

D/L
Item No. 12
21.02.2024
KOLE

**FMA 266 of 2024
With
IA CAN 1 of 2024**

**Sri Kiran Kumar Rai
-Vs.-
The Kolkata Municipal Corporation & Ors.**

*Mr. Sakya Sen, Sr. Adv.,
Mr. Sudipta Kumar Bose,
Mr. Aniruddha Bandyopadhyay,*

...for the appellant.

*Mr. Srijan Nayek,
Ms. Rituparna Maitra,*

...for the KMC.

*Mr. Surya Prasad Chattopadhyay,
Mr. A. Samanta,*

...for the respondent no. 8.

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

A judgment and order dated November 28, 2023, whereby the appellant's writ petition being WPA 10686 of 2023 was dismissed by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the writ petitioner.

The writ petitioner had approached the learned Single Judge with the grievance that his representation to the Kolkata Municipal Corporation Authorities (in short 'KMC Authorities') regarding the alleged unauthorized construction raised by the private respondent no. 8 in the writ petition, was not receiving the attention of the KMC Authorities.

The learned Judge called for the records and went through the same. The private respondents denied having made any unauthorized construction or having infringed any

building rules. They also submitted before the learned Judge that any expert may be appointed to ascertain whether there was any infringement of the applicable rules while constructing the building in question.

The learned Judge then recorded that the writ petitioner was also agreeable to such course of action.

Thereafter the learned Judge dismissed the writ petition with the following observations:-

“However, from the pleadings as has been shown to me from sub-para xii, xiii and xv of paragraph 2 and also the representation being Annexure “P2” wherefrom I find that there is no specific mentioning of the kind of deviation which is being done by the Developer, only generalised and omnibus allegation has been made. I do not find any cause of action in the pleading of this writ application as anything and everything can be brought within the fold of such generalized and omnibus pleading.

The matter is dismissed for want of specific pleading, however, without any costs.”

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

Mr. Sen, learned Advocate for the appellant/writ petitioner, says that it was not up to the writ petitioner to undertake a fact finding exercise as to exactly which building rules have been infringed by the private respondents. It is for the KMC Authorities, the expert body, to find that out after due inspection. When it appears to a citizen that a construction is unauthorized, it is within his rights to bring the same to the notice of the KMC Authorities and indeed, it will be his duty to do so. This is exactly what has been done in the present case. The appellant’s representation dated

April 18, 2023, should be disposed of by the KMC Authorities. Mr. Sen further says that the original document dated August 5, 2021, that the Learned Single Judge considered and found that the same does not say anything about the unauthorized construction, is a document which came into existence much before the appellant made his representation to the KMC Authorities on April 28, 2023.

Mr. Chattopadhyay, learned Advocate appearing for the private respondent no. 8 says that the complaint lodged by the appellant with the KMC Authorities is a *mala fide* and motivated one. Civil disputes are pending between the appellant and the respondent no. 8 (Ganga Developer). Two civil suits are pending between the parties. The complaint has been lodged only to harass Ganga Developer and its partners. Ganga Developer has not deviated from the sanctioned plan in any manner at all.

We have also heard Mr. Nayek, learned Advocate appearing for the KMC. He says that KMC will abide by whatever directions the Court issues.

We are of the view that since a representation has been made by the appellant to the KMC Authorities, the same should be disposed of in accordance with law observing the principles of natural justice.

Accordingly, we direct the respondent no. 6 being the Executive Engineer (Building Department), Borough-I, KMC, to dispose of the appellant's representation dated April 18, 2023, made through his learned Advocate Sri Sudipta Kumar Bose (page 66 of the stay application), in accordance

with law and the applicable rules and regulations, by a reasoned order, within a period of eight weeks from the date of communication of this order by the appellant to the respondent no. 6, after granting due opportunity of hearing to the appellant, the private respondents and any other concerned party or their authorized representatives. It will be up to the respondent no. 6 to decide whether or not any physical inspection of the property in question is necessary. If he deems the same to be necessary, then the parties will cooperate with him in having the property physically inspected.

We make it clear that we have not gone into the merits of the disputes between the parties. The respondent no. 6 shall decide the appellant's representation with an independent mind without being influenced by any observation in this order or in the order of the learned Single Judge which is impugned in this appeal.

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

The order under appeal is set aside.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)