

OD-5

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/185/2023
in
WPO/775/2023
IA No.GA/1/2023, GA/2/2023

MD. WASIM
VS
MD. BABAR AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 22nd June, 2023.*Appearance:**Mr. Suddhasatva Banerjee, Adv.**Mr. Subhrangsu Panda, Adv.**Mr. Aniruddha Mitra, Adv.**Ms. Ina Bhattacharyya, Adv.**...for the appellant.**Mr. Debjit Mukherjee, Adv.**Ms. Susmita Chatterjee, Adv.**...for the State.**Mr. Tapan Coomaar Dey, Adv.**Mr. Mihir Kundu, Adv.**...for the KMC.*

The Court: Let affidavit of service filed in Court be taken on record.

In spite of service, the respondent no.1/writ petitioner is not represented.

Re.IA No.GA/1/2023

This is an application for leave to prefer appeal against an order dated June 12, 2013, passed by a learned Single Judge in WPO No.775 of 2023. By the said order, the learned Judge has directed demolition of certain portions of the concerned premises. The appellant says that he resides in the said premises. He is, therefore, vitally affected by the impugned order.

We are satisfied that the appellant has locus standi to maintain the appeal.

Leave is granted to the appellant to prefer appeal against the order dated June 12, 2023.

Accordingly, the application being IA No.GA/1/2023 is disposed of.

Re. APOT/185/2023

An order dated June 12, 2023 passed in WPO No.775 of 2023 by a learned Single Judge at the instance of the respondent no.1 herein, is under challenge in this appeal. The order is interim in nature in the sense, that the writ petition is pending before the learned Single Judge.

It appears that Kolkata Municipal Corporation (in short, KMC) passed an order for demolition of certain structures at Premises no.166/H/79, Keshab Chandra Sen Street, Ward No.-037, Borough-V, Kolkata – 700 009. One Md. Ehtesham Uddin approached this Court by filing WPO No.2596 of 2022, seeking implementation of the demolition order. That writ petition was disposed of by the learned Single Judge, in effect directing that the demolition order be carried out.

Challenging such order of the learned Single Judge, the present appellants approached a Co-ordinate Bench by filing APOT/84/2023 with an application for leave to appeal since they were not parties to the writ petition. They claimed that they were occupants of the building in question which had been directed to be demolished and were vitally affected by the learned Single Judge's order. The Co-ordinate Bench granted them leave to appeal. Thereafter, the appeal was disposed of with the following directions:

- “(i) The Municipal Building Tribunal is directed to decide the stay application of the appellants before us which they have filed in connection with MBT Appeal No. 82 of 2023 by the end of April, 2023, after affording opportunity of hearing to all concerned parties including the appellants herein and the writ petitioner. Sufficient notice of hearing will be given to the parties.
- (ii) Kolkata Municipal Corporation is directed to ensure that the original records of the case are available before the Municipal Building Tribunal by April 13, 2023, so that the Tribunal can issue notice of hearing at an early date and decide the stay application filed in connection with MAT 82 of 2023 by the end of April, 2023.
- (iii) Till the decision of the Municipal Building Tribunal on the stay application filed in connection with MAT No. 82 of 2023 is available, no action shall be taken for demolition of the alleged unauthorised construction in question or any portion thereof.
- (iv) The concerned Deputy Commissioner of Police shall ensure through his subordinate officers that no further construction is made at the premises in question.
- (v) Needless to say, if any party obtains sanction from the Kolkata Municipal Corporation for making construction at the premises in question, the same may be permitted. However, in any event no construction be made till the end of April, 2023.”

It would appear from the aforesaid that the present appellants have challenged the order of demolition dated November 23, 2022, passed by KMC before the Municipal Building Tribunal by filing MBT Appeal No.82 of 2023. That statutory appeal is still pending.

In the present round of litigation, the respondent no.1 herein again approached the learned Single Judge with the grievance that the appellant

herein had made further unauthorised construction. The learned Judge noted the Division Bench order dated April 5, 2023 and passed the following order:

“Learned advocate representing the applicant submits, upon instruction that, the stay application is yet to be disposed of by the Municipal Building Tribunal and next date has been fixed on 3rd August.

It appears from the averments made by the applicant that he is only concerned with the ground and first floor of the subject structure.

The Corporation is, accordingly, directed to proceed with demolition of any unauthorized construction made in the subject premises but in no case will the Corporation touch any portion of the ground and first floor of the subject structure.

The other portions which have been constructed unauthorizedly and are no way connected with the applicant’s claim (ground and first floor), the Corporation may proceed with the demolition of the same.

The matter is adjourned till 29.06.2023 when the Corporation shall file a report before this Court.”

Being aggrieved, the present appellant who was not a party to the writ petition has come up by way of this appeal. We have granted leave to the appellant to prefer this appeal.

The appellant says that since the stay application before the Tribunal is still pending, the portion of the concerned building which is covered by the order dated April 5, 2023 passed by the Division Bench, cannot be touched, till the disposal of the stay application.

Learned advocate for KMC says that the portion of the building that has been granted interim protection by the Division Bench shall not be touched. If demolition is effected, it will be of further unauthorised construction. The appellant says that there is no further unauthorised construction.

We make it clear that if KMC proceeds to take action against any portion of the building, the same has to be in accordance with law following due process as contemplated by Section 400 of the KMC Act, 1980.

We further clarify that the portion of the building to which the demolition order dated November 23, 2022, relates, shall not be touched till the disposal of the stay application before the Tribunal. This is because that demolition order is under challenge before the Tribunal.

The Co-ordinate Bench by its order dated April 5, 2023, had directed KMC to ensure that the original records of the case are available with the Municipal Building Tribunal by April 13, 2023, to enable the Tribunal to issue notice of hearing at an early date and dispose of the stay application filed in connection with MBT Appeal No.82 of 2023 by the end of April, 2023. We are told that such records are still not available before the Tribunal. We are shocked at such indolent attitude on the part of KMC officers.

The Director General (Building-II), KMC, is directed to cause appropriate enquiry and find out which officer was responsible for carrying out this Court's directions and take appropriate action against such officer. Public officers in statutory bodies are expected to act with sincerity and diligence.

The Director General (Building-II), KMC is directed to file a report in this regard with the learned Registrar, Original Side of this Court within four weeks from date. The Registrar, Original Side shall place such report before us immediately thereafter.

The Director General (Building-II), KMC shall ensure without fail that the original records of the case are sent to the Building Department within a

fortnight from the date of communication of this order to the Director General (Building-II), KMC.

The Tribunal is directed to prepone the date of hearing which, we are told has been fixed on August 3, 2023. The Tribunal shall positively dispose of the appeal by August 15, 2023. The order under appeal is, accordingly, set aside.

The Registry is directed to communicate this order to the Tribunal as well as to the Director General (Building-II), KMC. A copy of the order be also sent to the Commissioner of KMC by the Registry for his information.

With the aforesaid directions, the appeal being APOT/185/2023 and the application being IA No.GA/2/2023 are disposed of.

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

Learned advocates for the appearing parties submit that in view of this order nothing remains in the writ petition. Accordingly, WPO/775/2023 is also disposed of.

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)