

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 1537 of 2023

Smt. Debjani Das
Vs.
The Kolkata Municipal Corporation & Ors.

For the writ petitioner	:-	Mr. Anindya Lahiri, Adv. Mr. Samrat Dey Paul, Adv.
For KMC	:-	Mr. Srijan Nayek, Adv. Mr. Swapan Kr. Debnath, Adv.
Heard on	:-	06.09.2023
Judgment on	:-	06.09.2023

Amrita Sinha, J.:-

The petitioner claims to have entered into an agreement for sale in respect of a portion of a structure standing at premises no.6/25, Poddar Nagar (391/242, Prince Anwar Shah Road), Ward No. 93, Borough-X of the Kolkata Municipal Corporation which is suffering an order of demolition. Agreement for sale relied upon by the petitioner was executed on a non-judicial stamp paper of Rs.20/- but the same has not been registered. The petitioner claims that she is in possession of the said property.

The structure was held to be unauthorised and order of demolition was passed by the Special Officer (Building) on 17.02.2023. Hearing of the demolition proceeding was concluded on 05.01.2023.

The petitioner claims to be aggrieved by the order of demolition and intends to prefer an appeal before the statutory appellate forum.

Submission of the petitioner is that the learned Tribunal is refusing to register the appeal as the petitioner failed to disclose the address of the complainant.

It has been submitted that the name of the complainant is appearing in the order of demolition but as the address is not mentioned, accordingly, the petitioner is not aware of the address of the complainant.

It has been contended that according to Section 400(3) of the Kolkata Municipal Corporation Act, 1980, 'any person' aggrieved by an order under Section 400(1) may, within 30 days prefer an appeal before the Municipal Building Tribunal. She, being the person aggrieved, ought to be permitted to prefer appeal according to the said provision.

Learned advocate representing the Kolkata Municipal Corporation opposes the prayer of the petitioner. It has been submitted that the petitioner does not have any right to prefer statutory appeal. Prayer has been made for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties.

Section 400 (1) of the Act mentions that where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction or in contravention of any of the provisions of the Act or the Rules, the Municipal Commissioner may make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been completed.

Proviso to the said sub-Section mentions that no order of demolition shall be made unless such person has been given, by means of a notice served in such a manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made.

Explanation appended to the said sub-Section mentions that 'the person at whose instance' shall mean the owner, occupier or any other person who caused the erection of any building or execution of any work to be done including alteration or addition, if any.

From the aforesaid provision of law, it appears that the 'person aggrieved' as mentioned in Section 400(3) of the Act will mean the person at whose instance the unauthorized construction has been carried out. Explanation to

the aforesaid provision mentions that 'the person at whose instance' shall mean the owner, occupier or any other person who caused the erection.

In the instant case, the petitioner is neither the owner nor the person who caused the erection. In fact, the alleged unregistered agreement executed on a non judicial stamp paper of Rs. 20/- was made after the hearing before the Special Officer (Building) concluded and after passing the order of demolition by the Special Officer (Building). The agreement for sale that is annexed to the writ petition does not bear a date at all. Only the month and the year is mentioned.

A possession letter has been annexed as annexure P-3 to the writ petition which is dated 22.02.2023. On the strength of the said possession letter the petitioner claims to be the occupier of the subject property, but the date mentioned in the alleged letter of possession is after the order of demolition was passed by the Special Officer (Building). It may be that the said letter of possession was prepared only for the purpose of filing the present writ petition.

The Court is of the opinion that the petitioner cannot be treated as a 'person aggrieved' in terms of Section 400 (3) of the Kolkata Municipal Corporation Act, 1980. The petitioner may have paid valuable consideration for purchasing the said property, but till a formal deed of conveyance is executed in her favour, she cannot claim herself to be the owner of the said structure. The certificate of possession relied upon will not come to the aid of the petitioner in the instant case.

If subsequent purchaser of a structure suffering an order of demolition is permitted to prefer appeal before the appellate forum, then there may be enormous delay in execution of the order of demolition and by this way the unauthorized construction will remain standing. An errant builder may transfer an unauthorized construction in favour of an unsuspecting buyer, but the same will not create any right in favour of the purchaser to challenge the order of demolition.

If the same is allowed, then there will be multiplicity of proceedings and many unsuspecting buyers may be duped in the process. A dishonest builder may set up persons as occupier/tenant/licensee for approaching the statutory

forum seeking stay of the order of demolition on the ground of violation of the principle of natural justice. The same ought not to be permitted and no leniency need to be shown or else there will be no end to a demolition proceeding and unauthorised construction cannot be restricted at all.

It has been brought to the notice of the Court that a separate appeal at the instance of a different purchaser is also pending consideration before the appellate forum.

The Court is of the opinion that in the present case though the learned Tribunal has refused to accept the appeal sought to be filed by the petitioner on a different ground altogether, but this is not a fit case where liberty may be granted to the petitioner for preferring the appeal against an order of demolition or to be granted any liberty to be added as party in the pending appeal before the Tribunal. The pending appeal will be decided on its merit.

The writ petition fails and is hereby dismissed.

No costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all legal formalities.

(Amrita Sinha, J.)