

12. 09.01.2023
Ct. No.6
Tanmoy

MAT 1856 of 2022

**Vineeta Singhania
-Versus-
Kolkata Municipal Corporation & Ors.**

**With
IA No: CAN/1/2022**

Mr. Rudraman Bhattacharya, Adv.,
Ms. Amrita Panja Moulick, Adv.,
Mr. Rajdeep Mantha, Adv.

...for the appellant.

Mr. N.C. Bihani, Adv.,
Mr. Abhishek Sikdar, Adv.,
Ms. Sahili Dey, Adv.

...for the KMC.

Mr. Tapan Kr. Mukherjee, Ld. Sr. Adv.,
Ms. Debdooti Dutta, Adv.

...for the State respondents.

Mr. Daanish Haque, Adv.,
Mr. Md. Zohaib Rauf, Adv.,
Mr. Abdul Zahid, Adv.,
Mr. Md. Siraj Munir, Adv.

...for the respondent nos. 8-11.

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.

This appeal is directed against a judgment and order dated September 5, 2022, whereby the appellant's writ petition being WPA 11526 of 2022 was dismissed.

The appellant approached the learned Single Judge with the grievance that the respondent nos. 8 to 11 were making unauthorized construction at premises no.5, Gurusaday Road, Kolkata – 700019. The learned Judge took on record a report prepared by the Assistant Engineer(C) and the Executive Engineer(C), Borough-VIII, Kolkata Municipal Corporation, to the effect that a spot inspection had been conducted on May 17, 2022 and it had been found that repairing, re-flooring and re-plastering works were in progress in the front portion of the two-storeyed existing building. The rear portion of the building is a multi-storeyed structure and residential in nature. The work was almost complete and the same was being done as per the provision of Rule 3(2) of the Kolkata Municipal Corporation Building Rules, 2009. Relying on such statements in the report, the learned Judge came to the conclusion that there was no substance in the grievance of the appellant herein. Accordingly, the writ petition was dismissed. Hence this appeal.

Learned Advocate for the appellant/writ petitioner ventilates a grievance that a copy of the report that the learned Judge has relied upon, was not made over to learned Advocate for the writ petitioner. He says that had that been done, his client could have filed an exception to such report.

We are of the view that filing exception to a report containing factual findings would be really of no assistance

to the Court. Obviously, in such exception the party taking exception would also make factual statements completely inconsistent with and/or contrary to the statements made in the report of the concerned Officer of the Authority. The writ Court is not in a position to enter into such factual disputes.

Today, a copy of the report has been made over by learned Advocate for the Corporation to learned Advocate for the appellant/writ petitioner as also to learned Advocate for the private respondent nos. 8 to 11.

For the ends of justice, we propose to pass an order that, we feel, will not prejudice any party and will also redress the grievance of the appellant.

We grant liberty to the appellant/writ petitioner to make a comprehensive representation with supporting documents, if any, to the Director General (Buildings), Kolkata Municipal Corporation, within a fortnight from date. If such representation is made within the time period indicated, the Director General (Buildings) shall dispose of the same by a reasoned order, in accordance with law and the applicable Rules and Regulations, within a period of four (4) weeks from the date of receipt of the representation, after giving an opportunity of hearing to all concerned parties including the appellant/writ petitioner herein and the private respondent nos. 8 to 11 herein. The decision so taken shall be communicated to the concerned parties within a week from the date of the decision. The

Director General (Buildings) shall decide such representation without being influenced by anything stated in the report that was filed before the learned Single Judge or by any observation made in the order of the learned Single Judge or in this order.

Needless to say, if the Officer finds that unauthorized construction is in fact being made or has been made by the private respondents, as alleged by the appellant/writ petitioner, appropriate remedial steps will be taken by the Authorities.

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 1856 of 2022 and the connected application being IA No: CAN/1/2022 are accordingly disposed of.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)