

APOT/97/2023
with
WPO/823/2023
IA NO:GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

SABITA SARKAR & ANR.
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

Appearance:

*Mr. R. Chakraborty, Advocate,
Mr. Bratin Kumar Das, Advocate
Ms. Anjana Banerjee, Advocate
...for the Appellants*

*Mr. Gurudas Mitra, Advocate,
Mr. Ziaur Rahaman, Advocate
...For KMC*

*Mr. Partha Pratim Roy, Advocate
Mr. D. Banerjee, Advocate
...for respondent no.6*

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date: April 12, 2023.

THE COURT: A judgment and order dated April 10, 2023 whereby the writ petition of the appellants being WPO/823/2023 was dismissed, is the subject matter of challenge in this appeal.

It appears that a demolition order was issued by the Kolkata Municipal Corporation on the basis of a complaint lodged by the private respondent herein, under Section 400(1) of the Kolkata Municipal

Corporation Act, 1980 (for short, “KMC Act”) against the appellants herein. The demolition order was passed on January 20, 2023.

The appellants herein have challenged such demolition order before the Municipal Building Tribunal being BT Appeal No.35 of 2023. The appeal is pending.

During the pendency of the statutory appeal, KMC issued a notice dated March 21, 2023 under Sections 544 and 546 of the KMC Act. The said sections basically pertain to the Corporation requiring the occupants to vacate the premises so that the Corporation can implement the demolition order.

The appellants herein approached the learned Single Judge challenging the said notice dated March 21, 2023.

The learned Judge dismissed the writ petition. The learned Judge observed that the writ petitioners did not bring to the knowledge of the Tribunal that a notice had been issued by KMC under Sections 544 and 546 of the KMC Act during the pendency of the statutory appeal. The learned Judge further observed that KMC had merely followed the Court’s order passed in a contempt application for implementation of the demolition order. In aid of that, notice under sections 544 and 546 was issued. The learned Judge concluded that no relief can be granted to the writ petitioner. Hence, this appeal.

We have heard learned counsel for the parties. Statute gives a right to the owner or occupant of a property to challenge an order of demolition before the Municipal Building Tribunal. The appellants herein are undisputedly occupants of the impugned building. They have exercised their right to challenge the demolition order before the Tribunal. Their appeal may or may not have any merit. That has to be

decided by the Tribunal. In our view, in all fairness, till the Tribunal decides the appeal, no coercive steps should be taken against the impugned construction. We are persuaded to grant this interim relief since we have noted that the appellants did not sleep over their statutory right and approached the Tribunal soon after the demolition order was passed.

Accordingly, we direct the Municipal Building Tribunal to dispose of BT Appeal No.35 of 2023 along with any connected application that may have been filed, by the end of this month, i.e., April 30, 2023. For this purpose, Executive Engineer (Building), Borough – III, is directed to forthwith and in any event within a period of five days from the date of communication of this order to him, transmit the records of the case to the Tribunal. We are told that the next hearing has been fixed by the Tribunal on April 18, 2023. All the parties shall appear before the Tribunal on that date. No further notice is required. The Tribunal shall not grant unnecessary adjournment and shall spare no effort to ensure that the appeal and the connected application are disposed of on merit after hearing all concerned parties by the end of this month.

Till pronouncement of the order by the Tribunal, no coercive steps shall be taken by the respondents herein in respect of the impugned construction. After disposing of the appeal, the Tribunal shall forthwith send back the records of the case to the concerned department in KMC.

Till disposal of the appeal by the Tribunal, the appellants shall make no further construction in the premises in question.

The Officer-in-Charge, Beliaghata Police Station is directed to ensure that no further construction is made by the appellants at the site in question. The appellants shall also not create any third party interest

or put anybody in possession of the concerned premises till disposal of the appeal by the Tribunal.

The order under appeal is set aside.

Both the appeal and the connected application are disposed of accordingly.

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

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/