

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/193/2023
WITH
WPO No.1231 OF 2023
GA/1/2023

ÁVYAAN' INITIATIVES & ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : July 18, 2023.

Appearance:

Mr. Arunava Ghosh, Advocate
Mr. Anindya Lahiri, Advocate
Mr. Prajnadeepta Roy, Advocate,
Mr. Samrat Dey Paul, Advocate,
Ms. Sohini Kundu, Advocate
....for appellants.

Mr. Gopal Chandra Das, Advocate
Mr. Dwijadas Chakraborty, Advocate
....for KMC.

THE COURT: Affidavit of service filed in Court today be kept with the records.

A judgment and order dated June 13, 2023, whereby the appellants' writ petition being WPO/1231/2023 was dismissed by a learned single Judge, is under challenge in this appeal.

It appears that the appellants have constructed two additional floors beyond what was permitted in the building plan sanctioned in their favour, at premises no. 3/1, Raj

Krishna Chatterjee Road, Kolkata within the jurisdiction of Kolkata Municipal Corporation. It also appears that the appellants do not dispute that two additional floors have been constructed. However, they say that the construction is quite stable and is such that it is capable of being regularized.

A case was initiated against the appellants in respect of the alleged illegal construction. Apparently hearing was conducted before the Special Officer (Building), Kolkata Municipal Corporation on January 16, 2023. The appellants say that in the order passed on February 9, 2023, the Special Officer specifically recorded that the next date of hearing would be communicated later. However, without communicating any further date of hearing, the Special Officer took up the matter for hearing and passed a demolition order on March 2, 2023.

Challenging the demolition order, the appellants approached the statutory appellate forum being the Municipal Building Tribunal by filing B.T Appeal No. 83 of 2023. The Tribunal affirmed the order of the Special Officer (Building) almost entirely relying upon a report/note of the technical member.

Challenging the order of the Tribunal, the appellants approached the learned Single Judge in the present round of litigation. By the order impugned before us, the learned Judge has dismissed the writ petition. Hence, this appeal.

The learned single Judge has also noted extensively the portion of the note/report of the technical member relying on which the Tribunal dismissed the appeal of the appellants against the demolition order passed by the Special Officer (Building). Ultimately, the learned Judge observed that the deviation from the sanctioned plan is to such an extent that question of regularization cannot and does not arise.

The short grievance of the appellants is that the Tribunal and learned single Judge both relied heavily on the note/report of the technical member. However, no copy of such note/report was ever made available to the appellants/writ petitioners. This is flagrant breach of the principles of natural justice.

We have ascertained from the learned Advocate representing the Kolkata Municipal Corporation that it is indeed a fact that copy of such note/report of the technical

member was not supplied to the appellants at any point of time.

In view of the aforesaid, we are of the opinion that the principles of natural justice have been violated in the present case. The note/report of the technical member ought to have been supplied to the appellants and they should have been afforded an opportunity of taking exception thereto, for whatever it is worth. It may be that the appellants have made illegal construction, which is incapable of being regularized as per law of the land; we express no opinion on that issue. However, justice must not only be done but also must be seen to be done. An opportunity should be given to the appellants to deal with the note/report of the technical member which forms the basis of the order of the Tribunal dismissing the appeal of the appellants against the order of the Special Officer (Building). The said note/report also appears to be the foundation for the learned single Judge to have dismissed the writ petition.

In view of the aforesaid, we set aside the order of the learned single Judge as also the order of the Municipal Building Tribunal only on the ground of breach of principles of

natural justice and not on any point touching the merit of the case. We remand the matter to the Municipal Building Tribunal to pass a fresh order after giving opportunity to the appellants herein to file an exception to the note/report of the technical member and after affording a reasonable opportunity of hearing to the appellants herein or their authorized representative and all concerned parties including KMC. The entire exercise should be completed within six weeks from the date of communication of this order by the learned Advocate for the Corporation to the Tribunal. We make it clear that we have not considered the merits of the case at all and particularly the point as to whether or not the impugned construction is illegal. The Tribunal is free to pass any order as it deems fit in accordance with law observing the principles of natural justice.

Till the Tribunal takes a fresh decision in terms of this order, let no coercive steps be taken against the impugned construction.

Both the appeal and the application are disposed of in terms of the above directions.

Since we have not called⁶ for any affidavit, the allegations made in the petition are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/