

APOT /43/2023
IA No.GA/1/2023
WPO/24/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

BHANU SONKAR & ANOTHER.
-Versus-
KOLKATA MUNICIPAL
CORPORATION AND ORS.

Appearance:

Mr. Arik Banerjee, Advocate.

Mr. Nilay Sengupta, Advocate

Mr. Sujit Banerjee, Advocate

...for the Appellant

Mr. Sakya Sen, Advocate,

Mr. Sumitava Chakraborty,

Advocate

For Respondent Nos. 5 and 6.

Mr. Arijit Dey, Advocate

Mr. Jayanta Kumar Dhar, Advocate

for Kolkata Municipal Corporation. .

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date: February 17, 2023.

THE COURT: A judgment and order dated February 8, 2023, whereby the writ petition of the appellants being WPO

No. 24 of 2023 was disposed of, is under challenge in this appeal.

The appellants claim to be tenants in respect of a portion of ground and first floors of premises no. 12, Goenka Lane, Kolkata- 700 007.

It appears that the private respondents being the owners and developers, obtained sanction of a building plan for constructing a new building at the premises in question after demolition of the old building.

Aggrieved by the fact that such sanctioned plan does not indicate any space earmarked for the writ petitioners, they approached the learned Single Judge seeking cancellation of the building plan.

The learned Judge noted that a civil suit filed by the writ petitioners for declaration of their tenancy right is pending before the competent court. The learned Judge came to the conclusion that the status of the writ petitioners as tenants is disputed. The writ Court is not the appropriate forum to decide such a dispute. In the event the writ petitioners are successful in getting their tenancy right declared before the civil Court, then the private respondents would be bound by the decree to be passed by the civil Court and provide accommodation to the writ petitioners, in accordance with law. With these observations the writ petition was disposed of.

Being aggrieved, the writ petitioners have come up by way of this appeal.

Appearing for the appellants, Mr. Banerjee, learned Advocate submitted that the private respondents have, in their Written Objection to the injunction application filed before the learned civil court, accepted the appellants as tenants. Hence the learned Single Judge ought not to have said that the status of the appellants as tenants is disputed. Other tenants of the same premises find mention in the sanctioned plan. Only the appellants have been left out.

Mr. Sen, learned Advocate appearing for the private respondents says that the learned civil court has not yet declared the alleged tenancy right of the appellants. In the event the appellants succeed in the suit, the private respondents will be bound to rehabilitate them in the newly constructed building.

The prayer with which the appellants approached the learned Single judge, is cancellation of the sanctioned plan. Section 397 of the Kolkata Municipal Corporation Act, 1980, empowers the Municipal Commissioner to cancel the sanctioned plan if one or more of the grounds mentioned in that Section are made out by the party seeking cancellation. We are of the view that the learned judge ought not to have entertained the writ petition at all and should have directed the writ petitioners to take recourse to the procedure provided in Section 397 of Kolkata Municipal Corporation Act.

Accordingly, we set aside the order under appeal. We grant liberty to the appellants/writ petitioners to make an appropriate application before the Municipal Commissioner by February 20, 2023. In the event, such application is made, the Municipal Commissioner or any competent officer authorised by him, shall decide such application in accordance with law by passing a reasoned order, within a period of three weeks from the date of receipt of the application, after giving an opportunity of hearing to the appellants and private respondents herein or their authorised representatives.

Till the decision is taken by the Municipal Commissioner or his delegate, which shall positively be done within three weeks from the date of receipt of the application, the private respondents shall not take steps for further demolition of the building in question.

We have been shown that the Corporation has issued notice under Section 412(A) of the Kolkata Municipal Corporation Act, 1980. This order will not, in any manner, stand in the way of the proceedings initiated by such notice, being carried to its logical conclusion or in passing such other order as may be necessary, in accordance with law.

Any observation in this order shall have no bearing on the civil suit pending before the learned XIIth Bench, City Civil Court, Kolkata.

The appeal and the connected application are accordingly disposed of.

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

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/