

APOT/232/2023
with
WPO/1449/2023
IA NO:GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SURESH PRASAD GUPTA
Vs.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE APURBA SINHA RAY

Date : 31st August, 2023.

Appearance:
Mr. Arindam Banerjee, Advocate
Ms. Sinthia Bala, Advocate
...for appellants
Mr. Nilanjan Chatterjee, Advocate
Mr. Saurav Chaudhury, Advocate
...for KMC.
Mr. Abhijit Ray, Advocate,
... for respondent no. 4.

The Court : By consent of the parties, the appeal and the application are taken up for hearing together.

Being aggrieved by a judgment and order dated July 27, 2023, whereby a learned single Judge of this Court disposed of the appellant's writ petition, the writ petitioner has come up by way of this appeal

The appellant is the tenant of the first floor of premises no. 3A, Ganguly Lane, Kolkata- 700 007. We are told that it is a G+4 storied

building. The respondent no. 4, viz., Alokesh Ganguly is the owner of the entire building.

The writ petitioner approached the learned single Judge challenging an engagement notice issued by Kolkata Municipal Corporation (in short KMC) under sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 (in short KMC Act), for execution of a demolition order which appears have been passed by the concerned Executive Engineer under Section 400(1) of the KMC Act. The writ petitioner submitted before the learned Judge that he had no idea of any proceedings having been initiated under Section 400(1) of the KMC Act. He is not aware of any order that may have been passed in such proceedings. He has been in occupation of the first floor of the building in question for the past several years. His tenancy is not in dispute. Suddenly he found that men from KMC reached the premises and tried to demolish portion of the second floor of the building, i.e., the floor immediately above the floor which he occupies. As a result of the activities of the KMC people, certain portions of the ceiling of the writ petitioner's floor collapsed. The writ petitioner approached the learned Single Judge for quashing of the engagement notice issued under Sections 544 and 546 of the KMC Act and also for an order restraining

the KMC authorities from carrying out any demolition activity without serving a copy of the demolition order on the writ petitioner. He also prayed for liberty to challenge the demolition order before the appropriate forum.

The learned Judge enquired from the writ petitioner as to whether he is responsible for the alleged unauthorised construction. The writ petitioner answered in the negative. The learned Judge then enquired of the respondent no.4 i.e., Alokesh, as to whether he was responsible for the alleged illegal construction. Again the answer was in the negative. The learned Judge thereafter disposed of the writ petition by observing that since neither the writ petitioner nor the respondent no.4 is responsible for the unauthorised construction in question, they cannot be aggrieved if such construction is demolished. The final observation of the learned Single Judge is as follows:

“It appears from the submissions made on behalf of the parties that neither the owner nor the occupiers/tenants, that is, the petitioner herein, takes responsibility of the construction that has been held to be unauthorised. Accordingly, the men and agents of the Corporation shall take steps to demolish the same by taking necessary precaution so that the tenanted portion of the petitioner does not get

affected at the time of the execution of the work of demolition.”

Being aggrieved the writ petitioner is before us by way of this appeal.

We had called for a report in the form of affidavit from KMC. Such report has been filed. We had also permitted the respondent no.4 (Alokesh) to file an affidavit, which is on record.

From the annexures to KMC's affidavit it appears that a stop work notice under Section 401 of the KMC Act, dated October 19, 2019, was issued by KMC to one Ashok Ganguly asking him to stop all construction works including addition and alteration at premises no. 3A, Ganguly Lane, i.e., the premises in question. Thereafter, we find an intimation by KMC to the Officer-in-Charge of the jurisdictional police station, dated October 19, 2019, intimating that stop work notice had been issued and follow up action should be taken by the police. In the said notice also, Ashok Ganguly has been mentioned as the person responsible. Then we find a letter dated October 22, 2019, written by the Sub-Assistant Engineer (Civil) Building, Borough-IV & V, KMC to the Assistant Engineer (Civil), Borough-IV informing that on further inspection it has been found that the person responsible continued

with the construction work in violation of the stop work notice. Again, Ashok Ganguly was named as the person responsible. A further notice dated October 22, 2019, issued by the Assistant Engineer (Civil), Building Department, addressed to the Officer-in-Charge, Posta Police Station is on record, wherein also Ashok Ganguly is named as the person responsible. There are other documents which also mention Ashok Ganguly as the person responsible but we need not advert to the same.

Finally, we find that Annexure-R2 to KMC's affidavit is a demolition order dated June 9, 2023, again addressed to Ashok Ganguly. Nothing has been disclosed to demonstrate that in fact a proper proceeding under Section 400(1) of the KMC Act was initiated.

From the affidavit filed by Alokesh, we find that a First Information Report (FIR) was lodged by one Satadal Chaki, Assistant Engineer (Civil), Building Department, Borough-IV & V, KMC on October 13, 2019, against Ashok Ganguly describing him as the person responsible. At page 10 of the said affidavit we find that a charge sheet has been submitted on June 13, 2022, and the charged person is the present appellant.

Learned advocate for the appellant says that all these fact would indicate that something funny is going on. The appellant had never made any unauthorised construction. He was not made aware of any demolition proceeding. No demolition order was served on him. Show cause notice under Section 400(1) does not appear to have been issued to anybody. Similarly, there is nothing on record to show that notice of hearing was issued to any concerned person. The FIR was not against him but against one Ashok Ganguly. However, strangely, the charge-sheet has been submitted against him. The appellant says that all he wants is that he should get an opportunity of hearing before he is condemned for something which he has never done.

Learned advocate for Alokesh strongly denies and disputes the submission made on behalf of the appellant. He says that it is the appellant who has made the unauthorised construction. Even if he has not, he did not report to the landlord or to the appellant that somebody else is making unauthorised construction. This appeal is not a bona fide one. The appeal should be dismissed.

Learned Advocate for KMC has produced the records of the case as we had directed. We have perused the records.

Having considered facts and circumstances of the case, the undisputed facts which emerge are that the appellant is the occupant of the first floor of the building in question. No notice of any demolition proceeding, no show cause notice under Section 400(1) of the KMC Act or notice of hearing under that section or any demolition order passed under that Section was ever served on the appellant. It also appears that if the demolition order that the KMC people sought to implement, is actually carried out, the portion in occupation of the appellant will be damaged. Although the learned Judge has taken care to observe that implementation of the demolition order shall not damage the portion in the appellant's occupation, that may not be practically or technically feasible. We are of the view that the appellant deserves a hearing before the Corporation authorities.

As regards the submission made on behalf of Alokesh that the appellant has made the unauthorised construction we do not observe anything on merits excepting that we wonder as to what the landlord was doing if the appellant was raising unauthorised construction.

We set aside the order of demolition dated June 9, 2023. We direct the Corporation to immediately initiate a fresh proceeding under Section 400(1) of the KMC Act and issue notice to the appellant as well

as to the respondent no.4 and any other concerned person as the KMC may deem necessary. Such proceeding shall be carried out to its logical conclusion within eight weeks from date. Needless to say, all parties concerned will be entitled to rely on documents as they may be advised. All such documents will be exchanged between the parties so that one party may not be taken by surprise by another party.

We do not bind the hands of the KMC authorities in any manner. The authorities shall initiate and conclude the demolition proceeding in accordance with law observing the principles of natural justice and will take further action, if any, depending on the result of the demolition proceeding.

We have not considered the merits of the case at all. We have not gone into the question of whether or not there is unauthorised construction and if there is unauthorised construction, then who is the person responsible.

The order under appeal is set aside.

Accordingly, the appeal (APOT/232/2023) and the application (IA No.GA/1/2023) stand disposed of.

Since we have not called for affidavits, the allegations contained in the stay petition are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/