

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/312/ 2023
Arising out of
WPO 1483 of 2023
IA NO:GA/1/2023

SANTOSH KUMAR GUPTA AND ANR.
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

And

The Hon'ble JUSTICE APURBA SINHA RAY

Date : October 6, 2023.

Appearance:

Mr. Raghunath Chakraborty, Advocate

Mr. Supratik Shyamal, Advocate

Mrs. Dyutisree Das Shom, Advocate

Ms. Moitri Mondal, Advocate

...for the appellants

Mr. Srijan Nayak. Advocate

Mrs. Sima Chakraborty, Advocate

...for KMC

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

A judgement and order dated August 10, 2023, whereby the writ petition of the appellants being WPO 1483 of 2023 was disposed of by a learned Single Judge of this Court, is assailed in this appeal.

Challenging an order dated July 12, 2023, passed by the Executive Engineer (Civil)/Building/Borough Nos.IV & V, for demolition of an alleged unauthorised structure, the appellants had approached the learned Single Judge.

The learned Judge observed that the order in question appears to have been passed in a mechanical manner without proper application of mind. Further, the order of the Executive Engineer is non-speaking containing no reasons in support of the decision. The learned Judge disposed of the writ petition with the following observations and directions:

“In view of the above, the said order is liable to be set aside and is, accordingly, set aside.

The Executive Engineer is directed to re-hear and decide the matter afresh at the earliest, but positively within a period of four weeks from the date of communication of this order. The notice of hearing shall be served upon the necessary parties through registered post.

In the event the petitioners refuse to accept service of the notice of hearing, then it will be open for the Executive Engineer to affix the notice of hearing at conspicuous places in and around the subject premises so that the petitioners and any other interested person of the subject structure is made aware of the proceeding in question.

A reasoned order shall be passed and communicated to the parties immediately thereafter.”

The appellants say that they are perfectly happy with the order excepting that the matter should not have been remanded to the same officer who had passed the earlier demolition order. It is common human tendency to uphold one's own decision. Some other competent officer in Kolkata Municipal Corporation, superior to the Executive Engineer, should consider the matter afresh.

Learned advocate for Kolkata Municipal Corporation in her usual fairness says that she cannot have any objection to such a prayer.

We see some substance and logic in the submission made on behalf of the appellants. We are not for a moment suggesting that the Executive Engineer concerned will not decide the matter afresh impartially. However, justice must not only be done but must also be seen to be done.

Accordingly, we modify the order under appeal to the extent that the matter be considered afresh by Special Officer (Building), KMC, instead of the Executive Engineer.

Let the exercise, as directed by the learned Single Judge, be completed within eight weeks from the date of communication of this order by learned advocate on record for KMC to the Special Officer (Building). Needless to say, the Special Officer (Building) shall consider all relevant Circulars/Notifications/Rules/Regulations and all such materials as may be placed before him on behalf of the appellants.

The principles of natural justice will be strictly adhered to and a reasoned order will be passed by the Special Officer (Building), in accordance with law.

Till such an order is passed, let no coercive steps be taken in respect of the impugned construction.

The appeal and the connected application are disposed of accordingly.

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.)

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