

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 25815 of 2023

Swapan Kumar Pan @ Swapan Pan
v.
The Kolkata Municipal Commissioner & Ors.

Sardar Amjad Ali, Senior Advocate
Mr. Samir Kumar Ghosh
... For the petitioner

Mr. Alope Kumar Ghosh
Mr. Subhrangshu Panda
Mr. Dwijadas Chakraborty
... For the KMC

Mr. Tapan Kumar Mukherjee
Mr. Samirul Bari
Mr. Somnath Naskar
... For the State

Affidavit of service filed in Court be kept with the
record.

The main grievance of the writ petitioner is that he preferred an appeal in the Municipal Building Tribunal, Kolkata along with a stay application against three orders of demolition dated 16.03.2023, 17.03.2023 and 11.04.2023. The petitioner alleges that while the stay application has been dismissed, the appeal is kept pending. Therefore, it will create a peculiar situation, if the appeal is ultimately allowed. The petitioner has also raised a question as to the identity of the property on the basis of a letter of the Executive Engineer (C), Building Department dated 27.04.2023 which speaks about the

actual area of land of the premises and the area of unauthorised construction.

The petitioner submits on the basis of one judgment reported in LAWS (CAL)-1959-5-4 (Shivadhar Sukla v. Corporation of Calcutta) of this Court that when a new notice has been given as to the identity of the land, the original order of demolition has become *non est*.

He has also raised another point stating that the Municipal Commissioner does not have the power to delegate the power to demolish a building to any of the officers specially when a Single Judge of this Court by His order has stated that the Commissioner will take steps for demolition of the building.

I have considered all the contentions raised by the petitioner. Taking the last contention first, i.e., demolition order can only be passed by the Municipal Commissioner, I hold that according to Section 48(3)(b), the Municipal Commissioner has the power to delegate any of his powers or functions including the powers or functions under Section 397, sub-section (1) of Section 400 and sub-section (1) of Section 411 to any other officer or any employee of the Corporation. Here the demolition order was passed by the Executive Engineer (C), Building Department/Borough-XV and the Assistant Engineer (C), Building Department (Borough-XV). Unless there is delegation of powers, such orders could not have been passed by such officers for demolition of the building.

Therefore, I hold that this delegation of power was actually done by the Commissioner to the respective officers.

In respect of the other question as to identity of the property and a new notice, I hold, after going through the said notice dated 27.04.2023, that it was not at all as to the identity of the premises (which is Premises No. T-99/1, S.A. Farooque Road, Ward-138, Br.-XV), it was in respect of the actual area of land of the aforesaid premises and the area of the unauthorised construction. As per some orders of some officers dated 11.04.2023, a joint inspection was scheduled to be held on 04.05.2023 and I do not know whether the petitioner was present when the fresh inspection was done or not. However, the petitioner submits that he was not present.

In any event, this notice was not in respect of identity of the property. In respect of the first and the most important objection is that if an appeal is pending before the Municipal Building Tribunal of the Kolkata Municipal Corporation and the stay application is dismissed, what would happen to the appeal if it is ultimately allowed.

From a reading of the order passed by the Division Bench of this Court (vide page 138), it appears that the Division Bench unequivocally held that if the appellant (here the writ petitioner) approaches the Tribunal within the time period indicated and is successful in obtaining interim stay of operation of the demolition order from the

Tribunal, naturally the stay will continue for so long as the Tribunal directs. In the event, the appellant is unsuccessful in obtaining interim relief from the Tribunal, the Corporation will be at liberty to implement the demolition order, subject to interdiction by any competent forum. Therefore, as the appellant therein, i.e., appellant before the Municipal Building Tribunal, has not been able to obtain any order of stay on the demolition order, the Municipal Corporation will be at liberty to implement the demolition order. Therefore, in effect, the appeal has become infructuous.

For the reason I have made the above observation is, had there been any confusion in the minds of the appellant therein (writ petitioner herein) about the said order he could have taken the order to any higher forum or took any step for modification or review of the said order, which has not been done. Therefore, I must say that the appeal has lost its force and the Corporation has the fullest liberty to proceed with the demolition of the unauthorised construction of the concerned premises.

With the above observation, this writ application is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Abhijit Gangopadhyay, J.)