

19.10.2023.
Item No. 1.
Court No. 13
sp

F.M.A.T. No. 504 of 2023
With
IA No. CAN 1 of 2023

Tarak Paul
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Saptarshi Mal,
Mr. Amal Kumar Saha,
Ms. Akanksha Mukherjee

...For the appellant.

1. The appeal has been filed against an order dated October 16, 2023 passed by the VIII Bench, City Civil Court at Calcutta in Title Suit No. 2160 of 2023.
2. By the impugned order, the Court below has declined ex parte ad interim order restraining the respondents from making construction exclusively on their own property being No. 8B, Haralal Das Lane, Kolkata- 700006.
3. The appellant/plaintiff has contended in the plaint and before this Court that by the proposed construction, the respondents have removed a tin shed within their premises and are proposing to raise a ground +1 storied construction thereon. The said construction according to the appellant/plaintiff would completely obstruct the

light and air into his premises at No. 6, Haralal Das Lane, Kolkata- 700006.

4. Mr. Saptarshi Mal, learned counsel for the appellant would rely upon Section 5 of the Easement Act, 1882 to submit that he has a right to free light and air to the back side of his premises. The proposed construction by the respondents/defendants has the effect of denying such easement right.
5. This Court is of the prima facie view that the general law of easement, is subject to and is overridden by the KMC Act, 1980 and Building Rules framed thereunder. If the Municipal Corporation has permitted construction on the defendants' own property, in accordance with law under a valid building sanction plan or if such construction is otherwise permitted without the involvement of the KMC, the same cannot be restrained at the instance of the appellant/plaintiff.
6. In the backdrop of the above, this Court does not find any infirmity in the order impugned. The Court below has called for the response from the respondents/defendants and declined ex parte ad interim orders.
7. This Court is of the view that the interest of justice would be subserved if the Kolkata Municipal Corporation files a report in the Court below, on the

legality of the construction being effected by the respondents/defendants within their own premises. It shall be indicated by the KMC as to whether there is a sanctioned plan for such construction or whether such construction can be made even without the sanctioned plan.

8. The respondents/defendants may also file a written objection on the claims made by the appellant/plaintiff in the Court below on the adjourned date. The Court below shall pass a reasoned order after hearing all parties.
9. It is, however, made clear that any construction made by the private respondent, shall abide by the result of any orders that may be passed by the VIII Bench, City Civil Court at Calcutta in Title Suit No. 2160 of 2023.
10. The Court below shall take an independent view on the matter after receiving report and objection from the respondents/defendants. The Court below shall not be influenced by any observations made by this Court.
11. The appellant shall communicate a copy of this order to the respondents/defendants and particularly, the KMC.
12. With the aforesaid observations, FMAT 504 of 2023 shall stand disposed of.

13. Consequently, CAN 1 of 2023 shall also stand disposed of.
14. There shall be no order as to costs.
15. Certified copy of the impugned order filed in Court today is kept on record.
- 16.
17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)