

OD-1

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1767/1999
NIRODH CHANDRA MAJUMDAR
VS
C.M.C.

BEFORE:

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date : 11th October, 2023.

Appearance :
Mr. H. Banerjee, Adv.; Mr. A. Pain, Adv.,
... for the petitioner.
Mr. B. Banerjee, Adv.; Ms. M. Nath, Adv.
... for the KMC.
Mr. K. Bhattacharyya, Adv.; Mr. A. Bhattacharyya, Adv., for respondent no.6.

The Court: The writ petition is presented, inter alia, challenging the order dated June 28, 1999, passed by the Special Officer (Building), being the respondent no.5, whereby the plan which was sanctioned in favour of the petitioner, namely Nirodh Chandra Majumdar, was revoked upon drawing a proceeding in terms of the order passed by a co-ordinate Bench dated December 12, 1991, passed in a writ petition being WPO/6246/1988. Applying the provisions as contemplated under section 397 of the Kolkata Municipal Corporation Act, 1980, the said respondent no.5 revoked the sanctioned plan dated January 2, 1984, issued in favour of the petitioner herein.

This Court has heard extensively the learned Advocates representing the petitioner, the Kolkata Municipal Corporation and the respondent no.6. Shorn of details on consideration of the relevant materials available on record and taking into account the submissions made by the respective

parties, it appears that the respondent no.5 initiated a proceeding and concluded the same vide the impugned order dated June 28, 1999.

A question crops up whether the Special Officer (Building), being the respondent no.5, was authorised to pass the said order dated June 28, 1999 or not.

Undisputably, the respondent no.6 filed a writ petition being WPO/6246/1998 (Subir Roy vs. Calcutta Municipal Corporation & Ors.) and the same was disposed of vide order dated December 12, 1991 with the following directions:

“Considering the facts and circumstances of the case, the respondent Nos.1 to 4 and 9 are directed to draw up a proceeding by issuance of a notice of show-cause upon the respondent Nos.3 to 8 and 12 as to why the sanctioned building plan should not be cancelled and as to why the unauthorised construction, if any, made in premises No.555, Diamond Harbour Road, Calcutta should not be demolished and proceed in the matter in accordance with law and pass necessary speaking order. It is made clear that the proceeding should be initiated within 4 weeks from the date of service of this order and complete adjudication within 6 months from the date of such initiation of the proceeding. The respondents will also consider as to whether the respondent Nos.5 to 8 have any right to obtain such sanctioned plan from the Calcutta Municipal Corporation.”

Taking note of the aforesaid direction, it appears that the respondent nos.1 to 4 and 9, in the writ petition being WPO/6246/1988, were authorised to draw up a proceeding as per the observations made by the co-ordinate Bench and to pass necessary speaking order in accordance with law. In view of the directions of the co-ordinate Bench, it appears that any of the following officers of Kolkata Municipal Corporation could have taken steps and pass an order:

- (i) Chief City Architect;
- (ii) Municipal Commissioner;

- (iii) Deputy City Architect (South);
- (iv) Borough Committee-XIII, Kolkata Municipal Corporation.

On perusal of the impugned order dated June 28, 1999, it appears that the Special Officer(Building) decided the issue though the said officer was not authorised in terms of the order dated December 12, 1991, passed by the co-ordinate Bench.

Though it has been strenuously argued by Mr. Kamalesh Bhattacharyya, learned counsel representing the respondent no.6, that the Court by passing the order dated December 12, 1991, directed the concerned authority of Kolkata Municipal Corporation to draw up a proceeding and pass necessary speaking order in accordance with law, therefore it was open to the Municipal Commissioner to delegate his power in terms of section 48(3)(b) of the Act of 1980 to any other officer or an employee of the Corporation to take a decision under section 397 of the said Act of 1980.

At first blush, such argument advanced on behalf of the respondent no.6 appears to be attractive, but taking into consideration the directions as contained in the order dated December 12, 1991, passed by the co-ordinate Bench in the writ petition being WPO/6246/1998, it transpires that such argument cannot be countenanced.

It is settled principle of law that when the High Court directs a particular authority or an officer to take a decision in a particular manner, such authority or officer is not authorised to delegate his power to some other subordinate authority/officer for taking the decision on diluting the order of the High Court and if the same is permitted that will set a negative precedence. In this regard, one unreported order of the Hon'ble Division Bench dated June 28, 2013, passed on an appeal being FMA/1707/2013 (Irfan Javed & Anr. –vs- The Assessor Collector, Tolly Tax Department, Kolkata Municipal Corporation & Ors.) has been relied upon by the petitioner and on a perusal of the said order it further appears that the principle as discussed above by this Court is fortified.

Learned advocate representing the KMC has also made submissions in support of the order dated June 28, 1999 but in view of the same being passed by the respondent no.5 in derogation of the order dated December 12, 1991 such argument pales into insignificance.

Accordingly, the impugned order dated June 28, 1999, passed by the Special Officer (Building), Kolkata Municipal Corporation stands set aside. The Municipal Commissioner, Kolkata Municipal Corporation, being the respondent no.4, is directed to decide the issue afresh on applying the provisions as contained in section 397 of the Kolkata Municipal Corporation Act, 1980 within a period of 16 weeks from date. The Municipal Commissioner shall be at liberty to take the assistance of other officers including the Special Officer (Building), Kolkata Municipal Corporation while taking the decision in terms of the aforesaid direction. At least seven days' notice shall be served upon the writ petitioner and the respondent no.6 before fixing the date of hearing.

The records of this writ petition be sent down to the department immediately in order to supply the certified copies of the records of this writ petition to the learned Advocates representing the parties on compliance of the necessary formalities. If applications for obtaining the certified copies of the records of this writ petition are made within seven days from date, the same shall be supplied within 15 days thereafter.

With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

Urgent photostat certified copies of this order shall be supplied to the parties expeditiously subject to their compliance with all the requisite formalities.

(SAUGATA BHATTACHARYYA, J.)