

19.01.2024
Item no.6.
Court No.6.
AB

**M.A.T. 140 of 2024
With
IA CAN 1 of 2024**

**Sibnath Chattopadhyay
Vs
Gautam Roy & Others**

Mr. Sanjoy Bose,
Mr. Priyankar Basu Mallick....for the Appellant.

Mr. Alope Kumar Ghosh,
Mr. Swapan Kr. Debnathfor the KMC.

Mr. Raghunath Chakraborty,
Ms. Amrita De,
Ms. S. Sultanafor the Respondent No.1/
Writ Petitioner.

Affidavit of Service filed in Court today, be kept
with the records.

An order dated January 17, 2024, passed by a
learned Judge of this Court in WPA No.20775 of 2022,
being a writ petition filed by the respondent no.1
herein, is under challenge in this appeal, at the
instance of the private respondent in the writ petition.
The writ petition is still pending before the learned
Judge.

It appears that the respondent no.1 herein
approached the learned Single Judge with the
grievance that the private respondent in the writ
petition, under the garb of making repairs, was
actually making new construction at the premises in
question. The private respondent in the writ petition

relied on a building plan sanctioned by Kolkata Municipal Corporation (in short “KMC”). The writ petitioner contended that the plan was sanctioned illegally. His representation to the Municipal Commissioner for cancellation of the plan is yet to be disposed of.

The learned Judge observed that under the garb of repairing, a new construction cannot be made. The relevant portion of the learned Judge’s order, which is under appeal, reads as follows:

“The building plan, it is found, was sanctioned wholly illegally, under the garb of repairing, a new construction can never be made. This was permitted by the Executive Engineer (Building), the Kolkata Municipal Corporation, Borough XI. He has to clarify why such a plan was sanctioned by him when the requirement of the building only was for erection, re-erection, addition to or alteration of repairing of a staircase or of lift-shaft, as has been mentioned under Rule 3 (2) of the Kolkata Municipal Corporation Building Rules, 2009. Such explanation has to be given before this court on 19th January, 2024 at 2 p.m. when this matter will be taken up. Such explanation shall be in the form of an affidavit.”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

We have heard learned Counsel for the parties at length.

We entirely agree with the learned Judge that under the garb of repairing, a new construction ought not to be permitted. However, the question is whether the work that the appellant herein is carrying on, is in

accordance with the sanctioned plan that he has in his favour. The learned Judge was perfectly justified in calling for a report from the Executive Engineer (Building). However, we are of the view that since the representation of the respondent no.1 herein for cancellation of the concerned plan is pending before the Municipal Commissioner, it may not be appropriate for the Writ Court to come to the conclusion that the concerned plan was sanctioned illegally. We set aside that portion of the order under appeal. The other portions of the order remain unaltered.

Mr. Ghosh, learned Senior Counsel representing KMC says that it will be necessary for KMC to use an affidavit before the learned Single Judge disclosing all relevant documents including the concerned plan. KMC will be at liberty to file such affidavit within such time period as the learned Judge may allow.

Learned Counsel representing the appellant also says that it would be necessary for their clients to file affidavits-in-opposition before the learned Single Judge. He will be at liberty to do so within such time as the learned Judge may allow. Naturally, the writ petitioner will be entitled to file his reply to such affidavits.

Learned Advocate for KMC prays for extension of time for the Executive Engineer to file the report called for by the learned Single Judge. It will be appropriate

for KMC to make such prayer before the learned Judge.

No useful purpose will be served by keeping the appeal pending. The appeal and the connected application stand disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)