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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/170/2023
[WITH WPO/1571/2023]
IA NO: GA/1/2023
BHOLA PRASAD SONKAR
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 11th October, 2023.

Appearance:
Mr. Ankit Agarwal, Adv.
Mr. Sujit Banerjee, Adv.
Ms. Puja Sarkar, Adv.
.....for Appellant.
Mr. Srijan Nayak, Adv.
Mrs. Rituparna Maitra, Adv.
For K.M.C.
Ms. Manju Agarwal, Adv.
Mr. Chayan Gupta, Adv.
Mr. Lal Ratan Mondal, Adv.
For Respondent No.6.
Mr. Nirmalya Dasgupta, Adv.
Mr. Rajesh Upadhyay, Adv.
Ms. Surabita Biswas, Adv.
For respondent no.7

The Court:- Affidavit of service filed in Court today be
kept with the records.

A judgment and order dated September 13, 2023,
whereby the appellant's writ petition being WPO/1571/2023,

was dismissed by a learned single Judge of this Court, is under challenge in this appeal at the instance of the writ petitioner.

The writ petitioner approached the learned single Judge alleging that the private respondents are raising illegal construction at premises no. T-8/1/4, Jagmohan Mullick Lane, Ward-22, Borough-IV, Kolkata- 7000 007. The petitioner claimed to be the lessee of the property, which according to him, is a thika property. He prayed for a direction upon Kolkata Municipal Corporation (in short KMC) to demolish the construction and to set aside the sanctioned building plan that had been issued for the construction of the building in question.

On behalf of private respondent nos. 6 and 7, it was submitted before the learned Judge that the property in question is premises no. 8/1/4 and not T-8/1/4 as claimed by the writ petitioner. The respondent no. 6 said that he is the owner of the premises no. 8/1/4.

Learned Advocate appearing for KMC produced a report of the concerned Engineer of Boroughs-IV and V of KMC, before the learned Judge wherein it was mentioned that upon inspection of the site, the department could not locate premises no. T-8/1/4. The report further stated that KMC had sanctioned reconstruction plan in terms of Rule 3(2)(e) of the KMC Building Rules, 2009 read with Section 410 of the KMC Act, 1980 and Circular No. 9 of 2013-14, in respect of premises no. 8/1/4. It was further stated that the said premises was not recorded as thika in the records of the KMC.

After noting the submissions made on behalf of the parties, learned Judge dismissed the writ petition with the following observations:

“It appears from the submissions made on behalf of all the parties that the identification of the premises in question is disputed. There is nothing on record to suggest that the construction is going on over the premises no. T-8/1/4, as alleged by the petitioner. On the contrary, it appears that the premises no. T-8/1/4 could not be traced by the Corporation either physically or on records maintained by the Corporation. Construction at premises

no. 8/1/4 is being done pursuant to the reconstruction plan sanctioned by the Kolkata Municipal Corporation. There are several disputed questions of facts which cannot be adjudicated by the writ Court.

In view of the above, reliefs sought for by the petitioner cannot be granted.”

Learned Advocate for the appellant/writ petitioner says that sanction of the building plan has been obtained by the private respondents by making gross misrepresentation and fraudulently. The appellant has made at least two representations to the Executive Engineer (Building), Borough – IV and V, KMC dated June 26, 2023 and July 7, 2023. The second representation was addressed also to the Director General of Building and the Municipal Commissioner. Learned Advocate says that keeping such representation pending, effect is being given to the sanctioned building plan which has been challenged by the appellant. This will result in demolition of a portion of the building of which he is the lessee. No further demolition should be permitted till the representations of the appellant are decided by the competent authority.

Learned Advocates for the private respondents seriously dispute the locus standi of the appellant to maintain the writ petition. They say that the appellant's predecessor-in-interest surrendered whatever right, title and interest he had in respect of the concerned property way back in 1996, in favour of the private respondent no. 6. Learned Advocates for the private respondents further say that no demolition activity is being undertaken. Construction is being made strictly adhering to the sanctioned plan.

Mr. Agarwal, learned Advocate for the appellant strongly disputes all the submissions made on behalf of the private respondents. Likewise, learned Advocates for the private respondents vehemently deny the veracity of the submissions made on behalf of the appellant.

Having heard learned Counsel for the parties we are of the view that ends of justice will be served if we pass the following directions:

- (i) The appellant shall resubmit the two representations referred to above along with

supporting documents, if any, to the Executive Engineer (Building), Boroughs –IV and V, KMC within three days from date and shall supply copies of such representations and the documents, if any, to the private respondents.

- (ii) Upon receiving intimation of submission of the representation by the appellant, the private respondents will be at liberty to submit their written statement along with supporting documents to the Executive Engineer (Building), Boroughs –IV and V, KMC, within a week thereafter, with copies of such written representations and documents to the appellant.
- (iii) Upon receipt of the aforesaid from the appellant and the private respondents, within four weeks thereafter, the Executive Engineer (Building), Boroughs- IV and V, KMC, shall take a reasoned decision on the representations of the

appellant, in accordance with law and the applicable Rules and Regulations, after giving opportunity of hearing to the appellant, the private respondents or their authorised representatives.

- (iv) The decision so taken shall be communicated to the parties within one week from the date of the decision.
- (v) While the private respondents may continue with the construction activities, they will not undertake any demolition activity. Such construction will of course abide by the decision of the Executive Engineer (Building) Borough-IV and V, KMC.

Learned Advocate for the appellant says that the private respondents should be restrained from interfering with the appellant's ingress to and egress from the concerned premises. We find that there are serious disputes of civil nature between the parties and we are not inclined to pass any

such order. However, it will be open to the appellant to approach the appropriate civil forum for obtaining any such redressal, if he is so advised.

No useful purpose will be served by keeping the appeal pending. Both the appeal and the application are disposed of accordingly.

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

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)

dg/