

OD-5

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/434/2023
WPO/1816/2023
IA No.GA/1/2023

TANVEER KHAN
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE M.V. MURALIDARAN

Date : 11TH December, 2023.

Appearance:
Mr. Ranajit Chatterjee, Adv.
Mr. Aniruddha Mitra, Adv.
For the appellant.
Mr. Swapan Kumar Deb, Adv.
Ms. Tanushree Dasgupta, Adv.
.....for KMC.
Mr. Y. Deora, Adv.
...for the State.

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

By consent of the parties the appeal and the
application are taken up together for hearing.

A judgment and order dated December 6, 2023, whereby the appellant's writ petition being WPO/1816/2023 was dismissed by a learned Judge of this Court, is assailed in this appeal.

The appellant approached the learned single Judge challenging an engagement notice issued by KMC under Sections 544 and 546 of the KMC Act, 1980. The occupants of the building in question were called upon to vacate the premises to enable KMC to implement a demolition order which had been passed by the Special Officer (Building) on May 11, 2023.

The appellant submitted before the learned Judge that the notice of the demolition proceeding or the notice under sections 544 and 546 were not issued to the person responsible for making construction. Instead, such notices had been issued in the name of a dead person.

The learned Judge dismissed the writ petition with the following observations:

“It appears from the order of demolition and the notice issued under Sections 544 and 546 of the

Kolkata Municipal Corporation Act, 1980 that the same was issued in favour of Shakir Ali and others. One of the noticees may have died, but there is no record to show that all the noticees have either not received or have expired.

As the appeal is pending consideration before the statutory appellate forum, it will be open for the petitioner to approach the appellate forum for necessary relief.

The Court is not inclined to exercise jurisdiction in the writ petition. The writ petition fails and is hereby dismissed.”

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

Mr. Chatterjee, learned Advocate appearing for the appellant says that the demolition order was passed without hearing the appellant, who is the promoter of the building in question. Initially, in January, 2023, the appellant was heard. He was, however, not notified of the subsequent dates of hearing. This is not a case where there is no sanctioned building plan. Even assuming there are deviations from the sanctioned plan, there could be no justification for the Special Officer (Building) to direct demolition of the entire building. No

report or opinion of an expert engineer has been referred to by the Special Officer (Building) to the effect that only the deviated portion cannot be demolished and necessarily the whole structure has to be dismantled.

Learned Advocate says that the appellant's statutory appeal along with the stay application for interim relief is pending before the Municipal Building Tribunal. The appeal is registered as BT Appeal No. 182 of 2023. The Tribunal is refusing to hear out the stay application contending that the order of the Special Officer (Building) that has been produced by the appellant before the Tribunal is not a genuine order. Mr. Chatterjee has annexed photocopy of the order of the Special Officer (Building) to the stay petition. It is at page 51 of the stay petition. To us it appears to be a genuine order. Same is the view of Mr. Debnath, learned Advocate for KMC.

Mr. Chatterjee further produced before us certified copy of an order of the Special Officer (Building). His client will be at liberty to file the same before the Tribunal and the Tribunal, in that event, will proceed on the basis of such order. The appellant may also produce before the Tribunal a

copy of the present stay petition which includes copy of the Special Officer's (Building) order which we think is a genuine order.

We are told that the next date fixed by the Tribunal for hearing of the appellant's statutory appeal is January 19, 2024. We direct the Tribunal to prepone the date of hearing and dispose of the appellant's stay application on or before January 15, 2024, observing the principles of natural justice. The Tribunal shall dispose of the stay application independently without being influenced by any observation in the present order or in the order of the learned single Judge impugned before us in this appeal.

We make it clear that if the appellant is unable to get interim relief before the Tribunal, the demolition order will be implemented by KMC in accordance with law.

We are told that before the Tribunal, the appellant has filed an application for condonation of delay. That application will be decided by the Tribunal in accordance with law.

Till the end of January, 2024, let no coercive step be taken by KMC in respect of the impugned construction.

Both the appeal and the application are disposed of.

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)

(M.V. MURALIDARAN, J.)

dg.