

D/L
Item No. 7
14.03.2023
KOLE

**MAT 2044 of 2022
With
IA No. CAN 1 of 2023**

**Sri Raj Kapoor Jaiswal
-Vs.-
The Kolkata Municipal Corporation & Ors.**

*Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
Mr. S. Dey,*

...for the appellant.

*Mr. Gopal Chandra Das,
Mr. R. De,*

...for the Municipality.

*Mr. Biswajib Ghose,
Mr. S. Chakraborty,*

...for the private respondent.

By consent of the parties the appeal and the application are taken up for hearing together.

This appeal is directed against a judgment and order dated November 22, 2022, whereby the appellant's writ petition was disposed of.

The appellant had approached the learned Single Judge with the grievance that the private respondents have made unauthorized construction on the premises in question. The specific allegation of the writ petitioner as would appear from paragraph 15 of the writ petition was as follows:-

"15. Your petitioner state and submit that the sanction plan was sanctioned by the Municipal Corporation with respect to the Meter Room, Underground Water Reservoir and a car parking space thereat wherein the private respondents illegally utilized the said space including one portion of the Car parking area by way of raising construction of the said parlour. Apart

from the same the private respondents also raised the illegal; construction by uprooting the wall of Southern Wall erected Bathroom uprooted Western Wall erected gate and also raised the illegal and unauthorized construction behind the said building and shed the same with Asbestos and plastic sheet. The said wall which has been raised by the Private Respondents are illegal and without keeping any requisite side space in compliance of the rules and regulation stipulated thereat in the Building Rules of Kolkata Municipal Corporation and as a result of the same the drainage of urinal and waste pipe line and underground water reservoir cannot be accessed for cleaning purpose.”

It appears that a representation had been made by the appellant/writ petitioner to the Kolkata Municipal Corporation but the same was not being considered. Hence, one of the prayers in the writ petition was for a direction on the Corporation to consider the writ petitioner’s representation.

Before the learned Single Judge it was submitted on behalf of the Corporation that proceedings under Section 400 of the KMC Act, 1980, had been initiated and the same culminated in an order dated November 9, 2022, passed by the Special Officer (Building). By the said order, certain sheds on the open space as marked in the “D” sketch were directed to be removed. However, the business (Beauty Parlour) was allowed to be retained on payment of applicable fees and charges. The learned Judge observed that the order of the Special Officer (Building) will be given effect to subject to the approval of the Mayor-in-Council.

Being aggrieved, the writ petitioner has come up in appeal before us. We have heard learned Counsel for the

parties. If the appellant is aggrieved by the order of the Special Officer (Building), his obvious remedy is by way of statutory appeal before the Municipal Building Tribunal. He will be at liberty to pursue that course.

However, the appellant says that the private respondents have made unauthorized construction in a manner which is denying the appellant access to his water reservoir. Consequently, he is unable to clean the water reservoir, which may result in serious health hazard.

Learned Advocate for the private respondents seriously disputes the submission made on behalf of the appellant. He says that, in fact, appellant has no water reservoir at the said premises.

We, sitting in writ jurisdiction, are not in a position to decide such a factual dispute. However, the occupants of a building must be given access to the water reservoir which caters to the requirements of such occupants. We direct the Kolkata Municipal Corporation to hold local inspection and ascertain as to whether or not the private respondents by making any construction, authorized or unauthorized, has caused denial of access to the appellant in so far as the appellant's water reservoir is concerned. In the event the Corporation finds that there is substance in the grievance of the appellant, immediate measures will be taken by the Corporation to ensure that the appellant gets access to the water reservoir, if any. This exercise will be completed within six months from date. The appellant and the private respondents shall cooperate with the Corporation in carrying out this order.

A copy of the order dated November 9, 2022, passed by the Special Officer (Building), be made over by learned Advocate for the Corporation to the learned Advocate for the appellant by tomorrow.

Since we have not called for affidavits, the allegations made in the stay application, are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)