

10. 18.01.2024
Court No.6
(Tanmoy)

MAT 88 of 2024

**Smt. Baby Dutta
-Versus-
The Kolkata Municipal Corporation & Ors.**

**With
IA No: CAN/1/2024**

Mr. Biswaroop Bhattacharyya, Adv.,
Ms. Bratati Pramanick, Adv.

...for the appellant.

Mr. Srijan Nayak, Adv.,
Mr. Swapan Kr. Debnath, Adv.

...for the Kolkata Municipal
Corporation.

Mr. Arindam Banerjee, Adv.,
Mr. Sumitava Chakraborty, Adv.

...for the respondent nos. 7-9.

Mr. Sounak Bhattacharya, Adv.,
Mr. Abhishek Mukherjee, Adv.

...for the respondent no.10.

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

An order dated January 11, 2024, passed in WPA 29213 of 2023, being a writ petition filed by the appellant herein, is the subject-matter of challenge in this appeal.

The appellant/writ petitioner claims to be the lessee of a flat in a building at premises no. 116/2B, Sarat Ghosh Garden Road, P.O.- Dhakuria, P.S. – Kasba, Kolkata – 700031, Ward No. 91 of Kolkata Municipal Corporation (in short, 'KMC'). It appears that action was taken by KMC

under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the 'KMC Act'), on the basis that the building at the said premises is completely unauthorized and is not backed by any sanctioned Building Plan.

The appellant approached a learned Judge by filing the aforesaid writ petition during the *Christmas* Vacation. On December 27, 2023, the learned Vacation Court passed an order restraining the KMC Authorities from taking further steps for demolishing the impugned structure till January 11, 2024. The learned Judge recorded in the order that the provision of Section 400(8) of the KMC Act has to be pressed into service carefully and with a lot of circumspection. It is required to be seen whether the same was done in the instant case. The learned Judge observed that the matter needs to be heard at length.

When the matter was listed before the learned Regular Bench on January 11, 2024, under the heading, "Extension of Interim Order", the learned Judge adjourned the matter till January 22, 2024.

Being aggrieved, the writ petitioner has come up by way of this appeal.

The appellant says that the next date for demolition is January 19, 2024. The matter had appeared for extension of the *interim* order granted by the learned Vacation Court. Without assigning any reason, the matter was simply adjourned till January 22, 2024, although January 19,

2024 is the date fixed for demolition. Why the extension of *interim* order was refused, does not appear from the order impugned.

Learned Advocate for the appellant argued that Section 400(8) of the KMC Act could not have been taken recourse to by KMC in the facts of this case. There is no ongoing construction at the said premises. Construction is complete. Sub-Section (8) of Section 400 of the KMC Act empowers the Mayor-in-Council of KMC to take immediate action “in relation to a building or a work *being carried on* in contravention of the provisions of this Act”. No work is being carried on now. Section 400, Sub-Section (8) has no manner of application in the facts of this case. It is also submitted that no construction has been made after stop-work notice was served under Section 401 of the KMC Act.

The submission made on behalf of the appellant is vehemently denied by learned Advocate for KMC.

We are of the opinion that the point raised by the appellant is an important point and merits consideration. However, we are not inclined to go into the merits since the writ petition is pending before the learned Single Judge.

We request the learned Single Judge to decide the above point before KMC can take any coercive action against the alleged construction. We also request the learned Judge to give some precedence to this matter, subject to the business of the Court. We make it clear that we have zero tolerance for unauthorized constructions. But

even an illegal construction has to be demolished by following the applicable law. We request the learned Judge to decide the point indicated above uninfluenced by the *prima facie* view we have expressed in this order as regards when the Mayor-in-Council may exercise its power under Section 400(8) of the KMC Act.

Accordingly, we set aside the order under appeal. KMC shall not take any coercive steps in respect of the impugned construction till the learned Single Judge decides the point of applicability of Section 400(8) of the KMC Act to the facts and circumstances of the present case.

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

The appeal being MAT 88 of 2024 and the connected application being IA No: CAN/1/2024 are disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)