

APO/27/2023
with
WPO/906/2022
IA No.GA/2/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

PRAMOD BAJAJ AND ORS.
-Versus-
KOLKATA MUNICIPAL CORPORATION AND ORS.

Appearance:

Mr. Tarique Quasimuddin, Advocate
Mrs. Zainab Tahur, Advocate
Ms. Sanchita Chawdhuri, Advocate
Ms. Meena Shabnam, Advocate
...for the Appellants

Mr. Biswajit Mukherjee, Advocate
Ms. Manisha Nath, Advocate
....for KMC

Mr. Naba Kumar Das, Advocate
Mr. Subhabrata Das, Advocate
...for State

Mr. Raghunath Chakrabarti, Advocate
...for respondent/ writ petitioner

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date: April 26, 2023.

THE COURT: A judgment and order dated February 9, 2023, whereby the writ petition of the respondent no.4 herein being WPO No.906 of 2022 was disposed of, is under challenge in this appeal.

The appellants were not impleaded as parties to the writ petition. The appellants have preferred this appeal with leave of this Court which we have granted.

The premises in question is no.66, Canning Street (now known Biplabi Rash Behari Bose Road), Kolkata – 700 001. The building at the said premises is occupied by various persons including the appellants. The legal status of the occupants is not clear nor is relevant.

The respondent no.4 / writ petitioner is admittedly the owner of the concerned property. The property was leased out in the year 1982. The present whereabouts of the original lessees are not known. From the lease deed it appears that when the property was leased out, there was a three storied building on the concerned land.

The respondent no.4-writ petitioner approached the learned Judge with the case that a major portion of the building on the said plot of land is unauthorised and is required to be demolished.

The learned Judge called for reports from the KMC. Two such reports were filed. In the report dated November 3, 2021, it was mentioned that there was a four-storied structure with no new construction work. In the subsequent report dated December 24, 2021, it was mentioned that there was a partly six-storied structure. It was argued on behalf of the writ petitioner that there was no sanctioned plan in respect of the building over and above the second storey and the unauthorised portion is liable to be demolished in accordance with the provisions of the KMC Act, 1980.

On behalf of the KMC it was submitted before the learned Judge that the department does not have any record of any sanctioned plan in connection with the concerned building. The construction in question is an old one. The building is fully occupied. KMC is not in a position to take a decision as to whether or not the construction is an authorised one.

Neither the owner nor any of the occupants of the building in question have taken the responsibility for construction of the building or the impugned portion thereof. The learned Judge disposed of the writ petition by the impugned order, the material portion of which reads as follows:

“As the Corporation asserts that there is no sanctioned plan in respect of the subject premises, then steps ought to have been taken by the Corporation to demolish the portion constructed without obtaining sanction from the Corporation. The Corporation is not required to bother with the fact as to whether the structure is an old one or not. Back to back inspection reports of the Kolkata Municipal Corporation suggest that the construction took place in the year 2021. The said construction can certainly not be said to be an old one. Any construction which has been made without obtaining sanction is liable to be demolished.

In view of the above, the instant writ petition is disposed of by directing the Municipal Commissioner or his delegate the Director General of Building to take steps for demolition of any unauthorized construction at the subject premises without being swayed by the fact that the unauthorized portions are occupied and may have become old due to passage of time.

The Deputy Commissioner of Police, Kolkata and the Officer-in-Charge, Burrabazar Police Station are directed to take steps for rendering all necessary assistance to the men and agents of the Kolkata Municipal Corporation at the time of demolition of the unauthorized construction, if sought for.

Steps shall be taken in the matter in accordance with law, at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

The notice of demolition shall be addressed to the owner of the property and in favour of the person(s) whose names are recorded in the

Assessment/Inspection Book maintained by the Kolkata Municipal Corporation.

Cost of demolition shall be recovered in accordance with the provisions of Section 400(7) of the Kolkata Municipal Corporation Act, 1980.”

The appellants say that as occupants of portions of the building in question, they are vitally affected by the impugned order of demolition. They should be granted an opportunity of hearing by the KMC before any portion of the building is demolished. They have annexed to the stay petition copy of a building permit which appears to have been granted by the Corporation in the year 1959.

Mr. Chakraborty, learned Advocate for the respondent no. 4/writ petitioner submits that the structure upto to the second storey as mentioned in the lease deed of 1982 is authorised. Remainder of the building is unauthorised.

Learned advocate for the Corporation candidly submitted that there are no records relating to any sanctioned plan in the relevant department. However, if the Court directs, the Corporation may grant an opportunity of hearing to the appellants.

The respondent no.4-writ petitioner vehemently opposed the prayer of the appellants that they may be given an opportunity of being heard. Learned advocate for the respondent no.4 referred to Section 400(1) of the KMC Act, 1980 and the explanation appended to the fourth proviso of the said sub-section and submitted that only the person responsible for the unauthorised construction is entitled to be heard before a demolition order is passed. Any and every occupant of a building would not have the right to be heard.

In this connection, Mr. Chakraborty relied on four decisions, viz., *Ram Awatar Agarwal & Ors. vs. Corporation of Calcutta and Ors.*, reported in AIR 1982 Calcutta 314; *Sanjay Mehta & Ors. vs. The Kolkata Municipal Corporation & Ors.*, reported in 2006 (2) CLC (Cal) 574 and *Sarita Agarwal vs. Municipal Building Tribunal, Kolkata Municipal Corporation & Ors.*, reported in (2009) 3 WBLR (Cal) 143, were relied upon in support of the aforesaid submission that only the person responsible for the unauthorised construction is entitled to a notice of hearing prior to any demolition order being passed. The decision in the case of *Mohanlal Mitra & Anr. Vs. Kolkata Municipal Corporation*, reported in 2005(3) CHN 282 was relied upon in support of the submission that there is no prescribed period of limitation with regard to taking action against unauthorised constructions by KMC.

In so far as the proposition in *Mohanlal Mitra (supra)*, is concerned, we do not have a different view. In so far as the other three judgments, referred to above, are concerned, including the Division Bench judgement in the case of *Ram Awatar Agarwal (supra)*, the facts in those cases were wholly different from the facts of the present case. In *Ram Awatar Agarwal (supra)*, the impugned construction was admittedly unauthorised. The person responsible was identified and he admitted that the construction was made without sanction of the Corporation. Similar was the situation in the other two cases where the persons responsible were identifiable. Hence, it was not necessary to issue notice of hearing to any other person.

In the present case, nobody knows who is the person responsible. Nobody has claimed responsibility till now. Neither the respondent no.4-writ petitioner nor the Corporation has been able to identify the person who is responsible for the alleged unauthorised construction.

Under these circumstances, the three decisions relied upon by the respondent no.4 are distinguishable on facts, although, we may not have any disagreement with the principle of law laid down therein.

In view of the fact that identity of the person responsible for the alleged unauthorised construction is shrouded in mystery and keeping in view that the appellants have produced copy of what appears to be a building permit granted by the Corporation in 1959 which refers to a building plan (although copy of the plan has not been disclosed), and in view of the admitted fact that the appellants are occupants of the building in question, we are of the view that principles of natural justice warrant that the appellants be granted an opportunity of hearing by the Municipal Commissioner or the Special Officer (Buildings) of KMC who will take a final decision as to whether or not the impugned construction is unauthorised.

Accordingly, we direct the Municipal Commissioner or the Special Officer (Buildings) to give an opportunity of hearing to the appellants, to the respondent no.4/writ petitioner and any other concerned person who may be affected by an order of demolition of the building and take a reasoned decision as regards whether or not the building in question or any portion thereof is unauthorised. The exercise is to be completed within a period of two months from the date of communication of this order to the Municipal Commissioner. In the event the Municipal Commissioner or the Special Officer (Buildings) comes to the conclusion that the building or any portion thereof is unauthorised and is not supported by a sanctioned building plan, the same will forthwith be demolished and the cost will be recovered in accordance with law.

All parties who will be heard by the Commissioner or the Special Officer (Building) will be at liberty to urge all points of law and facts

before the officer including making submission on the issue of who is the person responsible.

The order impugned is set aside.

Both the appeal and the application are accordingly disposed of.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/