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04-03-2024
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 237 of 2024
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IA NO:CAN/1/2024**

**Prem Narayan Khandelwal & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.**

Mr. Soumya Majumder,
Mr. Mainak Ganguly,
Mr. Siddharth Shroff

... For the Appellants.

Mr. B. Banerjee,
Mr. Gurudas Mitra,
Ms. Manisha Nath

... For Kolkata Municipal
Corporation.

Mr. Uday Shankar Bhattacharya,
Ms. Sudeshna Basu Thakur,
Ms. Banani Bhattacharya

... For Respondent No.6.

Read order dated February 02, 2024. Affidavit-in-Opposition filed on behalf of the respondent/writ petitioner, in terms of the earlier order, be kept with the records. Learned advocate for the appellants says that Affidavit-in-Reply could not be prepared for unavoidable medical reasons. The appellants will be deemed to have denied and disputed the averments made in the Affidavit-in-Opposition.

Since we propose to dispose of the appeal and the connected application by the present order, for the sake of completeness, relevant portion of the earlier order dated February 02, 2024, is reproduced in this order:

“ It appears that on the basis of a complaint lodged by the respondent/writ petitioner, a stop work notice was issued to the appellants herein on July 18, 2023. Subsequently, proceedings were initiated under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 (in short 'KMC Act') being Demolition Case No. 0250-D/Borough-XIV/2023-24. Notice under Section 400(1) of the KMC was issued on October 3, 2023. Hearing was held. All the concerned parties participated. An order was passed by the Special Officer (Building), KMC on October 12, 2023. The order noted certain deviations from the sanctioned plan in so far as the impugned construction is concerned. The appellants were directed to demolish the deviated portions. It appears that the appellants duly carried out the demolition order and removed the unauthorized portions of the construction.

The respondent no.6 had filed a writ petition being WPA 8976 of 2023 in April, 2023, with the following prayers:

"a) A Writ in the nature of Mandamus do issue commanding the Respondent Authorities and each of their men, agents, and associates to act in accordance with law.

b) A Writ in the nature of Mandamus, do issue commanding the Respondent Authorities and each of their men, agents and associates to take steps to stop the illegal and unauthorized construction made by the Respondent no.6, 7 and 8 at Premises and/or Holding No.44/1, Siddhinath Chatterjee Road, Police Station-Parnashree, Kolkata-700034 with immediate effect.

c) A Writ in the nature of Mandamus do issue commanding the Respondent authorities and each of their men, agents and associates to demolish the illegal and unauthorized construction, if any made by the Respondent No.6, 7 and 8 in respect of the premises and/or holding no.44/1 Siddhinath Chatterjee Road, Police Station-

Parnashree, Kolkata-700034, with immediate effect.

d) A Writ in the nature of Certiorari do issue commanding the Respondent Authorities and each of their men, agents and associates to certify and transmit the case record before this Hon'ble Court so that conscionable justice may be done upon perusal thereof."

That writ petition came up for hearing before the learned Single Judge on September 22, 2023, when the learned Judge directed the concerned councillor to appear personally in Court on October 6, 2023. On October 6, 2023, when the matter came up before the learned Judge, His Lordship noted that the hearing before the Special Officer (Building) had been fixed on October 12, 2023. The learned Judge directed that "till demolition is made, no shop shall be started in the said shop room which is an unauthorized construction and no certificate of enlistment in respect of the said shop room would be issued to the private respondent by the KMC". The councillor who was present in Court was directed to keep watch on the shop room so that no business can be started there. It was further directed that "in the mean time if demolition order is passed it is to be demolished forthwith. If necessary using all machineries that are required".

The matter again came up before the learned Judge on October 17, 2023. The learned Judge recorded the following order :

"The Corporation authorities already intimated that after passing the order of demolition the order has been complied with by the Corporation authorities by demolishing the unauthorized construction; it has been done partly by the Corporation and partly by the private respondent himself.

However, learned advocate for the petitioner submits that all the

unauthorized construction has not been demolished. Therefore, he prays for a joint inspection in the premises.

I direct the Executive Engineer to hold a joint inspection upon giving prior notice to both the parties and to file a report further on 29th November, 2023 before this court when this matter will be taken up at 3 p.m.

The report filed today is kept on record."

Pursuant to the aforesaid order, due inspection was held and a report dated November 23, 2023, signed by the Assistant Engineer (C)/Building and Executive Engineer (C)/Building, Borough-XIII and XIV, was filed before the learned Judge on November 29, 2023.

The matter next came up before the learned Judge on December 18, 2023. The learned Judge recorded the following order :

"The petitioner has drawn my attention to the observation of the Special Officer in the first page of his order whereunder the remark that 'as per report from concerning borough - infringement statement of Building Rule 2009' one table has been given which was received by the Special Officer from the concerned Borough.

The Special Officer in his order dated 12.10.2023 directed demolition of two unauthorized portions. Accordingly one report has been filed by the Executive Engineer (C)/Building, Borough XIII and XIV and also the Assistant Engineer (C)/Building of the same boroughs dated 23.11.2023.

The petitioner is not satisfied with the report. However, as of now I grant liberty to the petitioner to make his comment as to the table as has been given in the first page of the

Special Officer's order (which is not an order but only an observation from the concerned department of Borough). The statement of the petitioner should also be in the form of a table for quick understanding of the facts. This statement is to be filed by the petitioner on 8th January, 2024. The statement of the petitioner has to be served upon the appearing parties before that date.

List this matter for further hearing on 8th January, 2024 under the same heading at 2 p.m."

On January 17, 2024, when the matter came up before the learned Single Judge, the order impugned in this appeal was passed by the learned Judge. The order reads as follows :

"Learned advocate for the petitioner has shown some deviations which are still there in the building concerned which has been, according to him, constructed unauthorizedly in respect of some portions.

Learned advocate for the Kolkata Municipal Corporation has submitted that the contention of the petitioner is not really understood by them.

Therefore, I direct the Director General (Building), KMC, to hold a meeting between the petitioner and the respondent nos. 6 to 8 by four weeks from date when the Executive Engineer (Building), Borough XIII and XIV, KMC, shall remain present. Minutes of this meeting is to be recorded properly which is to be filed before this court in the form of an affidavit.

It is made clear that no further extension would be granted.

If the Director General (Building), KMC, thinks fit, he may visit the site before or after holding the meeting upon notice to the petitioner and also to the private respondents.

The matter is adjourned for further hearing till 21st February, 2024 when it will appear under the same heading.
"

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

Appearing for the appellants, Mr. Mazumder, learned counsel submits that there was no reason to continue with the writ petition once the demolition order was implemented by the appellants. The Corporation authorities are satisfied that the demolition order has been carried out and given effect to. No unauthorized construction remains at the site in question. Merely on the basis of allegations made by the writ petitioner that he is dissatisfied with the report dated November 23, 2023 which was filed in Court on November 29, 2023, the learned Judge ought not to have passed the impugned order.

Learned advocate further submits that the writ petitioner did not challenge the Special Officer's order dated October 12, 2023, before any competent forum and, therefore, has accepted the said order. That order has attained finality and in fact, has been executed. Nothing further remains in the writ petition. The writ petitioner cannot be permitted to make a roving enquiry to try and fish out evidence to harass the appellants.

Learned advocate for the writ petitioner says that the appeal is not maintainable. That issue is kept open for the time being. He also disputes all the submissions made on behalf of the appellants. He says that the report dated November

23, 2023 itself would show that there still remains illegal construction at the site.

He says that he should be permitted to file affidavit-in-opposition to the stay petition. Let such opposition be filed within two weeks from date (February 16, 2024). Reply thereto, if any, be filed within a week thereafter (February 23, 2024).

List the matter four weeks hence (March 1, 2024)

In the mean time, let the Director General (Building), KMC hold the meeting proposed to be held on February 5, 2024. The writ petitioner and the appellants herein shall attend the meeting. If the Director General (Building) deems it necessary, he shall have a further local inspection conducted. A comprehensive report should be filed before us on the adjourned date by the Director General (Building), clearly indicating whether or not any further unauthorized construction remains at the site in question in the context of the order dated October 12, 2023, passed by the Special Officer (Building). If any local inspection is made, needless to say the same will be upon notice to the concerned parties. ”

Today, an order dated February 19, 2024, signed by the Director General (Building), Building Department, Kolkata Municipal Corporation, has been filed in Court under cover of a letter dated February 28, 2024, signed by the Assistant Engineer and Executive Engineer (C)/B, Borough-XIII & XIV. Let the same be kept with the records.

From the report, it appears that further local inspection was held by the Director General. The appellants and the respondent/writ petitioner participated in the proceedings before the Director General. The Director General passed the order dated

February 19, 2024, the operative portion whereof reads as follows:

“ At the time of inspection of the captioned premises it is revealed that all the unauthorized construction has been demolished by the owner of the captioned premises as shown in the Demolition Sketch Plan vide D-Case No 025-D/Br-XIV/23-24 and in compliance with the order of Special Officer (Building) dated 12/10/2023.

However, during inspection it is also found that one electric meter enclosure has been constructed at the mandatory open space of the captioned premises. Therefore, the owner of the captioned premises has been directed to shift the electric meter within the sanctioned space of the above mentioned premises. ”

In view of the aforesaid, it appears that the entire unauthorized construction has been demolished by the appellants. The appellants further say that the direction for shifting of the electric meter issued by the Director General by the aforesaid order dated February 19, 2024, is in the process of being carried out. If the meter room is an unauthorized structure, the same shall also be demolished by the appellants. We are told that it will take about a fortnight to complete that process. We grant three weeks' time to the appellants to complete the process. The appellants shall in writing intimate to the respondent/writ petitioner as also the appropriate officer in Kolkata Municipal Corporation once that process is completed. The Kolkata Municipal Corporation authorities shall hold a further inspection to ensure that the direction has been carried out.

In light of the above, we see no reason to keep the appeal pending. Learned advocate for the

respondent/writ petitioner says that there are issues regarding change of user of the premises in question by the appellants. He says that the appellants have converted the premises into commercial premises when the premises are residential in nature, without obtaining requisite permission from the Corporation. Such issue is beyond the scope of this appeal. The respondent/writ petitioner shall be at liberty to agitate such issue in accordance with law before the appropriate forum.

The appeal and the connected application stand disposed of accordingly.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

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