

OD-6

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/274/2023
With
WPO/1426/2023
I.A. NO: GA/1/2023

M/S KZAR PROPERTIES PVT LTD AND ORS
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 6th September, 2023.

Appearance:

Mr. Raghunath Chakraborty, Advocate
Ms. Tanusree Das, Advocate
...for Appellant
Mr. Alak Kr. Ghosh, Advocate
Mr. Gopal Ch. Das, Advocate
Mr. Dwijadas Chakraborty, Advocate
...for KMC

THE COURT:- By consent of the parties, the appeal and the application are taken up for hearing together.

An interim order dated December 28, 2022, passed by the Special Officer (Building) was assailed by the appellants before the learned Single Bench. By the judgement and order dated July 25,

2023, the learned Single Judge disposed of the writ petition of the appellants being WPO 1426 of 2023.

It was submitted on behalf of Kolkata Municipal Corporation before the learned Single Judge that the portions mentioned in the demolition sketch have been more or less demolished.

The authority of the Special Officer (Building) to pass interim order was challenged on behalf of the writ petitioners. It was submitted that the Special Officer should have decided the issue of alleged unauthorised construction conclusively. The learned Single Judge disposed of the writ petition with the following observation:

“The petitioners accepted the order of the Special Officer and have applied before the Fire & Emergency Services. It will be open for the petitioner to pursue the matter with the Fire & emergency Services for obtaining the revised recommendation and place the same before the Special Officer (Building) for passing a final order in the matter. As regards the infringement statement, as required to be produced, the same shall be supplied by the Kolkata Municipal Corporation after spot inspection of the property to ascertain as to whether the demolition, as conducted by the petitioner, was in accordance with the demolition sketch.

On receipt of the revised recommendation, the Special Officer (Building) shall proceed to dispose of the demolition proceeding in accordance with law, at the earliest.”

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

Mr. Ghosh, learned senior counsel representing the Kolkata Municipal Corporation, says that on wrong instruction it was submitted on behalf of the KMC before the learned Single Judge that more or less the impugned construction has been demolished. According to him, the records would show that the unauthorised construction is to the extent of approximately 636 sq.m. and only a negligible portion has been demolished. This is disputed by the learned advocate for the appellants.

Be that as it may, we are of the view that ends of justice will be served if the Special Officer (Building) expedites the demolition proceedings and carries the same to its logical conclusion as early as possible and definitely within a period of six weeks from the date of communication of this order by the appellants to the concerned Special Officer (Building).

Till completion of the demolition proceeding, no further coercive action be taken by the Corporation in respect of the impugned construction.

Needless to say, the demolition proceedings before the Special Officer shall be conducted observing principles of natural justice, which means that the appellants will get sufficient opportunity of hearing.

The appeal and the connected application are disposed of accordingly.

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

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)

dg/