

OD-1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/238/2023
With
WPO/1426/2023
I.A. NO: GA/1/2023
GA/2/2023

SRI DEBASISH BARDHAN
VS
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 15TH SEPTEMBER, 2023.

Appearance:
Mr. Saumyajit Ghosal, Advocate
...for Appellant
Mr. D. Mukherjee, Advocate
Ms. Dipanwita Ganguly, Advocate
...for KMC

THE COURT:- GA/1/2023 is an application for condonation of delay of 97 days in filing the present appeal.

Causes shown being sufficient, the delay is condoned.

Learned advocate for the appellant says that service is not complete. However, learned advocate for Kolkata Municipal Corporation has appeared. Although the other respondents are not

represented, we are not inclined to defer hearing of this matter since the order that we propose to pass will not prejudice anybody.

This appeal is directed against a judgement and order dated March 23, 2023, whereby a learned Single Judge of this Court disposed of the writ petition of the appellant and the proforma respondents being WPO 632 of 2023.

The writ petitioners approached the learned Judge with the grievance that although they are bona fide tenants in respect of premises no.9, Kalachand Sanyal Lane, P.S. Shyampukur, P.O. Shyambazar, Kolkata – 700004, the owners of the said premises and a developer being the private respondents have obtained sanctioned building plan for reconstruction of the building in question, from Kolkata Municipal Corporation by making misrepresentation and on the strength thereof they have demolished part of the tenanted premises. The writ petitioners submitted that in the plan it was suppressed from Kolkata Municipal Corporation that part of the said premises is tenanted and the sanctioned plan does not make provision for rehabilitation of the writ petitioners.

The learned Judge noted from the averments made in the writ petition that the petitioners have filed a suit for declaration of tenancy right and injunction in respect of the building in question,

before the learned City Civil Court at Calcutta being T.S. No.1880 of 2022 and they have obtained interim relief in the form of a status quo order as regards the nature, character and possession of the suit property described in the Schedule to the plaint of the suit. The learned Judge disposed of the writ petition with the following observation:

“From the submissions made on behalf of the parties and upon perusal of the materials on record it appears that the petitioners have already moved the learned Court below and have been able to obtain an order of injunction restraining the defendants therein from changing the nature and character of the suit property.

At this stage, it will not be proper for the Kolkata Municipal Corporation to enter into and decide any private rights in between the parties.

Accordingly, it will be open for the petitioners to draw the attention of the learned Court below about the subsequent facts and pray for necessary relief therein.”

Being aggrieved, the writ petitioners have come up by way of the present appeal.

Learned advocate for the appellant says that the grievance of the writ petitioners before the learned Single Judge was primarily as regards the private respondents having obtained sanctioned building plan from Kolkata Municipal Corporation by practising fraud and making misrepresentation. This aspect of the matter was

not addressed by the learned Single Judge. Learned advocate says that we should go into the matter and pass an order for cancellation of the sanctioned building plan.

We cannot accede to the request made by the learned advocate for the appellant.

Section 397 of the Kolkata Municipal Corporation Act, 1980, clothes the Commissioner of KMC with the power to cancel a sanctioned building plan on certain grounds. Section 397 reads as follows:

“397. *Sanction or provisional sanction accorded under mis-representation.* – *If, at any time after the communication of sanction or provisional sanction to the erection of any building or the execution of any work, the Municipal Commissioner is satisfied that such sanction or provisional sanction was accorded in consequence of any material mis-representation or any fraudulent statement in the notice given or information furnished under section [393, 393A] or section 394 or section 395, he may, by order in writing, cancel, for reasons to be recorded, such sanction or provisional sanction, and any building or any work commenced, erected or executed shall be deemed to have been commenced, erected or executed without such sanction and shall be dealt with under the provisions of this Chapter:*

Provided that before making any such order, the Municipal Commissioner shall give a reasonable opportunity to the person affected as to why order should not be made.”

If sanction of a building plan has been obtained by making fraudulent misrepresentation or concealing material facts, the aforesaid section empowers the Commissioner of KMC to cancel such sanctioned plan.

Hence, in our opinion, the appellant should approach the Commissioner of the Corporation with their prayer for cancellation of the building plan in question. We grant liberty to the appellant to make a comprehensive representation to the Commissioner, KMC, within three weeks from date, with copies to the private respondents. If such a representation is made within the time period indicated, the Commissioner, KMC, being the respondent no.3 herein, shall take a reasoned decision thereon, in accordance with law, within eight weeks from the date of receipt of the representation, after affording opportunity of hearing to all concerned parties including the appellant and the private respondents herein. The decision so taken shall be communicated to the parties within a week from the date of the decision.

We make it clear that we have not considered as to whether or not, the sanctioned building plan in question should be cancelled. It is upto the respondent no.3 to take a decision in the matter, in accordance with law.

Accordingly, the appeal and the connected application are disposed of.

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

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)

dg/