

01.09.2023
Item No.03
Court No.6.
S. De

M.A.T. 1305 of 2023
with
I.A. No. CAN/2/2023

Manash Mukherjee & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Arindam Banerjee,
Mrs. Arpita Saha,
Ms. S. Manna,
...for the appellants.

Mr. Fazlul Haque,
Mr. Arijit Dey,
...for the K.M.C.

Mr. Avishek Prasad,
...for the State.

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

Read order dated August 24, 2023.

Learned advocate for Kolkata Municipal Corporation (in short 'KMC') has come back with instructions to the effect that the appellants, while constructing the boundary wall in question, encroached on the foot-path which is KMC land. That is the reason why part of the boundary wall was demolished by the KMC authorities. However, it is admitted that the concerned boundary wall is less than three metres high.

The notice dated November 11, 2022, issued under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, (in short the KMC Act), does not mention any encroachment by the appellants on KMC land. The notice is to the effect that proceedings were being initiated because the appellants had constructed “*a new peripheral brick wall in front of the premises without any B.S. plan*”. The demolition order dated December 8, 2022, reads as follows :

“WHEREAS it appears that the officers of the Kolkata Municipal Corporation visited the Premises No.39, Raja Dinendra Street, Ward No.-028, Borough-IV and observed that a construction new peripheral brick wall in front of the premises without any B.S. plan.

AND WHEREAS this is further to note that the said construction has been made in violation of rules 133,134 of KMC Building Rule 2009.

NOW THEREFORE you are required u/S-400(1) of KMC Act, 1980 to demolish within five (5) days the unauthorized construction. Failing which the Kolkata Municipal Corporation will proceed for demolition of the said unauthorised construction/structure and the expenses for such demolition shall be recoverable under Section 400(7) of the KMC Act, 1980”

The demolition order says that the impugned construction has been made in violation of Rules 133 and 134 of the KMC Building Rules, 2009. Our attention has been drawn to the said Rules. Those Rules have nothing to do with encroachment.

In so far as the ground for initiating demolition proceedings is concerned and also in so far as demolition order is concerned, the same can not be sustained. This is for the simple reason that Section 2(5) of the KMC Act defines 'building' as follows :

“building” means a structure constructed for whatsoever purpose and of whatsoever materials and includes the foundation, plinth, walls, floors, roofs, chimneys, fixed platforms, verandas, balcony, cornice or projection or part of the building or anything affixed thereto or any wall (other than a boundary wall less than three metres in height) enclosing or intended to enclose any land, signs and outdoor display structures but does not include a tent, samiana or tarpaulin shelter.” (Emphasis is ours.)

The boundary wall in question is admittedly less than three metres high and there is no dispute on that score. Therefore, construction of such boundary wall

did not require any sanctioned building plan. Hence, there was no basis for KMC to initiate the demolition proceeding in question.

Learned advocate for KMC says that in spite of receipt of notice, the appellants did not attend the hearing. In our opinion, that is of no consequence. The proceedings were without jurisdiction. Accordingly, the proceedings and the demolition order in question are set aside. The order under appeal is also set aside.

Learned advocate for KMC, on instruction, says that the appellants would be at liberty to reconstruct the boundary wall in accordance with Section 2(5) of the KMC Act and applicable Building Rules without encroaching on KMC land.

Accordingly, we dispose of this appeal and the connected application by holding that the appellants will be at liberty to reconstruct the boundary wall in question within the parameters of law and in particular Section 2(5) of the KMC Act and the applicable Building Rules but strictly without encroaching on any portion of KMC land.

MAT 1305 of 2023 is disposed of along with the application being I.A. No. CAN/2/2023.

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.)