

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/108/2023
with
WPO/1433/2023
GA/1/2023

SUBRATA PODDAR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
And
The Hon'ble JUSTICE APURBA SINHA RAY
Date : August 3, 2023.

Appearance:

Mr. Raghunath Chakraborty, Adv.
Mr. Supratik Syamal, Adv.
Ms. Sabarnee Chatterjee, Adv.
..for the appellants
Mr. Gopal Chandra Das Adv.
Mr. Dwijadas Chakraborty, Adv.
.for the KMC

The Court: A judgment and order dated July 24, 2023 whereby the appellant's writ petition being WPO/1433/2023 was dismissed by a learned single Judge of this Court, is the subject matter of challenge in this appeal.

It appears that the appellant/writ petitioner obtained sanction of a plan from Kolkata Municipal Corporation for raising a three storied residential building. It further appears that the appellant and other co-tenants constructed two additional floors

in deviation from the sanctioned plan. KMC issued stop work notice and thereafter initiated steps for dealing with unauthorized portion of the construction. The appellant, on July 17, 2023, made an application for regularization of the unauthorized portion of the construction.

It appears that people from Corporation, visited the property in question and asked the appellant and other tenants to remove the unauthorized portion. At this stage, the appellant approached learned single Judge with the instant writ application.

The learned Judge observed that there is no law which supports the contention of the writ petitioner that a construction made without obtaining prior sanction from the sanctioning authority, may be regularized subsequently. The learned Judge also observed that the application for regularization was made on July 17, 2023 and apprehending initiation of demolition proceeding, the writ petition was affirmed on July 19, 2023 and the writ petition does not appear to be a bonafide one. With the aforesaid observations, the learned Judge dismissed the writ petition. Hence, this appeal.

We have heard learned Counsel for the parties. Apparently, we find no infirmity in the order under appeal.

However, since the third proviso to Section 400(1) has been introduced in the KMC Act and relevant rules have been framed in 2015, it may not harm anybody if the Corporation first takes a decision on the appellant's application for regularization before proceeding to demolish the unauthorized portion.

Accordingly we direct the Municipal Commissioner or his delegatee in KMC to take a reasoned decision on the appellant's application for regularization of the impugned structure, in accordance with law and the applicable rules, within a period of 3 weeks from the date of communication of this order to the Municipal Commissioner or his delegatee, after granting an opportunity of hearing to the appellant or his authorized representative and any other concerned party.

Needless to say, if the appellant's application for regularization is allowed, the question of demolition may not arise. However, if such application is rejected by the Municipal Commissioner or his delegatee, KMC shall proceed to demolish the impugned structure in accordance with law.

We clarify that we have not gone into the merits of the case at all. We are not binding the hands of the Municipal Commissioner or his delegatee in KMC to decide the appellant's application in any particular manner. He will decide the

application in accordance with the relevant rules and regulations.

The order under appeal is set aside to the extent indicate above.

Both the appeal and the application are disposed of.

Since the respondents have not filed any affidavit-in-opposition, the allegations made are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY J.)

dg/