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CRR 3667 of 2016

IA NO: CRAN 10 of 2023

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M/s GKW Ltd.

Vs.

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State of West Bengal & Anr.

With

CRR 3744 of 2016

IA No. CRAN 9 of 2022

Sujoy Das

Vs.

State of West Bengal & Ors.

Mr. Ayan Bhattacharjee,
Mr. Rahul Auddy,
Mr. S Mondal
Mr. Aditya Goopta

... for the petitioner.

Mr. Goutam Dinda,
Mr. Anindya sundar Chatterjee,
... for the K.M.C.

Ms. Firia Hossain,
Mr. Anand Keshari. ... for the State.

Both the revisional applications involving identical issue are being taken up for disposal by this common order.

Both the revisional applications were filed by the respective petitioners for quashing the proceeding of Bhowanipore Police Station Case No. 264 dated July 19, 2015 under Section 401(A) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to "KMC Act") pending before the 4th Municipal Magistrate Court,

Calcutta.

Brief facts of this case is that one Assistant Engineer (C)/Bldg. Br. No. VIII of Kolkata Municipal Corporation lodged a written complaint addressed to Officer-in-Charge, Bhowanipore Police Station, alleging, inter alia, that owners/petitioners qua of both the revisional applications were making brick masonry structure in the premises in question i.e in the first floor of premises No.2 Bishop Lefroy Road, Kolkata 700020. It was further alleged that notice under section 401 of the KMC Act was served upon both the petitioners on 29.06.2015 to stop the work and all necessary steps for guarding the said premises with the assistance of police were made. It was further alleged that construction without following any norms and practicing of civil engineering may collapse at any time causing human lives.

Accordingly, the complaint was lodged suggesting for an action under Section 401(A) of the KMC Act, 1980 and also Bhowanipore Police Station Case No. 264 dated 19.07.2015 was started under Section 401(A) of the KMC Act.

During investigation one statement of Siddhartha Bhattar was recorded and submitted charge-sheet under Section 401(A) of the KMC Act against the petitioners of the revisional applications.

Mr. Ayan Bhattacharjee, learned advocate

appearing on behalf of the petitioners relied on Section 401(A) of the KMC Act along with Rule 3 of the Kolkata Municipal Corporation Building Rules 2009 and submitted that the proceeding was started for internal repairing works undertaken by the petitioners in the First Floor of premises in question and for which no permission/sanction is required under Rule 3(2) of the KMC Building Rules 2009.

Mr. Bhattacharjee has drawn to my attention to the order of Hon'ble Single Judge in W.P No. 9410 (W) of 2016 along with the report of KMC authority in compliance with the order of the Hon'ble Single Judge in the writ petition.

Mr. Bhattacharjee also relied on the order of Hon'ble Division Bench wherein the order passed in writ petition by the Hon'ble Single Judge was set aside. However, Mr. Bhattacharjee relied on the report submitted by KMC officials in compliance with the direction of the Hon'ble Judge in writ petition mentioned above.

It is submitted by Mr. Bhattacharjee that 401 (A) of the KMC Act has no application with the repairing works conducted by the petitioners within the flat of the premises in question.

Mr. Goutam Dinda, learned advocate appearing on behalf of the Kolkata Municipal Corporation has submitted that no construction works specially erection of partition wall cannot be permitted in any heritage

building under the KMC Act.

Mr. Anand Keshari, learned advocate appearing on behalf of the State produced the Case Diary.

At the very outset, I would like to reproduce the Section 401(A) of the KMC Act as quoted below:-

“401A. Construction of building in contravention of the provisions of the Act or the rules made thereunder.- (1) Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person who being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act, or the rules made thereunder as endangers or is likely to endanger human life, or any property of the Corporation whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with the fine which may extend to fifty thousand rupees.

Explanation.- “Person” shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any new building or additional floor or floors of any building as aforesaid.

(2) The offence under sub-section (1) shall be cognizable and non-bailable, within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Where an offence under sub-section (1) has been committed by a company, the provisions of section 619 shall apply to such company.

Explanation. – “Company” shall have the same meaning as in the Explanation to section 619.”

I am inclined to reproduce the provision of Rule 3 of

the KMC Building Rules 2009 as follows:-

3. Prohibition of erection of Building without Building Permit

- (1) No person shall erect a new building, or re-erect, or make addition to, or alteration of any building, or cause the same to be done as specified in section 392, without obtaining a sanction in the form of a Building Permit from the Municipal Commissioner under the Act, and without obtaining such permission for development from the concerned authority as may be required under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. XIII of 1979).
- (2) Notwithstanding the provisions of sub-rule (1) no building permit shall be required for –
 - (a) erection, re-erection, addition to, or alteration of-
 - (i) an internal partition wall which does not violate any of the provisions of the Act or these rules, or
 - (ii) a parapet wall or a cornice or chajja within the boundaries of the site and not overhanging a street, however, that the total height of the parapet wall shall not be more than 1.50 m. and width of the cornice or chajja shall not be more than 60 cm;
 - (b) repairing of a staircase or of lift-shaft;;
 - © white washing or painting;
 - (d) re-flooring of the surface of an existing floor;
 - (e) minor repairs and re-flooring of an existing damaged roof without changing the character and dimension of such roof;

Provided that the character of a damaged roof may be allowed to be changed and its reconstruction permitted by permission in writing of the Commissioner on such terms as he may consider fit, upon application being made to him with three copies of plan; on payment of requisite fees and on submission of structural stability certificate from a Structural Engineer, Architect or a Licensed Building Surveyor, as the case may be.

Provided further that no such work as is referred to in clauses (a) and (e) shall be

undertaken without giving the Municipal Commissioner fifteen days' notice in writing stating the nature of work proposed to be undertaken;

- (f) erection of a false ceiling in any floor for air-conditioning, lighting or decorative purposes;
- (g) plastering and patch work;
- (h) providing or closing an internal door or window or a ventilator not opening directly opposite a door or a window of another building'
- (i) replacing of tallen bricks, stones or repairing of damaged pillars or beams;
- (j) repairing or renewing existing plumbing, sanitary and other utility services;
- (k) repairing of boundary wall;
- (l) carrying out such other work as is necessary in the opinion of the Municipal Commissioner, for reasons to be recorded in writing, to maintain the building in a condition of good repair or to secure it to prevent danger to human life".

On careful scrutiny of the entire materials on record, I find that the KMC officials initially send the stop work notice under Section 401 of the KMC Act, 1980 and for repairing work in the flat in question at the behest of the petitioners and ultimately complaint was lodged suggesting for action under Section 401 (A) of the KMC Act, 1980 before the Officer-in-Charge of Bhowanipore Police Station.

As per Rule 3 (2) of KMC Building Rules, internal repairing/construction are permitted to be undertaken even without permission. From the report submitted in compliance with order of Hon'ble Judge in connection with WP No. 9410(W) of 2016, I find that the petitioners undertook all the repairing works inside the flat for which, presumably, no permission is required from the Kolkata

Municipal Corporation.

Coming to provision of Section 401(A) of the KMC Act, 1980, I find that the instant penal provision can only be attracted in case of construction of new building or additional floor/floors of any building in contravention of provision of this Act. So, neither from the written complaint, nor from the statement recorded in course of investigation, I find that there was any allegation of construction of new building or additional floor/floors at the behest of the petitioners of these revisional applications.

Therefore, criminal proceeding in connection with this case Section 401(A) cannot be allowed to continue otherwise it would result in a clear abuse of process of Court.

Thus, the proceedings in connection with Bhowanipore Police Station Case No. 264 dated 19th July, 2015 under Section 401(A) of KMC Act, 1980 pending before the 4th Municipal Magistrate Court, Calcutta stand quashed.

With the above observation, the revisional applications stand disposed of.

Pending applications, if there be any, also stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)