

D/L
Item No. 02
18.09.2023
KOLE

**MAT 1753 of 2023
With
IA CAN 1 of 2023
With
IA CAN 2 of 2023**

**Soumen Mondal
-Vs.-
Shruti Mullick & Ors.**

*Mr. Dibyendu Chatterjee,
Mr. Pritam Majumdar,
Mr. Mainak Singha Barma,,*

...for the appellant.

*Mr. Shovan Ghosh,
Mr. C, Ghosh,*

...for respondent no. 1.

*Mr. Debjit Mukherjee,
Mr. D. Ghosh,*

...for the KMC.

In Re: CAN 1 of 2023 in MAT 1753 of 2023:

This is an application for condonation of delay of 132 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2023 is, thus, allowed.

In Re: MAT 1753 of 2023 and CAN 2 of 2023:

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

This appeal is directed against a judgment and order dated April 25, 2023, whereby the writ application of the respondent no. 1 herein, being WPA 3599 of 2022, was disposed of by a learned Single Judge of this Court. The appellant was the respondent no. 7 in the writ petition.

The writ petitioner approached the learned Single Judge for implementation of an order dated November 24

2021, passed by the Special Officer, Building, in a proceeding initiated under Sections 400(1) and 416 of the Kolkata Municipal Act, 1980.

It appears that the building in question was constructed for residential purpose. However, the appellant started a medicine shop in a portion of the said building. The appellant says that he was granted a lease of the concerned premises by the mother of the writ petitioner and on the strength of such lease he started the business. However, it appears that the writ petitioner made a complaint to the Corporation to the effect that the appellant herein had made unauthorized construction and had also caused change of user of the premises under occupation of the appellant.

The Special Officer, Building passed an order dated November 24, 2021, the material portion whereof reads as follows:-

“It is reported that one single storied structure (2.7x3.5) exists at site, constructed at least ten years ago (on 2009). At the time of inspection by officials of department the room under lock & key & no recent construction work was found. But no sanction plan is submitted. As stated by complainant, during the period when he was out of Kolkata, P.R Soumen Mondal & Utpal Mondal constructed Commercial shop under name of style U/s. Mritunjoy Pharmacy. But complainant could not produce any evidence that proves that the construction works has been carried out by the P.R. But the old structure is used as shop. As stated by complainant that the premises: 1A, Thakurpukur Road is recorded in partition deed. But not recorded in Assessment Department KMC. The P.R. did not appear on the Schedule dates of hearing. It is understood that the

P.R. carried out the business (shop) without consent of owner.

In these circumstances, i am inclined to pass order not to allow the change of use in the existing structure as consent of owner is not available in file.

Department may intimate License department for taking action as needed from their end.

D/Sketch is part & parcel of order.

Order will be communicated after approval of authority.

Any person aggrieved by this order U/S 400(1) may appeal against this order to Municipal Building Tribunal within stipulated time in accordance with the provision of KMC Act, 1980.”

It appears that the writ petition was filed by the respondent no. 1 herein praying for a direction on Kolkata Municipal Corporation to demolish alleged unauthorized construction raised by the appellant herein. The learned Judge by the impugned order directed demolition. Being aggrieved the respondent no. 7 in the writ petition has come up by way of this appeal.

Although proceedings were initiated under Sections 400(1) and 416 of the KMC Act, there does not appear to be any demolition order as of date. Learned Advocate for the respondent/writ petitioner says that demolition proceedings were initiated and demolition order ought to have been passed. However, an order has been passed only refusing to grant permission for change of user.

Nobody has been able to draw our attention to any demolition order. Accordingly, the order under appeal is set aside.

The appellant would be at liberty to take recourse to the statutory remedy against the Special Officer's order dated November 24, 2021, in accordance with law. If the respondent/writ petitioner is aggrieved with that order, she shall also be at liberty to challenge the same before the appropriate forum in accordance with law.

Learned Advocate for the KMC on instruction says that pursuant to the Special Officer's order, the KMC has sent an intimation to the license department informing that the Special Officer has refused to grant permission for change of user. On the basis of such action, the license department has cancelled the license that was granted in favour of the appellant. We only record such submission.

Mr. Chatterjee, learned Advocate for the appellant says that the license was cancelled in breach of principles of natural justice inasmuch as no opportunity of hearing was granted to the appellant. We again put such submission on record only.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)