

19.02.2024
Item No.6.
Court No.6.
AB

M.A.T. 327 of 2024
With
CAN 1 of 2024
CAN 2 of 2024

Purbanchal Estate Pvt. Limited
Vs
Devendra Kumar Sarawgee & Others

Mr. Suman Kumar Dutt,
Mr. Sarosij Dasgupta,
Mr. Prasanta Naskarfor the Appellant.

Mr. Abhishek Haldar,
Ms. Pramiti Bandopadhyay,
Mr. Swadesh Misra,
Ms. Madhurima Basu
.....for the Respondent Nos.1 to 3/
Writ Petitioners.

Mr. Atish Biswas,
Ms. Debangana Dey Nayakfor the KMC.

Mr. Abhrajit Mitra, Sr. Adv,
Mr. Subhasish Pyne
....for the Respondent Nos.10 to 13.

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

In re : IA CAN 2 of 2024

This is an application for condonation of delay of
109 days in filing the appeal. Causes shown being
sufficient, the delay is condoned.

I A CAN 2 of 2024 is, accordingly, disposed of.

In re : MAT 327 of 2024, IA CAN 1 of 2024

A judgement and order dated September 20,
2023, whereby the writ petition of the respondent
nos.1 to 3 herein, being WPA 17311 of 2023, was

disposed of by a learned Judge of this Court, is under challenge in this appeal, at the instance of the respondent no.7 in the writ petition.

It appears that the appellant, the writ petitioners and the respondent nos.10 to 13 herein are co-owners of a property situate at 3, Alipore Park Place, Kolkata – 700029, Ward No.74, Borough–IX of Kolkata Municipal Corporation (in short “KMC”).

In the year 2021, the present writ petitioners had approached a learned Judge of this Court by filing WPA 14428 of 2021 alleging unauthorized construction at the aforesaid premises at the instance of amongst others, the appellant herein. The complaint was that a lift was being installed without obtaining requisite permission from KMC. A report was filed by KMC. The learned Judge observed on the basis of the report that some unauthorized constructions and preparations for installation of a capsule lift had been made. A stop work notice had been issued. It was submitted before the learned Judge that the application of the person responsible for permission for installation of the lift was pending before the KMC Authorities.

The learned Judge disposed of the writ petition by making the following observations and passing the following directions:

“Thus such repairs as per the version of the Corporation itself may continue, but the respondent nos.6 to 10 shall indicate in writing to the Kolkata Municipal

Corporation the nature of repairs undertaken exclusively with regard to the premises. Such repair shall not have any connection at all with the construction of the capsule lift. No construction with regard to the capsule lift shall be permitted till the Corporation decides the pending application for permission to install a lift of the respondent nos.6 to 10 in accordance with law.

The observations made in this order shall not be construed as the decision on the right of the petitioner over the premises in question.

The order is only passed to the limited extent of construction of the capsule lift without a valid sanction or approval from the Kolkata Municipal Corporation shall not be permitted.

The pending application shall be disposed of by the competent authority in accordance with law upon hearing the respondent nos.6 to 10 as also the petitioners on the basis of the documents to be supplied by the parties, within a period of six weeks from the date of communication of this order. The claim of co-ownership of the petitioners and their right to object will also be taken into consideration on the basis of the records of the courts and other relevant documents.”

It further appears that the present writ petitioners once again approached this Court by filing WPA 7865 of 2023 again making allegations of unauthorized construction at the instance of the present appellant. The learned Judge found that a representation had been made by the writ petitioners before the KMC Authorities but the same did not contain sufficient particulars. The learned Judge permitted the writ petitioners to make a comprehensive representation before KMC highlighting the details of the alleged unauthorized construction and directed KMC to dispose of the same, if made,

after giving reasonable opportunity of hearing to all necessary parties and by passing a reasoned order.

The present writ petition has been filed by the same persons, who had filed the earlier two writ petitions. Again, complaint was made before the learned Judge that unauthorized construction has been made by the appellant herein. The learned Judge noted that the objection of the writ petitioners filed in respect of the alleged unauthorized construction is pending before the KMC Authorities. Accordingly, the learned Judge disposed of the writ petition with the following observations and directions:

“The writ petition is accordingly disposed of by directing the Municipal Commissioner or his delegate to consider and dispose of the representation made by the petitioners strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioners within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties including the petitioners immediately thereafter.

A spot inspection shall be conducted to ascertain the nature and extent of unauthorized construction.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioners and all

points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

Till a decision is taken by the aforesaid respondent, the Corporation will not take any steps for regularizing the unauthorized construction, if any as alleged.

In the event the Corporation exists the regularized unauthorized construction, then an opportunity of hearing be given to all the necessary parties prior to passing a final order.”

Being aggrieved, the respondent no.7 in the writ petition has come up by way of this appeal.

Mr. Dutt, learned Counsel appearing for the appellant says that since the writ petition was disposed of on the very first day at the motion stage, all relevant documents including previous orders of this Court could not be placed before the learned Judge. The order impugned is in a sense inconsistent with the first order dated November 16, 2021, passed on the first writ petition. In fact, that order has been implemented in the sense that the Competent Authority in KMC considered the entire matter and passed an order dated April 28, 2023. A steel structure on the roof of the concerned property has been directed to be removed. Remaining part of the concerned construction and the lift were allowed to be retained on payment of fees under Section 400(1). The retention fees were also assessed by KMC vide memo dated July 7, 2023. Payment of such fees has also been made by the appellant. Our attention was drawn

to a receipt dated August 9, 2023, issued by KMC against payment of retention fees.

Mr. Dutt, learned Counsel says that on the strength of the order impugned, the KMC Authorities are proposing to hold a joint inspection of the property, once again. The only endeavour of the writ petitioners is to harass his client. His client has no objection if the KMC Authorities conduct the inspection and in fact such inspection was conducted by KMC Authorities on 16.02.2024. Furthermore, the impugned order of the learned Single Judge does not say that joint inspection will be held.

Mr. Halder, learned Advocate for the respondents/writ petitioners says that his clients being co-owners of the property in question, they were entitled to be present at the inspection that KMC claims to have conducted on February 16, 2024. However, his clients were not permitted to be so present. Further, no steps for regularization of any unauthorized construction can be taken without the concurrence of the writ petitioners since they are co-owners of the property in question.

Mr. Abhrajit Mitra, learned Senior Counsel representing the respondent nos.10 to 13 made submission in support of the appeal.

We enquired of the learned Counsel appearing for KMC as to whether any further inspection of the property in question is necessary. He says, on

instructions, that no further inspection is necessary. He further says that the steel structure that the Special Officer (Building) had directed to be removed by his order dated April 28, 2023, is still there and has not been brought down.

We are not concerned with the aforesaid. It will be upto KMC Authorities to take appropriate action in respect of any unauthorized construction in accordance with law.

Mr. Halder, learned Advocate for the writ petitioners says that his clients were not aware of the order permitting regularization of certain illegal constructions and the lift. The order of the Special Officer (Building) dated April 28, 2023 was never served on the writ petitioners. We only clarify that the writ petitioners will be at liberty to challenge such order, in accordance with law, before the appropriate forum, if they are entitled to do so in law.

We find that the order of the learned Single Judge has been implemented to the extent that an inspection has already been held by KMC. KMC will now pass necessary orders and take necessary action in accordance with law keeping in loop the appellant and the writ petitioners as well. If KMC proposes to regularize any further unauthorized construction at the said premises, the same shall only be done after affording opportunity of hearing to the appellant and the writ petitioners herein.

The order under appeal will be construed in the light of the observations made in this order.

The appeal and the connected application stand disposed of.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

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

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)