

06.12.2023
Item No.10.
Court No.6.
AB

M.A.T. 2144 of 2023
With
CAN 1 of 2023

Sarfaraz Ahmed Khan
Vs
Jamil Ahmed & Ors.

Mr. Saptangsu Basu, Sr. Adv,
Mr. Kumar Gupta,
Mr. Binay Kumar Jain,
Mr. Piyush Jainfor the Appellant.

Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharya,
Mr. Rajesh Upadhyay
....for the Respondent No.1/
Writ Petitioner.

Mr. Somnath Ganguly,
Mr. Anand Farmaniafor the State.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjeefor the KMC.

Read order dated December 1, 2023.

Mr. Mukherjee, learned Advocate appearing for Kolkata Municipal Corporation (in short "KMC") has produced a copy of an order dated November 24, 2023, passed by the Special Officer (Building), KMC in Demolition Case No.D-43/VII/2023-24 initiated in respect of the alleged unauthorized construction in question.

We find from the order that a portion of the impugned structure has been ordered to be demolished and a portion has been allowed to be retained on payment of fees under Section 400(1) to be

paid within 30 days from the date of communication of this order. We are also told that the order has not been officially communicated to any of the parties as yet.

In view of the aforesaid, the order of the learned Single Judge has worked itself out and nothing remains to be decided in the appeal.

However, Mr. Basu, learned Senior Advocate appearing for the appellant says that the restraint order passed by the learned Single Judge to the effect that “the private respondent is restrained from selling out/transferring/alienating or creating third party right in the subject premises”, should be vacated.

Mr. Saha Roy, learned Advocate appearing for the respondent/writ petitioner strongly opposes such prayer. He says that his client has the right to challenge the portion of the order allowing retention of a part of the impugned structure before the appropriate forum.

We clarify that the restraint order will naturally operate in respect of the portion, which has been directed to be demolished. The restraint order shall also operate in respect of the portion allowed to be retained for a period of one month from the date of communication of the order.

Nothing in this order or in the order of the learned Single Judge will have any bearing on the civil suit that is pending between the appellant and the writ petitioner.

Since no affidavit has been called for, the allegations made in the stay petition are deemed not to be admitted by the respondents.

MAT 2144 of 2023 is disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)