 sq. ft. i.e., about 41 per cent of the sanctioned area. The report accordingly indicated that the nature and extent of unauthorized construction could not be said to be minor and as such incapable of being regularized under the relevant provisions of the KMC Act read with the Rules framed thereunder.

Relying primarily on the aforesaid report, the learned Judge dismissed the writ petition. Hence, this appeal.

Without adverting to the other arguments advanced by learned Counsel for the appellants, we note the primary grievance of the appellants, i.e., the inspection on the basis whereof the report was filed before the learned Single Judge, was held without notice to the appellants. The appellants

further argued that the Commissioner's report was solely based on the report filed before him by the concerned engineer who had inspected the concerned building. The Commissioner before preparing his report should have granted an opportunity of hearing to the appellants to make submission in respect of the engineer's report.

We find some substance in this argument of learned Counsel for the appellants. In our opinion, the ends of justice will be served if, we pass the following order.

A fresh inspection of the impugned structure in question be conducted by a competent officer in the Corporation as may be deputed by the Municipal Commissioner. Such inspection shall be in the presence of the representatives of the appellants and the private respondents. After the inspecting officer files his report before the Commissioner, the Commissioner shall give an opportunity of hearing to the appellants, the private respondents or their authorized representatives. Prior to such hearing, a copy of the inspection report shall be made available to the appellants and the private respondents. The appellants and the private respondents will be at liberty to urge all points before the Commissioner who shall after hearing them or their representatives, pass a reasoned order in accordance with law. Let this exercise be completed within two months from the date of communication of this order by the appellants and/or the private respondents to the Municipal Commissioner.

We make it clear that we have not gone into the merits of the case in the sense that we have not applied our

mind to the fact as to whether or not the construction in question is unauthorized and if unauthorized, whether or not the same is capable of being regularized. The Commissioner shall take an informed decision in accordance with law without being influenced by any observation in the order of the learned Single Judge which is impugned before us or in this order. The order impugned is set aside. The Commissioner shall not be swayed by any observation in the report that he filed before the learned Single Judge. In other words, the Commissioner shall decide the issue afresh with an open mind.

The appeal stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)