

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE

APOT/157/2023  
WPO / 794 OF 2023  
GA/1/2023

K. K. SAHA AND CO (PRIVATE) LIMITED & ANR.  
VS  
THE KOLKATA MUNICIPAL CORPORATION ORS

Appearance:

*Mr. Shuvashish Sengupta, Advocate*  
*Ms. Subhra Das, Advocate.*  
*Mr. S.N. Dutt, Advocate,*  
*...for the Appellants.*  
*Mr. Alok Kumar Ghosh, Advocate*  
*Mr. Gopal Chandra Das, Advocate*  
*for KMC.*

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE  
The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date: June 15, 2023.

THE COURT: -The appellants/writ petitioners are the owners of a property known as 'Hatibagan Market'. Hundreds of shops are being run from that market. The activities in that market result in accumulation of garbage in the market premises.

In an earlier round of litigation, the appellants herein approached a learned single Judge of this Court by filing WPO 452/2020 with the grievance that the Kolkata Municipal

Corporation (KMC) was not collecting the garbage that resulted from the activities in the market premises but was insisting that the garbage should be deposited at a particular place wherefrom KMC will collect the same. The writ-petitioners argued that this was not what is envisaged by the Kolkata Municipal Corporation Act, 1980. The learned single Judge had called for a report from KMC indicating the charges that the writ-petitioners were liable to pay for removal of garbage. Such report indicated that a sum of Rs.27.77 lac approximately was due from the writ-petitioners to KMC for the period from 2016 till August, 2022. The learned Judge directed the writ-petitioners to pay a sum of Rs.15 lac within a period of fortnight from the date of the order and the balance within a period of a fortnight thereafter. Being aggrieved, the writ petitioners preferred an appeal being APOT/164/2022.

The appeal and the connected application were disposed of by a judgment and order dated September 15, 2022 by a co-ordinate Bench with the following observation and direction:

*“Basically, the dispute between the parties involves two issues. One is, from which place the Corporation authorities are obliged to collect the garbage which results from the activities in Hatibagan Market. The second is, what charges, if any, the Corporation can demand from the appellants for removing such garbage.*

*We are of the view that the appellants should ventilate their two-fold grievance and any other related grievance that they may have against the KMC, before the Municipal Commissioner who, being a very high authority, will consider such grievance in accordance with law.*

*Accordingly, we grant liberty to the appellants to make a comprehensive representation to the Municipal Commissioner, KMC, within two weeks from date. If such representation is made, the Municipal Commissioner shall decide the same in accordance with law as soon as possible and preferably within six weeks from the date of receipt of the representation, by a reasoned order, after giving an opportunity of hearing to the appellants and any other party including the Tenants' association operating at the Hatibagan Market, who may be affected by the order of the Municipal Commissioner.*

*The order under appeal is set aside.*

*The appellants shall, without prejudice to their rights and contentions, deposit a sum of Rs.5 lakhs with KMC within two weeks from date. If such deposit is not made, this order shall stand recalled and the appeal shall stand dismissed without further reference to us.*

*In view of the above order, no useful purpose will be served by keeping the writ petition or this appeal pending. The writ petition (WPO/452/2020) and the appeal (APOT/164/2022) along with the connected application (I.A No: GA/ 1/2022 all stand disposed of."*

The aforesaid order was clarified by a subsequent order dated September 21, 2022, by recording the submission of KMC that the amount of Rs.17.77 lac was only part of its claim against the appellants on account of garbage removal charges.

Pursuant to the aforesaid order of the Division Bench, the Municipal Commissioner passed an order dated January 20, 2023. The operative part of the said order reads as under:

*“That the petitioners are directed to disburse the admissible dues as applicable from April, 2016 till March, 2021 to the tune of Rs.61,59,367/- within a period of fortnight and concerned Department is further directed to raise demand subsequently from April, 2021 till date as per applicable charges in accordance with law and send the same to the petitioners.*

*With this order, matter stands disposed of.”*

Being aggrieved, the appellants herein challenged the aforesaid order before the learned single Judge in the present round of litigation by filing WPO-794-2023.

The learned Judge noticed that firstly, the written objection of the appellants to the preliminary assessment of the garbage collection charge was not considered by the Municipal Commissioner. Secondly, the issue as regards from where garbage was to be collected by KMC, was not decided or even adverted to by the Municipal Commissioner although that was one of the issues, which he was required to address as per the Division Bench order dated September 15, 2022. The learned Judge finally noted that for

whatever reason, the appellants could not be present at the hearing before the Municipal Commissioner. The learned Judge opined that for the ends of justice a further opportunity of hearing should be granted to the appellants. The learned Judge set aside the order of the Municipal Commissioner dated January 20, 2023. The operative portion of the order of the learned Judge, which is assailed before us reads as under.

*“In view of the above, for ends of justice the Court thinks it fit to set aside the order passed by the Municipal Commissioner and remand the matter back to the Municipal Commissioner for fresh consideration upon giving reasonable opportunity of hearing to all the necessary parties from the stage when the order was passed on 20.01.2023. The Municipal Commissioner shall take into consideration the objection filed by the petitioners on 12.12.2022 and final order shall be passed by the Municipal Commissioner at the earliest, but positively within a period of eight weeks from the date of communication of this order.*

*As it appears that the petitioners have not paid anything on account of the garbage removal charges after the initial payment made by the petitioners in terms of the Hon’ble Division Bench’s order, accordingly, as an interim measure, petitioners are directed to deposit a sum of rupees ten lakh only on ad hoc basis within a fortnight from the date of communication of this order.*

*The Municipal Commissioner is directed to pass final order in terms of the direction passed by the Hon’ble Division Bench on 15.09.2022 read with the order dated 21.09.2022.”*

The appellants are aggrieved by the portion of the order directing the writ petitioners to deposit Rs.10 lac with KMC. Learned Advocate for the appellants says that the Commissioner is yet to finally decide the issues framed by the Division Bench by its order dated September 15, 2022, passed in the earlier round of litigation. In terms of that order, the appellants have already deposited Rs.5 lac with the KMC. The tenants at Hatibagan Market pay absurdly paltry rents to the owners of the market. It would be a very heavy burden on the owners, if they are required to deposit Rs.10 lac towards garbage collection charges even before that issue is finally decided by the Municipal Commissioner.

Mr. Ghosh, learned senior Counsel representing KMC says that it cannot be disputed that some amount is payable by the appellants to KMC on account of garbage collection charges. As recorded in the orders passed in the earlier round of litigation, part of such claim of KMC is in the region of Rs.27 lacs. The Municipal Commissioner had assessed the claim at a sum of approximately Rs.61 lacs. Although such order of the Commissioner has been set aside, nobody can dispute that an appreciable amount is payable by the appellants to the KMC. The appellants deposited only Rs. 5 lac in September, 2022 pursuant to

the order of the Division Bench. About nine months have elapsed since then. Further sums have become due on account of garbage collection charges. Rs.10 lac is a reasonable figure according to Mr. Ghosh.

Having considered the rival contentions of the parties, we are of the view that some amount definitely should be paid by the appellants to KMC immediately. However, since the Municipal Commissioner has not yet finally decided the total dues of KMC from the appellants on account of garbage collection charges, ends of justice will be served if the appellants deposit a sum of Rs.5 lac with the KMC. Such deposit is to be made within a period of three weeks from date. Such deposit shall be made by the appellants and accepted by KMC without prejudice to the rights and contentions of the respective parties.

Mr. Ghosh representing KMC says that the appellants have already filed a comprehensive written representation before the Municipal Commissioner. A hearing also was granted to them. If the appellants want to urge any further point before the Municipal Commissioner, the same may be done by way of additional written representation. We grant liberty to the appellants to file such additional written representation within a

fortnight from date. It is desirable that the Municipal Commissioner disposes of the matter and passes a fresh order within six weeks from the date of receipt of the additional written representation from the appellants, in accordance with law.

The order impugned in this appeal is modified to the aforesaid extent.

Both the appeal and the application are disposed of.

Since we have not called for any affidavit-in-opposition, allegations contained in the application are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

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