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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO 116/2022
WITH
WPO 2815/2022
IA GA 1/2023

MD MOSARAF BEG AND ORS
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

And

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 12th May, 2023.

Appearance:

Mr. Ayan Banerjee,Adv.
Mr. Suman Banerjee,Adv.
...for the appellants.

Md. Adil Badr,Adv.
Mr. S.M.Burhanuddin,Adv.
Mr. Sobhan Gani,Adv.
Md. Aqib Badr,Adv.
Ms. Shabnam Farooqui,Adv.
Mr. Shakti Shivam,Adv.
Ms. Nafisa Anwar,Adv.
Mr. Abdul Kalam Chowdhury,Adv.
...for respondent no. 8.

Mrs. Sipra Majumder,Adv.
Ms. Debarati Sen (Bose),Adv.
...for the State.

Mr. Gopal Chandra Das,Adv.
Mr. Rudranil De,Adv.
...for KMC.

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

The judgment and order dated November 4, 2022 whereby the writ petition of the respondent no. 8 herein was disposed of, is under challenge in this appeal filed by the respondent nos. 8,9 and 10 in the writ petition.

It appears that the writ petitioner complained to the Kolkata Municipal Corporation that the appellants herein are making unauthorized construction. The Corporation issued stop work notice under Section 401 of the KMC Act, 1980 and also notice under Section 400(1) of the said Act. The notice issued under Section 400(1) of the Act mentions that the building in question is in deviation from the sanctioned plan since an additional floor has been constructed.

The writ petitioner approached the learned Single Judge alleging that in spite of issuance of notices under Section 401 and Section 400(1) of the KMC Act, 1980, the private respondents in the writ petition were continuing with the unauthorized construction.

The learned Judge after hearing the parties, disposed of the writ petition with the following observation:

“As it appears from notice dated 16th November, 2021 that the Corporation has already taken steps under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 and directed the person responsible to demolish the unauthorized construction, accordingly, it is incumbent for the Corporation to ensure that the unauthorized

portion is duly demolished by the person responsible for making such construction. If the person responsible fails and/or neglects to demolish the unauthorized construction, the Corporation ought to take steps to demolish the same and realised the cost of demolition from the person responsible.

In view of the above, the instant writ petition stands disposed of by directing the respondent no. 5 to take notice to deal with the unauthorized construction strictly in accordance with law after giving reasonable opportunity of hearing to all the necessary parties.

The Corporation shall ensure that the unauthorized construction, if any, is demolished positively within a period of twelve weeks from the date of communication of this order.”

The private respondents in the writ petition have come up by way of this appeal.

Mr. Banerjee, learned Advocate appearing for the appellants submitted that pursuant to the notice under Section 400(1) of the KMC Act, the appellants have appeared and participated in the proceedings before the Assistant Engineer, Borough -XV. Hearing was held. No final order has been passed as yet. Learned Counsel says that observation in the order impugned, to the effect that “the Corporation shall ensure that the unauthorized construction, if any, is demolished positively within a period of twelve weeks from the date of communication of this order” may prejudice the appellants’

right of appeal from any demolition order that may be passed by the authorities.

We clarify that even if any demolition order is passed, the same shall not be executed until after expiry of the period prescribed by the relevant statute for preferring appeal against such demolition order.

Mr. Banerjee further says that the appellants have a right to apply for regularisation of any construction that the Corporation may find to be unauthorised. The observations in the order impugned may jeopardize such right. On this score, we clarify that if the appellants have any right, in law, to apply for regularisation of any unauthorised construction, they would be at liberty to exercise such right in accordance with law. No statutory right or legal right of the appellants will be adversely affected by any observation in the order impugned.

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

The appeal and the connected application stand disposed of.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)