

D/L
Item No. 04
24.11.2023
KOLE

**MAT 1926 of 2023
With
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Kolkata Municipal Corporation & Ors.

-Vs.-

Sk. Md. Sharfuddin

*Mr. Alok Kr. Ghosh,
Mr. S. Panda,
Ms. I. Bhattacharyya*

...for the appellants.

*Mr. Partha Sen Gupta,
Mr. B. Sengupta,*

...for the respondent/writ petitioner.

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

Being aggrieved by a judgment and order dated September 12, 2023, whereby the writ petition of the respondent herein was disposed of by a learned Single Judge of this Court, Kolkata Municipal Corporation (in short 'KMC') has come up by way of this appeal.

The material facts are that the respondent/writ petitioner obtained sanction for construction of a G+4 building but, in fact, constructed a G+7 building along with further construction on a portion of the roof of the 7th floor. KMC passed an order under the emergency provision of Section 400(8) of the Kolkata Municipal Act, 1980 (in short "1980 Act") for demolition of the unauthorized floors. Such order was challenged by the writ petitioner before the learned Single Judge.

The learned Judge, while recording the written opinion of the Mayor-in-Council that the structure in question is extremely dangerous and may collapse at any time leading to accident resulting in loss of human life and property, directed the Mayor-in-Council or his delegate to take immediate steps for dealing with the unauthorized construction but “after giving a reasonable opportunity of hearing to all the necessary parties”.

The appellants say that the learned Judge has set at naught the action taken by it under the emergency provision of Section 400 (8) of the 1980 Act, which was necessary in the facts of this case in public interest. In effect, the learned Judge has directed the KMC to proceed under Section 400(1) of the 1980 Act which the learned Judge should not have done in spite of noting that immediate action was called for in view of the dangerous condition of the unauthorized construction.

On October 11, 2023, while admitting the appeal, a Co-ordinate Bench had stayed the operation of the impugned order till two weeks after the puja vacation i.e., till 30.11.2023.

On November 17, 2023, learned Advocate appeared for the respondent/writ petitioner and submitted that major portion of the alleged unauthorized construction has already been demolished by the KMC. Further, a notice dated November 2, 2023, has been issued by the Special Officer (Building), KMC, intimating that hearing will be held on November 9, 2023, in respect of a demolition case pertaining

to the unauthorized structure in question. Learned Advocate further submitted that hearing was held on November 9, 2023, and the next hearing has been fixed on November 19, 2023. Mr. Ghosh, learned Senior Counsel, appearing for the KMC took time to obtain instructions.

On November 20, 2023, learned Advocate for KMC filed a report in the form of affidavit on behalf of the appellant no. 4 (Executive Engineer (Civil), Building Department, KMC) who had issued the hearing notice dated November 2, 2023. The substance of that affidavit is that the notice under Section 400(1) of the 1980 Act, was issued my mistake. That notice may be deemed to be cancelled and withdrawn by KMC. Learned Advocate for the respondent/writ petitioner took time to obtain instructions.

Today, we have heard learned Counsel for the parties. The admitted fact is that three extra floors along with further construction on the roof of the 7th floor, have been raised by the respondent/writ petitioner. Such unauthorized construction is not supported by any sanctioned plan. Being satisfied that urgent action is required, the Mayor-in-Council exercised power under Section 400(8) of the 1980 Act. Pursuant to order passed under that provision, the structures on the roof of the 7th floor and a portion of the 7th floor have been demolished, as per submission of learned KMC Advocate. The remaining part of the unauthorized construction should be permitted to be demolished at the earliest to avoid any untoward incident.

Learned Advocate for the respondent/writ petitioner says that the building in question is occupied by commercial tenants who run businesses from various portions thereof. Their livelihood will be affected if the KMC proceeds to demolish the floors which have been raised beyond the sanctioned plan.

We are unable to show any indulgence to the occupants of the portions of the building which are unauthorized. Any construction made without the prior permission of the sanctioning authority, i.e., KMC in this case, must be removed. The KMC Act, 1980 has been promulgated in greater public interest and for planned and efficient development of the city of Kolkata. No unauthorized construction can be allowed to remain on any ground, far less sympathetic grounds. In this connection reference may be made to the decisions of a Coordinate Bench of this Court in the cases of **M/S. KZAR Properties Pvt. Ltd. & Ors.-vs.-The Kolkata Municipal Corporation & Ors.** (APOT No. 89 of 2023) and **Nirmal Kumar Das also known as Nirmal Das-vs.-The Kolkata Municipal Corporation & Ors.** (APOT No. 21 of 2023).

The order under appeal is set aside to the extent it requires KMC to initiate proceedings under Section 400(1) of the 1980 Act or grant of opportunity of hearing to the respondent/writ petitioner. KMC would be entitled to proceed with the demolition work in terms of the order passed under Section 400(8) of the 1980 Act. However, on

humanitarian grounds, we grant two months' time to the occupants of the portions of the building which are unauthorized, to vacate the premises and relocate elsewhere so that the unauthorized portion of the building can be demolished without any obstruction or complication.

In the event, the occupants of the unauthorized portions of the building do not vacate their respective portions within two months from date, the jurisdictional police will ensure that the concerned portion of the building in question is vacated to enable the KMC to carry out its statutory duty of demolishing the unauthorized structures.

The respondent/writ petitioner shall communicate this order to the occupants of the portions of the building in question which are unauthorized.

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.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)