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04-09-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 1373 of 2023
+
IA NO:CAN/1/2023**

**Sushila Jaiswal & Ors.
Vs.
Ravindra Kumar Jaiswal & Ors.**

Ms. Kakali Samajpaty,
Ms. Sangita Jangra,
Mr. Subhronil Ray
... For the Appellants.

Mr. Anupam Kr. Bhattacharjee,
Mr. Partho Sarathi Das,
Mr. N. P. Mahato,
Mr. Mritunjoy Saha
... For Respondent No.1.

Mr. Suman Ghosh,
Ms. Rajashree Mukherjee
... For the State.

Mr. Barin Banerjee,
Mr. Saurav Chaudhuri
... For K.M.C.

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

This appeal is directed against a judgment and order dated July 17, 2023, whereby the writ petition filed by the respondent no.1 herein, being WPA 9843 of 2023, was disposed of by a learned Single Judge of this Court.

It appears that being aggrieved by alleged unauthorized construction raised by the present

appellants, the respondent no.1/writ petitioner approached the learned Single Judge for an order directing Kolkata Municipal Corporation (in short 'KMC') to take appropriate steps against the unauthorized structure. At the hearing before the learned Single Judge, it was submitted on behalf of KMC that initially a stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 had been issued to the private respondents in the writ petition, who are the present appellants. Thereafter, show-cause notice under Section 400(1) of the KMC Act was issued. A hearing was held. The appellant no.3 represented all the appellants at the hearing before the Executive Engineer. Thereafter, a demolition order was passed on December 12, 2022 by the Executive Engineer (Civil)/Building/Borough-III.

For implementing the order of demolition, notice under Sections 544 and 546 of the KMC Act was issued to the persons responsible and a considerable portion of the impugned structure was demolished on January 04, 2023.

Noting the aforesaid facts, the learned Judge disposed of the writ petition with the following observations:-

“ As it appears that the demolition order was passed in December 2022 the respondent Corporation is liable to be implemented and the same in its entirety.

Accordingly, the Executive Engineer of Borough-III is directed to take necessary steps to demolish the remaining unauthorised portion in accordance with the order of demolition passed in the matter.

Steps shall be taken at the earliest, but positively within a period of twelve weeks from the date of communication of this order. ”

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

On August 07, 2023, when this appeal was first taken up along with the connected application, we had directed KMC to file a report in the form of affidavit bringing on record the relevant facts of the case along with supporting documents. We had given such direction since affidavits were not called for by the learned Single Judge and KMC did not have any opportunity to put on record its case. We had also granted interim protection to the appellants.

On August 24, 2023, when this matter was taken up again, KMC filed its report in the form of affidavit. On that day, learned advocate for the appellants submitted that the appellants did not receive notice of the demolition case. Hence, they had no opportunity of participating in the proceedings initiated and completed by KMC under Section 400(1) of the KMC Act.

Since this was a serious allegation, we requested Mr. Banerjee, learned Senior Counsel, representing KMC, to produce the relevant records of the demolition case. The interim protective order was extended till September 08, 2023.

Today, learned advocate for the appellants has filed an exception to the report of KMC. KMC has also produced a bunch of documents from its records.

The appellants in the exception to the report has said that the appellant no.3, who was representing all the appellants, did not receive notice of the demolition proceedings or copy of the demolition order. This is a patent falsehood. We see from the report filed by KMC as also from the bunch of documents produced by them that although the appellant no.3 was absent at the hearing held pursuant to the first show-cause notice, at the hearing held pursuant to the second show-cause notice, the appellant no.3 was present and participated in the proceedings. The demolition order was also received by the appellant no.3 by putting his signature. The signatures in the attendance sheet of the second hearing before the Executive Engineer and the signature evidencing receipt of the demolition order by the appellant no.3, even to the naked eye, appear to be the same. We are unable to accept the contention of the appellants that KMC authorities have forged the signature of the appellant no.3 on the attendance sheet or for showing receipt of the demolition order by the appellant no.3.

In view of the aforesaid, we see no reason to interfere with the order of the learned Single Judge. The appeal and the connected application, which are patently dishonest and *mala fide*, are dismissed with costs assessed at Rs.20,000/- to be paid to Kolkata Municipal Corporation within a fortnight from date. The interim order stands vacated.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)