

APO/181/2023
WPO/1675/2023
IA NO: GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

DEBAJYOTI SINHA
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : October 19, 2023.

Appearance:

Mr. S.N. Mitra, Sr. Advocate
Mr. Somnath Ganguly, Advocate
....for Appellant

Mr. Alak Kumar Ghosh, Advocate
Mr. Gopal Chandra Das, Advocate
Ms. Manisha Nath, 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 October 5, 2023, whereby the writ petition of the appellant being WPO/1675 of 2023 was disposed of by a learned Single Judge of this Court, is under challenge in this appeal at the instance of the writ petitioner.

It appears that Kolkata Municipal Corporation (in short, 'KMC') detected alleged unauthorised construction at premises No.1/1/1A, Marhatta Ditch Lane, Ward No.7, Borough-I, Kolkata-700003. KMC issued stop work notice

under Section 401 of the Kolkata Municipal Corporation Act, 1980 (in short, 'KMC Act'), on September 8, 2023. The appellant claims to be the recorded owner of the said premises. He filed an application on September 14, 2023, before KMC, seeking regularization of the additional floor that has been constructed at the concerned premises. Such application/representation not having received the attention of the competent authority in KMC, the appellant herein approached the learned Single Judge.

The learned Judge disposed of the writ petition with the following observations and directions:

"Learned advocate representing the Corporation submits that the stop work notice has been issued and necessary steps will be taken in the matter.

Upon hearing the parties and upon perusal of the materials on record it appears that, admittedly, the petitioner is guilty of raising unauthorised construction by making additional floor.

It will be open for the Corporation to take all necessary steps to deal with the unauthorised construction in accordance with law."

Being aggrieved, the writ petitioner is before us by way of this appeal.

Mr. Mitra, learned senior advocate representing the appellant/writ petitioner, says that before any coercive step is taken in respect of the alleged unauthorised construction, the representation of the appellant ought to be disposed of, in accordance with law, by KMC. Mr. Mitra says that the 2015 Rules framed under the KMC Act, empower KMC to regularize structures that have been raised without obtaining prior sanction.

Mr. Ghosh, learned senior counsel representing KMC, says that if and when proceedings under Section 400(1) of the KMC Act are initiated in respect

of the impugned construction, the appellant can always make the prayer for regularization which will then be duly considered by the competent authority. It is practically not possible to independently consider such representation.

It appears that admittedly, unauthorised construction has been made beyond the sanctioned plan. We express no opinion on whether or not the nature and extent of the unauthorised construction in the present case is such that the same is capable of regularization. However, we clarify that if a demolition case under Section 400(1) of the KMC Act is initiated in respect of the impugned construction, the appellant will be at liberty to renew his prayer for regularization of the impugned construction and the competent authority dealing with the demolition case will duly consider such prayer, in accordance with law.

This order will not be considered as any kind of direction on KMC authorities excepting as indicated above.

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.)