

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/350/2023
with
WPO/1651/2023
GA/1/2023

JHARNA SAHA 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 : 27th September, 2023.

Appearance:

Mr. Raghunath Chakraborty, Adv.

Mr. Supratik K. Syamal, Adv.

Ms. Sonali Sengupta, Adv.

Ms. Sabarnee Chatterjee, Adv.

....for the appellants

Mr. Gurudas Mitra, Adv.

Mr. Swapan Kumar Debnath, Adv.

...for KMC.

The Court : A demolition order in respect of the impugned construction was passed by the Kolkata Municipal Corporation (in short “KMC”) on June 27, 2023 in proceedings initiated under Section 400(1) of Kolkata Municipal Corporation Act, 1980.

The appellants say that they did not receive any notice of such proceedings. Hence, they could not participate in such proceedings. The appellants claim to be thika tenants in respect of the property in question. Such claim is disputed by learned Advocate for KMC.

The appellants say that on last Saturday (23.9.2023), some persons claiming to be employees and officers of KMC as also some police personnel, visited the premises in question and pasted the demolition order on the outer wall of the building. They told the appellants that demolition will be carried out on September 27, 2023.

The appellants say that they immediately approached the learned single Judge on September 26, 2023. The learned Single Judge passed the following order :

“Accommodation is sought for on behalf of the private respondent nos.6 & 7.

List the matter once again on October 5, 2023.”

Accordingly, this appeal has been filed by the writ petitioners.

We have heard learned counsel for the parties. Mr. Mitra, learned Advocate appearing for KMC, says that

firstly, the appellants have no locus standi to maintain the writ petition or file this appeal. They are not occupants of the building in question. They are also not persons aggrieved by the demolition order. He says that there should be no interference with the order of demolition and KMC should be permitted to implement the demolition order.

The appellants say that they have filed a statutory appeal against the demolition order before the Municipal Building Tribunal being BT Appeal No. 153 of 2023, which is pending.

Since a statutory appeal has been filed by the appellants, we are of the view that before any coercive action is taken in respect of the impugned construction, the appeal should be disposed of. This is also because, according to the appellants they received no notice of the demolition case. Mr. Mitra, learned Advocate for KMC says that there could be no question of serving notice on the appellants as their names do not appear in the records of KMC.

In the aforesaid factual scenario, we direct the Municipal Building Tribunal to dispose of BT Appeal No.153

of 2023 along with any connected application that may have been filed or may be filed, by the end of November, 2023. For this purpose the Executive Engineer (Building), Borough-III, is directed to forthwith and in any event within a week from the date of communication of this order to him by learned Advocate for the appellants, transmit the records of the case to the Tribunal. As soon as the records of this case are transmitted to the Tribunal, the same shall be duly received by the Tribunal which shall then fix an early date of hearing of the proceedings before it. The Tribunal shall not grant unnecessary adjournments and shall not spare any effort to ensure that the appeal and the connected application, if any, are disposed of on merits after hearing all concerned parties by November, 2023. This time schedule should be strictly adhered to.

This order will be immediately communicated by learned Advocate for the appellants to the Executive Engineer (Building), Borough-III as also to the Registrar of Municipal Building Tribunal.

Till pronouncement of the order by the Tribunal, no coercive step shall be taken by the respondents herein in

respect of the impugned construction. After disposing of the appeal, the Tribunal shall forthwith send back the records of this case to the concerned department in KMC.

Till disposal of the appeal by the Tribunal, the appellants are restrained from making any construction at the premises in question. They are also restrained from creating any third party interest in respect of the said premises including the building that stands thereon.

The Officer-in-Charge, Maniktala Police Station, is directed to ensure that the aforesaid order of injunction is enforced and that the appellants make no further construction at the concerned premises and they do not create any third party interest in respect thereof, nor put anybody in possession of the said premises.

We clarify that in the event the appeal fails, the appellants shall duly deposit with KMC the cost for demolition of the impugned construction.

The interim order is conditional upon the appellants bearing the costs that KMC has incurred for mobilizing resources for implementing the demolition order today. We are told that men and machinery of KMC are present at the

concerned location. Naturally, they will not proceed with the demolition activity in view of this order. Within one week from date KMC shall intimate to the appellants the cost, with details, that KMC incurred for preparing the demolition programme for today. Within one week of such intimation, the appellants shall pay to the Corporation such cost. It is made clear that if the cost is not paid by the appellant to the KMC, as indicated above, and within the prescribed period of time, this order shall stand recalled and the stay order shall stand vacated without further reference to us and the KMC will be free to take necessary steps in accordance with law.

Learned Advocate for the parties say that no useful purpose will be served by keeping the writ petition pending. We agree. WPO/1651/2023 is disposed of by treating the same as on the day's list along with the appeal and the connected application.

Learned Advocate-on-record for the Corporation is requested to immediately telephonically communicate this order to his client.

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

[ARIJIT BANERJEE, J.]

[APURBA SINHA RAY, J.]

dg/