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W.P.A. 19756 of 2014

Pradipta Sett

-vs-

The Kolkata Municipal Corporation & Ors.

Mr. Raghunath Chakraborty,
Mr. M. Ahmed

....for the petitioner.

Mr. Alak Kumar Ghosh,
Mr. Subhrangsu Panda

....for the KMC.

The writ petition is presented, *inter alia*, challenging the order of the Special Officer (Building) dated 13th June, 2014 whereby respondent nos. 6 & 7 were permitted to retain a portion of the construction in question as it has been delineated in part B of the order dated 13th June, 2014. Part A of the order of the Special Officer (Building) directed to demolish the unauthorised R.C.C. columns made on the roof of the ground floor as shown in the precis as well as demolition sketch map, within a specified time.

Mr. Chakraborty, learned advocate representing the petitioner submits that respondent nos. 6 & 7 and petitioner are co-sharers of the building in question where unauthorised construction has been made and as on date the learned advocate has got the instruction that the

part of the construction which was directed to be demolished remains.

However, on behalf of the petitioner relying upon Section 400(1) of the Kolkata Municipal Corporation Act, 1980 it has been submitted that though the word “may” has been used at the relevant part but fact remains the Municipal Commissioner has got no authority to exercise discretion and the only option which is left to the Municipal Commissioner is to pass an order of demolition, in the event it is found that dehors the sanctioned plan or the permission of the Kolkata Municipal Commission any construction in any form has been made. In this regard reliance has been placed on the judgment of **(Ghanashyam Das -vs- The Kolkata Municipal Corporation & Ors.) reported in (2014) 4 Cal LT 1 (HC).**

Therefore in terms of Section 400(1) according to the petitioner the Municipal Commissioner is not authorised to pass an order of retention upon payment of fees as directed in the order impugned dated 13th June, 2014 passed by the Special Officer (Building).

Mr. Ghosh, learned advocate representing the Corporation has made an attempt to defend the decision of Special Officer (Building) dated 13th

June, 2014 upon placing reliance on the order of the Hon'ble Division Bench dated 27th August, 2019 passed on the Appeal being APO 434 of 2014 with APO 455 of 2014 (Eskag Sanjeevani Pvt. Ltd. & Anr. -vs- Kolkata Municipal Corporation & Ors.)

However on perusal of the order of the Hon'ble Division Bench dated 27th August, 2019 it appears that the directions were issued by the Hon'ble Division Bench on appraisal of extraordinary situation which has been discussed in the order dated 27th August, 2019.

Today respondent nos. 6 & 7 are not represented.

However, in consideration of the case made out in this writ petition which centers around the order of the Special Officer (Building) dated 13th June, 2014 this Court finds that in terms of Section 400(3) of the Kolkata Municipal Corporation Act, 1980 the remedy lies before the Municipal Building Tribunal if the appeal is preferred questioning the order of the Special Officer (Building).

On perusal of the writ petition this Court does not find any case has been made out that there is overt violation of principle of natural justice while passing order dated 13th June, 2014 therefore

in consideration of availability of alternative speedy efficacious remedy, this Court grants leave to the petitioner to prefer appeal before the Municipal Building Tribunal within fortnight from date assailing the order dated 13th June, 2014.

In the event the appeal is preferred before the Tribunal within the period of fortnight the Tribunal shall proceed to decide the appeal on merit and the period of limitation shall not be relevant consideration in deciding the said appeal since petitioner approached this Court by filing writ petition on 9th July, 2014.

At the time of consideration of the appeal the Tribunal shall consider the law which has been enunciated by the coordinate Bench in **Ghanashyam Das** (supra).

In the event of preferring an appeal as directed above the appeal shall be decided by the Tribunal within a period of sixteen weeks from the date of instituting the same.

However, it will be open to the parties to rely on other relevant judgments before the Tribunal at the time of deciding the appeal.

With the aforesaid direction the writ petition stands disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)