

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/67/2023
with
WPO/1144/2023
IA No. GA/1/2023

AMITAVA DE BHOWMICK AND ANR
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 17th August, 2023.

Appearance:
Mr. Kushal Chatterjee, Adv.
Mr. Abhimanyu Banerjee, Adv.
.. for the appellants.
Mr. Alope Kr. Ghosh, Adv.
Mr. Subhrangsu Panda, Adv.
Ms. Manisha Nath, Adv.
...for KMC.
Mr. Jit Ray, Adv.
Mr. Joydeep Dhar, Adv.
... for private respondents.
Mr. Paritosh Sinha, Adv.
Mr. Sabyasachi Mondal, Adv.
For the State.

The Court : Report in the form of affidavit filed on behalf of Kolkata Municipal Corporation be kept with the records.

By consent of the parties, the appeal being APO/67/2023 and the application being GA/1/2023 are taken up for hearing together.

This appeal is directed against a judgment and order dated May 18, 2023, whereby the appellants' writ petition being WPO/1144/2023 was dismissed by a learned single Judge.

The writ petitioners had approached the learned single Judge contending that in spite of complaints having been made

to Kolkata Municipal Corporation (in short KMC), intimating that the private respondents have made unauthorised construction at premises no. 52/1, Surendra Nath Banerjee Road, Ward No. 53, Borough-VI, P. S. Taltala, Kolkata- 700 014, no action was taken by KMC.

On the day the writ petition was taken up for hearing and disposed of by the learned Judge, learned Advocate representing the KMC submitted that he was yet to receive instruction in the matter.

The learned Judge took on record written instruction dated May 17, 2023, issued by the Officer-in-Charge, Taltala Police Station, Kolkata, to the learned State Advocate. The instruction was to the effect that the construction done at the subject premises has been found to be in accordance with the approved re-construction and demolition sketch plan. Such instruction was given on the basis of a communication from the Executive Engineer (C)/Building/Borough-VI, Building Department, KMC to the Officer-in-Charge, Taltala Police Station.

Taking note of the aforesaid written instruction, learned Judge came to the conclusion that the allegation of the writ petitioners that the private respondents have made unauthorized construction remains unsubstantiated. Accordingly, the learned Judge dismissed the writ petition.

Being aggrieved, the writ petitioners are before us by way of this appeal. By our earlier orders, we had called for reports from the KMC. Two reports have been filed. A further report in the form of affidavit has been filed today.

The appellants contend that the concerned Executive Engineer did not have the power or authority to sanction reconstruction plan submitted by the private respondents. It is

further contended that the concerned Executive Engineer has not even approved the reconstruction plan, as a matter of fact.

Mr. Ghosh, learned senior Counsel representing KMC disputes the contentions advanced on behalf of the appellants.

We are told that several representations have been made by the appellants/writ petitioners to the competent officer in KMC but the same have yielded no result. In view of the factual disputes involved, we are of the opinion that a competent officer of KMC should look into the matter.

We grant liberty to the appellants to make a fresh comprehensive representation ventilating their grievance addressed to the Director General (Building), KMC, being the respondent no. 3, within a fortnight from date. The appellants are also permitted to make a representation to the Director General, Water Supply Department, KMC being the respondent no.4, within a fortnight from date.

We direct the respondent nos. 3 and 4 herein to take reasoned decisions on the appellants' representations, in accordance with law and the applicable rules and regulations, within a period of 12 weeks from the date of communication of this order, after granting opportunity of hearing to the appellants and the private respondents or their authorised representatives. If the respondent nos. 3 and 4 find merit in the grievance of the appellants/writ petitioners, appropriate action will be taken in accordance with law.

We have not gone into the merits of the disputes between the parties. The respondent nos.3 and 4 will take informed decisions in accordance with law.

The appeal and the connected application are disposed of.

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

[ARIJIT BANERJEE, J.]

[APURBA SINHA RAY, J.]

dg/