

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

APO /42/2023
WPO/2293/2022
GA/1/2022

MD. SABIR

-Versus-

THE KOLKATA MUNICIPAL
CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date: October 04, 2023.

Appearance:

Mr. Sakya Sen, Advocate

Mr. Arindam Paul, Advocate,

Ms. P. Mukherjee, Advocate

...for the Appellants

Mr. Alak Kumar Ghosh, Advocate

Mr. Dilip Chatterjee, Advocate

Mr. Debangshu Mondal, Advocate

For KMC

Mr. D. Mukherjee, Advocate

Ms. Kalpita Paul, Advocate

For State

THE COURT: A judgement and order dated July 14, 2022, whereby the appellant's writ petition being WPO No. 2293 of 2022 was dismissed by a learned single Judge of this Court, is the subject matter of challenge in this appeal.

The appellant/writ petitioner had approached a learned single Judge in an earlier round of litigation by filing WPO No. 190 of 2018. The complaint was that the private respondents herein had made unauthorized construction but in spite of complaints having been lodged with the Kolkata Municipal Corporation (in short 'KMC'), no action was taken on the basis of such complaints. In that writ petition pursuant to an order dated June 22, 2018, a report was filed by KMC. When the matter came up before the learned single Judge on February 19, 2020, noticing such report, the learned single Judge disposed of the writ petition with the following observations and directions :

“Pursuant to such direction a report dated 20th June, 2018 was filed which clearly described that an unauthorized construction has been made in the said premises. The report also records that appropriate steps have been taken for initiation of demolition proceedings under Section 400 and 401(1) of the Kolkata Municipal Corporation Act, 1980. In view of the clear finding in the report filed by the authority that there is illegal and unauthorized construction at the said premises and appropriate steps have been taken in accordance with law, nothing survives in the writ petition, W.P. 190 of 2018 is disposed of by directing the Kolkata Municipal Corporation to take steps in accordance with and take the demolition proceedings to their logical conclusion.”

It appears that in the meantime, an order dated January 15, 2019, was passed by the Special Officer (Building) in a

demolition case initiated by KMC in respect of the self-same construction but on the complaint of another neighbour of the private respondents i.e. Ms. Priya Dutta. By the said order dated January 15, 2019, the Special Officer (Building) allowed the private respondents to retain the impugned construction on the conditions mentioned in the said order. We are told that the conditions have been satisfied by the private respondents.

Coming to know of the said regularisation order, the present appellant filed a General Application being GA/1114/2019 (renumbered as GA/3/2021) in the earlier writ petition, challenging the order of the Special Officer (Building) permitting the private respondents to retain the impugned construction. However, at the time of disposal of the writ petition, it was not brought to the attention of the learned Judge that such General Application was pending and accordingly, no order was made in respect of such application.

After disposal of the earlier writ petition, KMC filed an application for clarification of the order dated February 19, 2020, whereby WPO/190/2018 had been disposed of. By such application, KMC brought to the notice of the learned Judge that as on the date of disposal of the writ petition, i.e. February 19, 2020, the demolition proceeding that had been initiated in respect of the impugned construction stood concluded and the impugned construction had been allowed to be retained on certain conditions. Recording such submission made on behalf of KMC, its General Application was disposed of. The General Application filed by the present appellant was also disposed of by the same order dated

April 20, 2022, by recording that the order dated February 19, 2020, does not prejudice any of the rights of the writ petitioner.

The appellant herein again approached the learned single Judge in the present round of litigation assailing the order dated January 15, 2019, passed by the Special Officer(Building). The learned Judge recounted the facts of the case and dismissed the writ petition with the following observations:

“It appears from the submissions made on behalf of the parties that the petitioner did not take any steps before the appropriate authority highlighting his grievance from the year 2020 till filing of the present writ petition in June, 2022. The petitioner way back in the year 2020 became aware of the fact that demolition order was passed relying upon the complaint of one Smt. Priya Dutta. Had the petitioner taken steps in proper time, then the petitioner may have got an opportunity of hearing before the appropriate authority. The petitioner had failed to act in proper time and has approached this Court after nearly two years of getting knowledge of the order. The Corporation has already regularized the alleged illegal construction in January 2019. It will not be proper to reopen the issue all over again.

In view of the above, no relief can be granted to the petitioner in the instant case.”

Being aggrieved the writ petitioner is before us by way of this appeal.

Learned Advocate for the appellant says that as soon as the appellant came to know of the order of the Special Officer

(Building), he approached the learned single Judge by filing an application in the writ petition that was pending then. Hence it was not correct for the learned Judge to record that the appellant had taken no step to assail that order contemporaneously or soon after coming to know of the said order. The appellant's grievance is that before allowing the private respondents to retain the impugned construction, be it on whatever condition, the appellant should have been given an opportunity of hearing.

Learned Advocate for KMC says that the order that the appellant sought to challenge before the learned single Judge is an appealable order. Section 400(3) of the Kolkata Municipal Corporation Act enables any person aggrieved by any order passed under Section 400(1) of the Act to prefer an appeal before the Municipal Building Tribunal. The appellant should have taken recourse to that remedy immediately after he became aware of the retention order. He did not do so. Now it is too late in the day to pass any order in favour of the appellant.

Learned Advocate for the private respondents also made submissions in support of the submissions made on behalf of KMC. He says that his client has met all the conditions stipulated by KMC as pre-condition for retention of the impugned construction. Substantial sums of monies have been spent by his client for that purpose. The appeal should be dismissed.

Having considered the submissions made on behalf of the parties and the facts and circumstances of the case, we notice that the complaint made by the appellant herein in respect of the impugned construction raised by the private respondents, remains pending with KMC. The demolition case that was initiated and

which culminated in an order permitting the private respondents to retain the impugned construction, albeit on certain conditions, appears to have been started on the basis of the complaint of Ms. Priya Dutta. We are of the view that the appellant's complaint that is pending with KMC ought to be disposed of in accordance with law by the appropriate authority in KMC at an early date. This, in our view, will serve the ends of justice.

Accordingly, we direct the Special Officer (Building) to dispose of the appellant's complaint dated February 13, 2018, by a reasoned order, in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order along with a copy of the complaint, after affording an opportunity of hearing to both the appellant and the private respondents herein.

We make it clear that we have not gone into the merits of the case at all. The Special Officer (Building) shall take an informed decision in accordance with law uninfluenced by any observation made either in this order or in the order of the learned single Judge, which is impugned in the present appeal. All points of law and fact are left open for the parties to urge before the Special Officer (Building) KMC.

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

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/