

08. 01.02.2024
bd. Ct.15

WPA 204 of 2016

Shyamal Mondal

-vs-

The State of West Bengal & Ors.

Mr. Sanjay Mukherjee ... for the petitioner.

Mr. Raghunath Chakraborty

Ms. Shomolima Sarkar ... for the respondent no.5

Mr. Arijit Dey ... for the KMC

Mr. Jayanta Samanta

Ms. Indumouli Banerjee ... for the State.

Affidavit-in-opposition filed on behalf of KMC is taken on record.

The writ petition centres around order of demolition dated 11th July, 2014 passed by the Special Officer (Building), Kolkata Municipal Corporation (hereinafter referred to as "KMC"). Petitioner has prayed for implementation of the order dated 11th July, 2014 of the Special Officer (Building). It has been submitted by Mr. Mukherjee, learned advocate representing the petitioner that the construction made by the respondent no. 5 at 126/1, Swinhow Lane is de-hors the relevant provisions of Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the "said Act of 1980") and no sanctioned plan was accorded by the concerned authority of KMC permitting the respondent no. 5 to

make such construction. It is submitted that stop work notice was issued under section 401 against the person responsible not to continue such unauthorised constructions at the aforesaid holding number but the same was not complied with thereafter a guard was posted. However, the person responsible continued with the constructions which led the Special Officer (Building) to decide the fate of such construction in connection with Demolition Case no. D/VII/54/13-14. It is also the case of the petitioner that in terms of the order of the coordinate Bench passed on this writ petition dated 6th July, 2018 whereby direction was given upon the KMC to act in accordance with the order of the Special Officer (Building) dated 11th July, 2014. It has further been submitted that though steps were taken to demolish the unauthorised construction but the demolition work is not complete. Only a whole has been made while carrying out the demolition work by the KMC, therefore the demolition work should be made complete strictly in consonance with the order of the Special Officer (Building) dated 11th July, 2014.

Mr. Chakraborty, learned advocate representing respondent no. 5 submits that against the order of the Special Officer (Building) dated 11th July, 2014 an appeal has been preferred before the Building Tribunal in terms of section 400(3) of the said Act of 1980 therefore prayer

has been made to direct the Building Tribunal to dispose of the appeal along with section 5 application expeditiously and before disposal of the appeal not to pass an order of demolition based on the order of the Special Officer (Building) dated 11th July, 2014.

It is also submitted that an application was also made before the concerned authority of the corporation dated 4th July, 2018 praying for review of the order passed by the Special Officer (Building) on 11th July, 2014. It is contended that though at the material point of time when the construction was made in 2012 the municipal commissioner was devoid of any power to regularise deviation/unauthorised constructions but subsequently 2015 Rules have been framed empowering the municipal commissioner to pass necessary order in order to regularise minor unauthorised constructions. According to the petitioner, while deciding this writ petition subsequent Rules empowering municipal commissioner to regularise minor unauthorised constructions in appropriate cases need to be applied in order to save the constructions made by the respondent no. 5.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials available on record this Court is required to examine the issue raised in this writ petition on the

basis of chronological facts since an issue has been raised on behalf of respondent no. 5 that if, during pendency of the appeal before the Building Tribunal direction is given upon the concerned authority of KMC to demolish the unauthorised construction the said appeal shall be rendered infructuous. Special Officer (Building) after considering the gamut of the issue passed an order on 11th July, 2014 directing the demolition of the construction made at the site in question. In terms of section 400(3) of the said Act of 1980 any person aggrieved by the order passed in terms of section 400(1) can prefer appeal before the Building Tribunal within thirty days from the date of order. Within the prescribed period of limitation respondent no. 5 did not prefer any appeal under section 400(3) subsequently on 5th January, 2016 petitioner filed this writ petition praying for implementation of the order of the Special Officer (Building) dated 11th July, 2014; the present writ petition was instituted nearly one and half years after the orders passed by the Special Officer (Building) directing demolition. During this period of approximately one and half years respondent no. 5 did not take any step to prefer an appeal under section 400(3). In the year 2018, nearly four years after the order passed by the Special Officer (Building) directing the demolition, appeal was preferred before the Building

Tribunal under section 400(3). In view of aforesaid backdrop this Court finds it inappropriate to grant opportunity to the respondent no. 5 to test the order before the Tribunal at this stage since the appeal is hopelessly time barred and no plausible explanation has been offered before this Court as to why the order of the Special Officer (Building) dated 11th July, 2014 was assailed before the Building Tribunal in the year 2018 albeit specific provision under section 400(3) is to prefer such appeal within thirty days from the date of order. It further appears from the conduct of the respondent no. 5 that appeal was preferred before the Tribunal in 2018 in order to frustrate this writ petition which amounts to abuse of process of law. Therefore the contention of the respondent no. 5 not to give direction upon the KMC to give effect to the order of the Special Officer (Building) dated 11th July, 2014 during pendency of the appeal stands negated.

On the merit of the order passed by the Special Officer (Building) it appears that the same does not suffer from any flaw. There is nothing on record which goes to show that prior to commencement of construction at the site in question sanctioned plan was obtained by the respondent no. 5 to make such construction and first floor was constructed. It has been found by the Special Officer (Building) that the act of

respondent no. 5 not only violates the relevant provisions of the said Act of 1980 but the same is contrary to Rules 62,69,70,133 and 134 of the Kolkata Municipal Building Rules, 2009. It is also recorded in the order dated 11th July, 2014 a notice under section 401 was issued and the local police station was also informed. But during inspection on 11th July, 2012 it was found that the respondent no. 5 resumed construction in violation of stop work notice which compelled the corporation to depute municipal guard.

In this regard this Court finds it apposite to rely upon the judgment of the Apex Court reported in **(2013) 5 SCC 336 (Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation & Ors.)**. Paragraph 2 of the said judgment is quoted below:-

“2. In the last four decades, the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in K. Ramadas Shenoy v. Town Municipal Council, Udipi, Virender Gaur v. State of Haryana, Pleasant Stay hotel v. Palani Hills Conservation Council, Cantonment Board, Jabalpur v. S.N. Awasthi, Pratibha Coop. Housing Society Ltd. v. State of Maharashtra, G.N. Khajuria v. DDA, Manju Bhatia v. NDMC, M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, Friends Colony Development Committee v. State of Orissa, Shanti Sports Club v.

*Union of India and Priyanka Estates
International (P) Ltd. v. State of Assam.”*

In view of the aforesaid discussion this Court does not find any anomaly in the order dated 11th July, 2014 passed by the Special Officer (Building).

However, before parting with the issue raised on behalf of respondent no. 5 needs to be addressed that subsequent Rules of 2015 which was brought in by way of an amendment permitted the concerned authority of KMC to regularise minor unauthorised constructions. However, such Rules of 2015 does not have retrospective effect. This Court is dealing with the constructions made by the respondent no. 5 in 2012; therefore said Rules of 2015 has no manner of application so far as the present case is concerned.

Accordingly, the concerned authority of KMC is directed to demolish the construction made by the respondent no.5 at premises no. 126/1, Swinhow Lane, under Ward No. 67 which has been constructed without sanctioned plan within six weeks from date.

The concerned authority of the KMC shall be at liberty to obtain assistance from the concerned police authorities in order to complete the demolition work and if the police authorities are

approached by the KMC, the police authorities are directed to provide necessary assistance including vacating the premises in question, if required. After completing of demolition work cost of demolition shall be recovered from the respondent no. 5.

With the aforesaid directions and observations the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)