

28.02.2024
Item no.02.
Court No.6.
AB

C.P.A.N. 145 of 2024
In
MAT 1221 of 2023

Tapan Roy Paul
Vs
Firhad Hakim & Others

Mr. Satrajit Sinha Royfor the Petitioner.

Mr. Alok Kumar Ghosh,
Ms. Manisha Nath
.....for the alleged Contemnors.

This contempt application has been taken out alleging wilful violation of a judgement and order dated August 8, 2023, whereby we had disposed of MAT 1221 of 2023, being an appeal preferred by the present petitioner against a judgement and order dated June 22, 2023, dismissing his writ petition.

Mr. Alok Kumar Ghosh, learned Senior Counsel and Ms. Manisha Nath, learned Advocate enter appearance on behalf of the alleged contemnors and accept service of the contempt petition.

The operative portion of the judgement and order dated August 8, 2023, violation whereof is alleged in this contempt application, reads as follows:

“We are unable to agree with the learned Single Judge that just because seven years or so have passed since the alleged unauthorised construction was made, no action can be taken against the same.

An illegal construction does not become legal merely by passage of time. If the Corporation finds there is unauthorised construction, as alleged by the writ petitioner/appellant herein, the Corporation is directed to initiate proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, immediately and carry the same to its logical conclusion, in accordance with law, after granting adequate opportunity of hearing to all concerned parties including the appellant herein and the private respondents. The entire exercise should be completed within a period of four months from the date of communication of this order to the Special Officer (Building), Kolkata Municipal Corporation.

We have not gone into the merits of the disputes. The Competent Authority, as indicated above, shall take an informed decision, in accordance with law. Needless to say, if the Authority finds merit in the grievance of the writ petitioner/appellant herein to the effect that there is unauthorised construction on the second floor of the building in question, either without a sanctioned plan or in deviation from the sanctioned plan, immediate steps should be taken by the Authority for removal of the unauthorised portion of the construction.

The order under appeal is accordingly set aside.”

Learned Advocate for the petitioner says that the order was communicated to the Corporation under cover of a letter dated August 11, 2023. More than four months have passed after that. No proceeding under Section 400(1) of the KMC Act, 1980, has been initiated. At least the petitioner has not received any notice of such proceedings. Hence, the alleged

contemnors are guilty of wilful violation of the aforesaid order passed by us.

Mr. Ghosh, learned Senior Counsel representing the alleged contemnors says that the communication dated August 11, 2023, was made to the Mayor, the Municipal Commissioner and the Director General (Building), Kolkata Municipal Corporation. The order was not communicated to the Special Officer (Building) as was directed. However, he says that the Corporation shall do the needful and complete the proceedings within two months from date.

Learned Advocate for the petitioner produces copy of a letter dated January 15, 2024, addressed to the Mayor, the Commissioner and the Director General of Building/Special Officer (Building) saying that the order was duly communicated to the Special Officer (Building). We find that the letter is dated January 15, 2024. Four months have not lapsed from the date of that communication.

In view of the fact that the alleged contemnors say that the proceedings under Section 400(1) of the KMC Act, 1980 would be initiated and completed within two months from date, we see no reason to keep this contempt application pending. We do not find any wilful act of violation of the relevant order on the part of the alleged contemnors. This contempt proceeding is closed.

CPAN 145 of 2024 is, accordingly, disposed of.

We only clarify that due notice of the proceedings under Section 400(1) of the KMC Act, 1980, if initiated, shall be served on all concerned including the petitioner herein so that they can participate in the proceeding.

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.)