

07. 17.10.2023
Court No.6
Tanmoy Ghosh

MAT 1611 of 2023

**The Kolkata Municipal Corporation & Ors.
-Versus-
Narayan Chandra Das**

**With
IA No: CAN/1/2023**

Mr. Alok Kr. Ghosh, Adv.,
Ms. Debangana Dey Nayak, Adv.
...for the appellants.

Mr. Gopal Chandra Das, Adv.,
Mr. Rudranil De, Adv.,
Ms. Ananya Das, Adv.
...for the respondent/
writ petitioner.

Affidavit of service filed in Court today be kept with
the records.

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

Being aggrieved by and dissatisfied with the
judgment and order dated June 28, 2023, passed in the
writ petition of the respondent herein, being WPA 15168
of 2023, Kolkata Municipal Corporation (in short, 'KMC')
has come up by way of this appeal.

A demolition proceeding was initiated in respect of
the writ petitioner's premises. The Special Officer
(Building) passed an order on January 9, 2023,
permitting retention of a part of the construction and
directing demolition of the other parts.

The writ petitioner intended to prefer a statutory
appeal before the Municipal Building Tribunal against

the part of the order directing demolition. He could not do so because certified copy of the order was not made available to him.

A notice dated June 16, 2023 was issued by KMC, under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the 'KMC Act'), informing the writ petitioner that on June 28, 2023, the men and agents of KMC will enter the concerned premises for demolition of the unauthorized part of the construction indicated in the demolition sketch.

Challenging such notice of engagement, the writ petitioner approached the learned Single Judge. The learned Judge accepted the submission made on behalf of the writ petitioner that he has a right to file statutory appeal before the Tribunal against the operation of the order of the Special Officer (Building) directing demolition of part of the impugned construction. However, he has been prevented from filing such appeal by reason of non-supply of certified copy of the order of the Special Officer (Building), without which no appeal could be presented before the Tribunal. The learned Judge protected the writ petitioner to the extent of permitting time to file the statutory appeal and obtaining *interim* protection.

Insofar as the notice under Sections 544 and 546 of the KMC Act is concerned, the learned Judge observed and directed as follows:-

“It appears that the impugned notice under Sections 544 and 546 of the KMC Act was issued by the Assistant Engineer delegating power to himself for the purpose of entering and causing demolition of the unauthorised construction.

It appears that the Assistant Engineer himself has delegated the power to him to enter the premises. One cannot delegate power to himself.

In view of the above, the impugned notice under Sections 544 and 546 dated 16th June, 2023 is set aside.”

It is against this portion of the learned Judge’s order that KMC has come up in appeal.

Mr. Ghosh, learned senior Counsel representing KMC, drew our attention to a circular described as Municipal Commissioner’s Circular No.53 of 2022-2023, dated March 24, 2023, which lays down the structure of delegation of the Municipal Commissioner’s power regarding various aspects of the Building Department of KMC. As per that circular, *“Power of entry and inspection, to enter land, breaking into building, etc. under section 544 to 546”* has been delegated to the Assistant Engineer (C)/Building of the concerned Borough/ward. In other words, the power to issue notice as also the right to exercise power under Sections 544 and 546 of the KMC Act, are that of the Assistant Engineer (Civil). The Assistant Engineer has issued the notice as a delegatee of the Municipal Commissioner. As an Officer of KMC, he proposed to enter the concerned

premises for implementing the demolition order. It cannot be said that this is a question of delegating power to one's own self. To that extent, we disagree with the observation of the learned Single Judge and set aside such observation and the direction quashing the engagement notice under Sections 544 and 546 of the KMC Act.

The remaining portions of the order of the learned Single Judge have not been challenged by KMC and the same remain unaltered.

The order under appeal is modified to the above extent.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1611 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)