

IA NO:GA/1/2023
GA/2/2023
IN
APOT/305/2023
WPO/1792/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

LANSDOWNE MARKET BYABASAYEE SAMITY & ANR.
Vs.
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : SEPTEMBER 13, 2023.

Appearance:

Mr. Arunava Ghosh, Advocate
Mr. Anindya Lahiri, Advocate
Mr. Puspall Chakraborty, Advocate
...for appellants
Mr. Biswajit Mukherjee, Advocate
Mr. Gopal Chandra Das, Advocate
Mr. Arijit Dey, Advocate
...for KMC
Mrs. Manju Agarwal, Advocate
...for respondent no.8
Mr. Manoj Malhotra, Advocate
Mr. Suman Dey, Advocate
...for State.

The Court : **RE : GA/1/2023**

This is an application for condonation of delay in filing the appeal.

Causes shown being sufficient, the delay is condoned.

G.A.No.1 of 2023 is disposed of.

RE : GA/2/2023, APOT/305/2023

This matter pertains to a very popular market in South Kolkata known as Lansdowne Market which operates under the aegis of Kolkata Municipal Corporation. It appears that in the year 1987, an Agreement was entered into between Kolkata Municipal Corporation (in short “KMC”) and one Happy Homes & Hotels Private Limited (in short “Happy Homes”) for development of the market by constructing multi-storied building and rehabilitating the shop-owners in such building.

It appears that some aggrieved parties filed a writ petition touching upon such Development Agreement and ultimately, the same was carried to the Division Bench. The present appellants preferred an appeal before that Division Bench against an order of a learned Single Judge passed on the writ petition, after obtaining leave to appeal as they were not parties to the writ petition. In that appeal, the Division Bench passed an order dated March 1, 1995, wherein the Division Bench directed that development of the market should take place on certain terms and conditions.

The present writ petition has been filed by the appellants herein again with the grievance that since Happy Homes has not been able to honour its obligation under the Development Agreement, KMC should cancel such agreement and float fresh tender and ensure that development of the market takes place at an early date.

In the writ petition, an order dated April 4, 2022 was passed by a learned Single Judge, the material portion whereof reads as follows:

“The Corporation shall file their affidavit indicating the details of the steps taken by the Corporation as per the direction of this Court. The tender documents and the letters of allotment to the respondent no.8 shall be annexed. The respondent no.8 shall categorically state the reasons as to why the construction could not be made. In the affidavit, the respondent no.8 shall also include documents to show that attempts had been made for construction of the market as per a tender notice. The master plan and/or drawings of the market prepared by the respondents pursuant to the order of the Division Bench shall also be produced before the Court through the affidavit. The police authority shall indicate by an affidavit as to whether the allegations of non-cooperation by the petitioner no.1 and its members had been reported to the police or not and what steps were taken by the police authority.”

Pursuant to such order, both KMC and Happy Homes filed their affidavits-in-opposition before the learned Single Judge. The appellants pointed out to the learned Judge that the documents that Happy Homes and KMC had been directed to produce with the affidavits, were not so produced. In fact, the appellants herein filed an interlocutory application in the writ petition, being GA/1/2023 with the following prayers:

“(a) Declare the affidavit in opposition filed by the respondent nos.1 to 5 and 8 to be not in conformity with the order dated April 04, 2022;

(b) *Direct the Kolkata Municipal Corporation, its men, agents, assigns, subordinates and/or representatives to disclose before the Hon'ble Court the tender documents, the letters of allotment to the respondent no.8 as per the direction of the Hon'ble Court dated April 04, 2022 and details of the steps taken by the Kolkata Municipal Corporation as per the direction of the Court dated March 01, 1995 passed by the Hon'ble Division Bench comprised of His Lordship the Hon'ble Justice Bhagabati Prasad Banerjee [as His Lordship then was] and His Lordship the Hon'ble Justice Basudeva Panigrahi [as His Lordship then was] in Appeal No.158 of 1994 with Matter No.60 of 1994 [Lansdowne Market Byabasayee Samity & Others –versus- Sajib Tulsian & Others] by filing a report in the form of affidavit within a particular time frame;*

(c) *Direct the respondent no.8, its men, agents, assigns, subordinates and/or representatives to disclose before the Hon'ble Court the master plan and/or drawings of the market prepared by it pursuant as per the direction of the Hon'ble Court dated March 01, 1995 passed by the Hon'ble Division Bench comprised of His Lordship the Hon'ble Justice Bhagabati Prasad Banerjee [as His Lordship then was] and His Lordship the Hon'ble Justice Basudeva Panigrahi [as His Lordship then was] in Appeal No.158 of 1994 with Matter No.60 of 1994 [Lansdowne Market Byabasayee Samity & Others –versus- Sajib Tulsian & Others] by filing a report in the form of affidavit within a particular time frame;*

(d) *Extension of time be granted to the applicants/petitioners to file their affidavit in reply;”*

When the said application came up for hearing, KMC submitted before the learned Single Judge that the concerned documents which KMC had been directed to disclose, are not readily available. Whatever relevant documents were available with KMC have been disclosed with the affidavit-in-opposition. It was submitted that the documents relate back to 30 years and due to shifting of office, some of the documents are not available.

Learned advocate for the appellants/writ petitioners submitted that without such documents being disclosed, affidavit-in-reply could not be filed.

The learned Judge disposed of the interlocutory application with the following observations:

“It is up to the parties to disclose documents and take the call as to whether to proceed with the documents that are already on record.

As the petitioners have expressed their intention not to file the affidavit-in-reply to the affidavit-in-opposition filed by the respondents, accordingly, the writ petition be treated as ready for hearing.”

Being aggrieved, the writ petitioners/appellants are before us by way of this appeal.

The appellants say that the respondents and in particular KMC is deliberately not producing the relevant documents as that would strengthen

the case of the appellants/writ petitioners. A direction should be issued on KMC to produce such documents.

We are unable to accede to the request of learned advocate for the appellants. We do not know whether or not in fact the documents that are being called for, are available with KMC presently. KMC says that such documents are not available with it. Hence, we cannot pass a direction which cannot be enforced.

However, we do note that a learned Single Judge passed an order on April 4, 2022, directing KMC to disclose certain documents. Such order was not challenged by anybody and accordingly, attained finality. If KMC was unable to comply with such order, it should have either preferred appeal or should have gone back to the learned Single Judge for modification or recall of the order. Nothing of that kind was done. Hence, that order stands. If in the teeth of that order, the documents called for are not disclosed, it will be legitimate and justified on the part of the Court to draw an adverse inference as against the respondents.

Learned advocate for Happy Homes submits that the present appellants do not have the locus standi to maintain the writ petition. This is disputed by learned advocate for the appellants.

In any event, we are not inclined to go into that issue. Happy Homes will be at liberty to urge such point before the learned Single Judge.

Learned advocate for the appellants says that the purport of submission before the learned Single Judge was that unless the documents called for are disclosed by KMC, no meaningful affidavit-in-reply can be filed by them. However, since no direction has been issued by us on KMC for production of such documents, we may permit the appellants to file affidavit-in-reply in connection with the writ petition.

We think that for the ends of justice, the appellants' prayer should be allowed.

Let such reply be filed before the learned Single Judge within two weeks from date with advance copies to learned advocates for the other parties.

With the aforesaid observations, 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.)