IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/83/2023
with
WPO/1320/2023
IA NO:GA/1/2023

MERLIN PROJECTS LIMITED AND ORS.
VERSUS
KOLKATA MUNICIPAL CORPORATION AND ANR.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
And
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 24th July, 2023.

Appearance:

Mr. Abhrajit Mitra, Sr. Advocate
Mr. Arindam Banerjee, Advocate
Ms. R. Kajaria, Advocate
...for the appellants

Mr. Alak Kumar Ghosh, Adocate
Mr. Gurudas Mitra, Advocate
.for the KMC

The Court: A judgment and order dated June 23, 2023, whereby the appellants' writ petition being WPO 1320 of 2023 was disposed of, is the subject matter of challenge in this appeal.

In an earlier round of litigation, the appellants had approached the learned single Judge in the writ jurisdiction challenging notices of hearing issued by the Municipal Commissioner. The writ petitioners took exception to the methodology adopted by the Corporation in assessing the concerned property.

The learned Judge had disposed of the writ petition by directing the Municipal Commissioner to take a decision on the representation made by the writ petitioners.

The order of the learned single Judge was carried in appeal. It was submitted before the appeal Court on behalf of the appellants/writ petitioners that the notices of hearing could not be sustained in view of the provisions of, inter alia, Section 176 read with Section 171(8) of the Kolkata Municipal Corporation, 1980 *as also the decision of a Single Judge of this Court in (2016) 3 Cal LT 249 (Fabworth Promoters Pvt. Ltd. & Anr. Vs. Kolkata Municipal Corporation & Ors.), affirmed by an Hon'ble Division Bench of this Court in the case of The Kolkata Municipal Corporation & Anr. Vs. Fabworth Promoters Pvt. Ltd. & Ors., reported in (2016) 3 Cal LT 509.*

The appeal was disposed of by an order dated March 20, 2023 with the following observations:

"*We are not inclined to go into the merits of the disputes between the parties at this stage. Since a representation has been made by the appellants, let such representation dated December 24, 2019, be disposed of as directed by the learned Single Judge. We clarify that the appellants will be at liberty to rely on all such materials as they may be advised including decisions of Courts. We do not interfere with the order of the learned Single Judge as we do not find any apparent infirmity therein.*

However, in the event the representation of the appellants is rejected or any other adverse order is passed, the same shall not be given effect to and/or the assessment shall not be proceeded with for a period of

fortnight from the date of communication of the order to the appellants. This is to give an opportunity to the appellants to challenge any such adverse order before the appropriate forum."

It appears that pursuant to the aforesaid order, the Municipal Commissioner started the hearing. Three hearings have been held.

With the grievance that their representation has still not been disposed of and the Municipal Commissioner is from time to time calling for documents and information which are not relevant for the purpose of deciding their representation, the appellants approached the learned Single Judge in the present round of litigation by filing WPO/1320/2023.

By the impugned judgement and order dated June 23, 2023, the learned Judge disposed of the writ petition with the following observations and directions :

> *"The Municipal Commissioner, Kolkata Municipal Corporation may proceed to conclude the hearing upon calling for documents/evidences that may be required for arriving at a logical conclusion of the representation filed by the petitioners. Endeavour shall, however, be taken to ensure that the representation stands disposed of at the earliest.*
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> *Since the Hon'ble Division Bench did not fix up any time frame within which the appeal is required to be disposed of, this Bench is, accordingly, not fixing up any time limit and the Municipal Commissioner, Kolkata Municipal Corporation will take a decision in the matter pursuant to the orders passed by this Court.*
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> *The parties will, however, be obliged to produce documents as may be required for effective consideration of the disputes pending consideration before the Municipal Commissioner, Kolkata Municipal Corporation.*

The Court also notices that the petitioners are adequately protected by the order passed by the Hon'ble Division Bench, whereby the Court directed the Kolkata Municipal Corporation not to proceed with any adverse order, if passed, against the petitioners in the representation filed.

The writ petition stands disposed of."

Being aggrieved, the writ petitioners are before us by way of this appeal.

We have heard learned counsel for the parties. We did not fix any time period within which the Municipal Commissioner was required to decide the representation of the appellants, while disposing of the earlier appeal by our order dated March 20, 2023. We also did not bind the hands of the Municipal Commissioner in any manner in the sense that the Commissioner was not required to decide the representation in any particular manner. However, the Commissioner will naturally take the final decision considering the entire material placed before him and also in light of the relevant decisions of Courts. The representation has to be decided as per the law prevalent as on the date of the assessment. We do not want to put any restriction on the Commissioner as regards the documents and information that he may call for from the appellants. However, we would definitely expect that being a highly placed and responsible officer of the Corporation, he will not call for documents or information which may have no relevance for deciding the representation. We, however, direct that the representation shall be disposed of by a final order within six weeks from the date of communication of this order. This time limit will be adhered to

irrespective of whether or not the appellants, in spite of being called upon, fail to file documents or furnish information.

We again clarify that we have not touched upon the merits of the dispute. The Municipal Commissioner shall decide the concerned representation in accordance with law in the light of the above observations.

The appeal and the connected application are disposed of accordingly.

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

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY J.)

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