

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

Present:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

MAT 280 of 2024

with

CAN 2 of 2024

With

A.P.O.T. 6 of 2024

Smt. Pritha Nandy

Vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Alok Kumar Ghosh
In APOT 6 of 2024 Mr. Arijit Dey

For the State : Ms. Tuli Sinha

For Respondent No.6 : Mr. Sumitavo Chakraborty
In APOT 6 of 2024

For the KMC : Mr. Biswajit Mukherjee
Mr. Gurudas Mitra
Ms. Suranjana Sarkar

For Respondent No.5 : Mr. Arindam Banerjee
In APOT 6 of 2024 Mr. Biswajib Ghosh

Heard On : 22.03.2024
Judgment Delivered On : 10.05.2024

Supratim Bhattacharya, J.:-

The instant appeal has been preferred against the order passed by the Ld. Single Judge of this Hon'ble Court dated 30.11.2023 in WPO 1351 of 2023 with WPA 5978 of 2023.

By the impugned order the Learned Judge dismissed the writ petitions on the ground that "...it does not appear that the repairing/ renovation work is in any manner contrary to the provisions of law; neither the same is impermissible in law. The Renovation / repairing work cannot be treated to be unauthorized."

1. Background facts:

- i) It would be necessary to advert to the facts underlying the present dispute.
- ii) As per the version of the appellant, the appellant namely Pritha Nandy and the sister-in-law of the appellant namely Annapurna Nandy who is the Respondent No. 11, are the joint owners of premises No. 99A, Bidhan Sarani Kolkata-700004. Sushanta Sutar who is the Respondent No. 10 was a tenant in respect of one shop room on the ground floor of the said premises. One Jiban Krishna Bhowmick was a tenant in respect of another shop room on the ground floor of the said premises and was carrying on business of readymade garments under the name and style 'New Sonar Kella' and on the death of the said Jiban Krishna Bhowmik his legal heirs namely Mrinal Kanti

Bhowmick, Malay Kanti Bhowmick, Suman Bhowmick, Mala Saha and Smt. Manju Roy who are the Respondents No. 5 to 9 respectively are running the said business.

- iii)** A suit for eviction has been filed by the landlords which is still pending.
- iv)** It has further been stated that after the death of Ashoke Kumar Nandy the husband of the appellant, the Respondents No. 5 to 9 in collusion with the Respondent No. 10 and with the indulgence of the Respondent No. 11 have illegally handed over possession of the shop room belonging to Jiban Krishna Bhowmick to the Respondent No.10. Thereafter the said Respondent No. 10 that is Sushanta Sutar has forcibly demolished the load bearing partition wall in between his shop room and the shop room which was being possessed by the Respondents No. 5 to 9 ignoring the objections raised by the appellants and thereby causing damage to the building. Against such illegal acts of the said Sushanta Sutar that is the Respondent No. 10 the appellant lodged a complaint dated 28.10.2022 before the Municipal Commissioner as well as the police authorities and several requests were made to the said authorities for taking necessary steps against the said Respondent No. 10 but all have been in vain.

- v) Thereafter the appellant moved a writ petition against the non-consideration of her complaint by the concerned authorities being WPA No. 5978 of 2023 and the said writ petition has been finally disposed of by the impugned order.
- vi) The appellant herein has filed a Suit against the Respondent No. 10 and the Respondent No. 11, being Title Suit No. 464 of 2022 pending before the Ld. 10th Bench of the City Civil Court at Calcutta praying for a declaration that the Respondent No. 10 has no right to convert the tenanted road side shop room into a big room by demolishing the load bearing partition wall of the adjoining road side shop room.
- vii) The appellant has also filed a suit against the Respondent No.11 being Title Suit No. 472 of 2022 which is also pending before the Ld. 10th Bench City Civil Court Calcutta praying for partition of the suit premises being premises No. 99A and 99C Bidhan Sarani, P.S. Shyampukur.

2. Submissions:

We have heard at length Mrs. Kaberi Ghosh (Dey), Ld. Counsel for the appellant, Ms. Tuli Sinha, Ld. Counsel for the State, Mr. Haridas Das, Ld. Counsel for the Respondent No. 6, Mr. Biswajib Ghosh being assisted by Ms. Anuska Pal Ld. Counsel for the Respondent No. 10 and Mr. Sumitava Chakraborty, Ld. Counsel for Respondent No.11.

The main contentions urged are recorded as under:

A) On behalf of the appellants:

i) The entire roof measuring 1200 sq. ft. has been covered by erection of several iron columns length of which are about 15 feet each together with several iron joists of same length and because of such erection of iron columns together with iron joists there is heavy load added on the roof of the said old building. Ld. Counsel has further submitted that this nature of erection comes within the definition of 'building' as has been stated in Section 2 (5) read with Section 390 (1) Clauses (g) to (m) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as *the KMC Act*).

ii) Ld. Counsel has further submitted that the Respondent No. 5 being a tenant had two shop rooms side by side on the ground floor of the building and the said tenant has dismantled the load bearing walls and also the partition walls and has converted three shop rooms into one after managing to obtain another adjoining shop room from another tenant. She has further submitted that altogether three rooms in the ground floor have been converted into one room measuring about 653 sq. ft.

iii) Ld. Counsel has also submitted that the two-storeyed building is a brick built one and the entire structure stands upon the load bearing walls and the said load bearing walls having been removed, the same is causing immense danger to the structure.

iv) Ld. Counsel has further submitted that a partition suit being Title Suit No. 472 of 2022 has been filed by the appellant, which is pending and an order of *status quo* dated 08.03.2022 is in force.

v) Ld. Counsel has also submitted that another suit praying for declaration has been filed being Title Suit No. 464 of 2022, against the Respondents No. 5 and 6 herein. He has further submitted that in the said suit an order of *status quo* has been granted vide order dated 27.02.2022.

vi) The Ld. Counsel has also submitted that in spite of the directions of the Ld. Trial Court to maintain *status quo* in respect of nature, character and possession of the suit premises the Respondents No. 5 and 6 herein have gone ahead with construction work in the said building in collusion and in connivance with the engineers of the building department and have obtained a notice under Section 411(1) of the KMC Act, which pertains to KMC's power to direct removal of a dangerous building or dangerous portion of a building.

vii) The Ld. Counsel has also submitted that the Respondents No. 5 and 6 taking advantage of the issuance of the said notice dated 12.03.2022 in violation of the Order of the Civil Court have deliberately and willfully made the aforementioned unauthorized construction.

viii) The Ld. Counsel has also submitted that the unauthorized construction as complained does not come within the purview of the notice under Section 411 (1) of the *KMC Act*.

ix) The Ld. Counsel has also submitted that the appellant/writ petitioner having no other alternative as regards the inaction of the police authorities had filed a writ petition earlier being WPA No. 5168 of 2022. In the said writ petition the Hon'ble Single Judge was pleased to pass an order directing the Officer-in-Charge, Shyampukur Police Station to ensure that no construction or demolition takes place and the order of *status quo* passed in TS No.472 of 2022 is maintained till the issues get decided by the Ld. Civil Court.

x) The Ld. Counsel has also submitted that another writ petition being WPA No. 26631 of 2022 was filed by one Partha Nandy and the said writ petition was disposed of by a learned Judge of this Court directing the officials of the Shyampukur Police Station to strictly enforce the interim order passed by the Ld. Civil Judge and further directed to ensure that there is no violation of the said order.

xi) The Ld. Counsel has also submitted that for violation of the orders of the Ld. Civil Judge, passed in the Title Suits being No. 472 of 2022 and 464 of 2022 two contempt applications have been filed and the said contempt applications are still pending for disposal.

xii) The Ld. Counsel has also submitted that the learned Single Judge has failed to consider the case in hand in its true perspective and has thus granted no relief to the petitioners in the instant case.

xiii) The Ld. Counsel has also submitted that the learned Single Judge has committed an error by accepting the report of the Director General, Building and has failed to appreciate the case of the appellant.

xiv) The Ld. Counsel banking upon the aforesaid facts and circumstances has prayed for allowing the instant appeal by setting aside the impugned order.

B) On behalf of the respondents:

Ld. Counsel appearing on behalf of the respondents has vehemently opposed the contentions of the Ld. Counsel appearing on behalf of the appellants and has submitted the following:

i) That there has not been any violation of the Building Rules framed under the KMC Act. The report of the Director General, Building, has specifically stated that the said Director General, Building, was present at the time of inspection and after spot verification it has been found that there are a few columns and steel joists existing on the roof.

ii) Ld. Counsel has submitted that in the report of the Director General it has been specifically mentioned that the steel joists appear to be standing since long.

iii) It has also been harped upon that the said Director General has opined that the structure existing at the top of the building cannot be treated as unauthorized and demolition of the internal partition walls also cannot be considered to be unauthorized.

iv) Ld. Counsels appearing on behalf of the respondents have pointed out that in the said report of the Director General it has been categorically mentioned that the said Director General had noticed that the old existing building was thoroughly renovated to secure the same, on the basis of the notice served under Section 411 (1) of the KMC Act, for the safety and security of the inmates of the said building and the public at large.

v) Relying on the aforesaid facts the Ld. Counsel prayed for dismissal of the instant appeal and thereby affirming the impugned order passed by the learned Single Judge.

6) Questions for consideration:

Though various contentions have been canvassed by the parties to the dispute, however if this Court is to decide those issues the following questions are to be considered at the threshold. Those are as follows:

i) Whether the Respondent No. 10 has made construction in violation of the Building Rules framed under the KMC Act?

ii) Whether the appellant is entitled to any relief as sought for in the writ petition, in spite of there being title suits pending in between the contending parties therein?

7) Analysis and consideration:

Issue No. 1

- i)** On going through the report dated 16.10.2023 of the Director General (Building) Building Department, the Kolkata Municipal Corporation it transpires that in compliance with the order of this Court, the said Director General had inspected the premises in question on 16.10.2023 with prior intimation to all the parties and at the time of inspection all the concerned parties were present. It has further been stated that there exists a two-storeyed old building which is being used both for residential and commercial purpose and after thorough spot inspection it has been found that few columns of steel joists, are in existence on the roof of the two-storeyed building and the steel joists columns appear to be standing thereon since long. It has further been specifically stated that the structure at the top cannot be treated as unauthorized construction.
- ii)** In the said report it has further been stated that the demolition of the internal partition walls is not considered as an unauthorized construction.

- iii)** It has been categorically mentioned that the structure on the top of the roof and the demolition of the internal walls cannot be treated as unauthorized.
- iv)** Through the said report the said Director General, Building has opined that during inspection it has been found that the two-storeyed old existing building has been thoroughly renovated to secure the building on the basis of the notice served under Section 411 (1) of the KMC Act, for safety and security of the inmates of the building and the public in general.
- v)** Hence, on going through the report filed by an expert in regard to the dispute it is apparent that there has been no violation of the provisions of the KMC Act. The issues raised by the appellant cannot be said to have any basis at all.
- vi)** From the said report it is crystal clear that there has not been any unauthorized construction and the renovation which has been made has been done to secure the building keeping in mind the safety and security of the inmates of the building and the public at large.

Issue No. 2

- i)** The Second issue in hand, that there being title suits pending between the contending parties as regards to the said building in respect of which the instant writ petition has been filed and against the passing of the impugned order, the instant appeal having been

preferred this Court is of the view that the appellant was not justified in filing the writ petition in the facts and circumstances of the case.

ii) The Hon'ble Single Judge while disposing of the writ petitions being No. WPO 1351 of 2023 with WPA 5978 of 2023 and passing the impugned order has dealt with all the aspects at length and this Court finds no reason to interfere with any of the said issues dealt with.

8) As evidenced from the discussions hereinabove the judgment impugned before us withstands/sustains the scrutiny. This being the case the judgment and order of the Ld. Single Judge stands affirmed.

9) The appeal being **MAT 280 of 2024** is dismissed.

10) Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

11) Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)

Arijit Banerjee, J. :-

1. While I completely agree with the conclusion reached by my learned Brother, I take the liberty of adding a few words.

2. The appellant had filed two writ petitions, one on the Original Side of this Court being WPO 1351 of 2023 and the other on the Appellate Side being WPA 5978 of 2023. The cause of action pleaded and the reliefs claimed in the two writ petitions were similar. Therefore, the learned Single Judge directed the two matters to be listed together and disposed of the two writ petitions by the common judgment and order which is sought to be impugned in the present appeal.

3. The appellant and the respondent no. 11 herein are co-owners of the property in question. The other private respondents appear to be tenants/occupants of the said premises.

4. It seems that Kolkata Municipal Corporation (in short 'KMC') found the said premises to be in a ruinous state and issued notice under Section 411(1) of the Kolkata Municipal Corporation Act, 1980 (in short the 'KMC Act'), calling upon the owners of the property to demolish the irreparable portions and to repair the portions that were capable of being repaired. This was naturally for the safety and security of the occupants of the concerned building as also the people in the vicinity thereof.

5. It appears that repair works were carried out. The appellant however, being of the view that under the garb of repairs, unauthorized construction had been made by the respondents including the co-owner of the property, made representations to KMC. With the grievance that such representations were not receiving the attention of the competent authority in KMC, the appellant

approached the learned Single Judge by filing the two writ petitions referred to above.

6. The learned Judge called for a report from the Director General (Building) Building Department, KMC, after holding local inspection of the premises in question. Such report was filed. The learned Judge found from such report that the Director General (Building), is of the opinion that no unauthorized construction has been made at the said premises.

7. The content of the report has been discussed by my learned Brother in His Lordship's judgment and to avoid prolixity. I refrain from dilating on the same.

8. The learned Judge dismissed the writ petition taking note of the contents of the report filed by the Director General (Building). Being aggrieved the writ petitioner is before us by way of this appeal.

9. My learned Brother has noted the arguments advanced on behalf of the parties and concluded that there is no error in the order impugned. I am completely in agreement with my learned Brother. The learned Single Judge after taking into account the opinion of the expert, i.e., the Director General (Building), KMC, rightly dismissed the writ petition.

10. I have also independently considered the relevant Building Rules and provisions of the statute. The nature of construction complained of by the appellant/writ petitioner would not seem to require any permission from KMC. The demolition of a partition wall is permitted under the provisions of the KMC

Act read with the Building Rules without permission of the competent authority.

11. The order of the learned Single Judge is a reasoned one and I find no infirmity in the reasoning of or conclusion reached by the learned Judge. The appeal deserves to be and is dismissed.

I Agree.

(Supratim Bhattacharya, J.)

(Arijit Banerjee, J.)