

APOT /134/2023
I A. GA/1/2023
WPO/905/2023
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

ASHOKE SEAL.
-Versus-
THE KOLKATA MUNICIPAL
CORPORATION AND ORS.

Appearance:
Mr. Raghunath Chakraborty, Advocate,
Ms. T. Das, Advocate
Ms. Sobnam Sultana, Advocate
...for the Appellant
Mr. Gopal Chandra Das, Advocate, Mr.
Subhrangsu Panda, Advocate
for Kolkata Municipal Corporation.
Mrs. Sipra Majumder, Advocate
Ms. Debarati Sen (Bose) Advocate
For the State.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date: May 11, 2023.

THE COURT: A judgment and order dated April 24, 2023, whereby the appellant's writ petition being WPO No. 905 of 2023 was dismissed, is under challenge in this appeal.

On February 8, 2023, a notice was issued by the Corporation to the appellant under Section 401 of the KMC Act, 1980 calling upon the petitioner to stop all construction works, as according to the Corporation the appellant/writ petitioner was raising such construction unauthorisedly without obtaining requisite sanction from the Corporation

In April, 2023 the appellant had approached a learned single Judge by way of WPO/860/2023 pleading that he apprehended that the Corporation may take recourse to the provisions of Section 400(8) of the Kolkata Municipal Corporation Act, 1980, in respect of the impugned construction. That writ petition was dismissed on April 13, 2023, on the basis of the submission made by the learned lawyer representing the Corporation that no steps have been taken by the Corporation against the concerned unauthorised construction till date.

In the present round of litigation, the appellant approached the learned single Judge with a prayer to direct the Corporation to initiate proceedings under section 400(1) of the Kolkata Municipal Corporation Act.

The learned Judge dismissed the writ petition with the following observation:

“It appears that the petitioner is in tearing hurry to complete the construction work despite being aware of the fact that the same was being made in an unauthorized manner. Once the Corporation has detected unauthorized construction, it is for the authority to take necessary steps in accordance with law to deal with such unauthorized construction.

It is not permissible for a builder raising unauthorized construction to dictate terms upon the authorities regarding the provision under which he ought to be prosecuted. It is for the authority to take a decision as to the manner in which the unauthorised construction is to be dealt with.

It appears that as on date steps have not been taken to deal with such unauthorised construction except for issuance of the stop work notice. The Corporation shall take steps in accordance with law.”

Appearing for the appellant, Mr. Chakraborty, learned Advocate, submits that once a notice under section 401 of the KMC Act is issued, it is incumbent upon the Corporation to immediately or soon thereafter initiate proceedings under section 400(1) of the KMC Act. In support of such submission, reliance has been placed on a decision of a learned Judge of this Court in the case of Sri Prahlad Singh Jaggi & Ors. Vs. Kolkata Municipal Corporation & Ors., reported in (2017) 4 Cal LT 564 (HC).

We are unable to read that decision in the manner Mr. Chakraborty would like us to read. There cannot be any proposition of law that once a notice under section 401 of the Kolkata Municipal Corporation Act is issued calling upon the person responsible to stop all construction works, the Corporation thereafter will have no choice but to initiate proceedings under section 400(1) of the Act. It cannot be said that even if the person responsible, in disobedience to the notice under section 401 of the KMC Act continues with unauthorised construction, the Corporation will still have to initiate the normally long drawn proceedings under Section 400(1) of KMC Act.

In the present case, admittedly the impugned construction is unauthorised. There is no sanctioned plan for the same. Learned single Judge has rightly observed that a person responsible raising unauthorised construction cannot dictate terms to the authorities regarding the manner in which the authorities will have to deal with the impugned construction. Citizens who take law into their own hands and without bothering to obtain requisite sanction, make unauthorised construction, deserve no sympathy. The Court must not lightly interfere with the Corporation's decision as regards how to deal with unauthorised construction. In case such decision is arbitrary or contrary to law or in breach of the principles of natural justice, the Court of course may interfere. But not generally. The Corporation should be permitted to discharge its statutory duties in the manner it deems fit but of course in accordance with law.

We find no infirmity in the order under appeal. We agree with the observations of the learned single Judge as also the conclusion reached by the learned Judge. It will be open to the Corporation to decide as to how to deal with the unauthorised construction in question. We, however, may add that the normal course that the Corporation takes, as we have seen, is to initiate proceedings under section 400(1) of the KMC Act. However, we make it clear that if the Corporation finds that notwithstanding issuance of notice under Section 401 of the KMC Act, the appellant continued with the unauthorised construction, nothing will stand in the way of the Corporation to exercise its other powers as are available under the statute.

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

Since no affidavit is called for, the allegations made in the stay petition are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/