

11.03.2024
Item No.04
Court No.6.
S. De

M.A.T. 466 of 2024
With
I.A. No. CAN/1/2024
I.A. No. CAN/2/2024

Birbal Kumar Ray.
Vs
The Kolkata Municipal Corporation & Ors.

Mr. Rishabh Ahmad Khan,
Md. Nazish Khan,
...for the appellants.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
...for the K.M.C.

By consent of the parties, the appeal and the connected applications are taken up together for hearing.

In re : I.A. No. CAN/1/2024

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

I.A. No. CAN/1/2024 is, accordingly, disposed of.

In re : MAT 466 of 2024 & I.A. No. CAN/2/2024

A judgment and order dated January 25, 2024, whereby the appellant's writ petition being WPA 1924 of 2024, was dismissed by a learned Judge of this

Court, with costs assessed at Rs. 35,000/- payable to Kolkata Municipal Corporation, is the subject matter of challenge in this appeal.

Admittedly, the appellant has raised a G+2 storeyed building and some further construction on the roof of the second floor at premises no. 49/5/H/143, Karl Marx Sarani, Kidderpore, Kolkata-23, without obtaining any sanctioned plan therefor from Kolkata Municipal Corporation (in short "KMC"). The premises suffered a demolition order. For implementation of such demolition order, KMC issued a notice under Sections 544 and 546 of the KMC Act, 1980, calling upon the occupants thereof to vacate the premises.

Before the learned Single Judge the appellant submitted that no notice under Section 400(1) of the KMC Act was served on him. The learned Judge found from the records that this was an incorrect submission. The learned Judge dismissed the writ petition with costs and directed KMC to proceed expeditiously and urgently with the demolition activity of the unauthorized construction.

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned counsel for the appellant as also learned counsel for the KMC.

Learned advocate for the KMC says that a date was fixed for demolishing the unauthorized construction but adequate police personnel were not available on that date. Therefore, the demolition schedule had to be deferred.

Learned advocate for the appellant fairly concedes that the impugned construction is not supported by any sanctioned building plan. He however, says that in the same complex and/or in the vicinity of the impugned structure, there are several buildings which have been brought up illegally without obtaining permission from KMC. KMC should not only demolish the impugned construction involved in the present matter which was raised by the appellant, KMC should take similar action against all the illegal constructions in that locality.

We, in principle, agree that KMC should not single out any particular illegal construction for demolition. It should take appropriate action against all buildings that it finds to have been constructed without its permission.

However, presently we are concerned with only one such construction. Learned advocate for the appellant says that the building in question is occupied by about twenty people. Some time may be given for them to vacate the premises and find alternative accommodation.

Purely on humanitarian grounds, we grant two months' time to the appellant to have the building in question vacated and handed over to KMC officers for them to carry out the demolition activities. This order is however subject to the appellant filing an undertaking in the form of an affidavit within a week from date with the Registrar General of this Court, to the effect that he shall ensure that the building in question is vacated and peaceful vacant possession thereof is made over to KMC officers within two months from today i.e. March 11, 2024. A copy of the undertaking be made available also to the concerned officer in KMC. If such affidavit is not filed within the time period prescribed above, this order shall automatically stand recalled and vacated and KMC will forthwith proceed to demolish the building in question.

KMC is directed to paste the demolition order and the notice under Sections 544 and 546 of the KMC Act 1980 at a conspicuous place on the outer wall of the building in question so that the same may serve as a notice to the public at large including the occupants of the building in question. A copy of the instant order be also put up on the outer wall of the building in question by KMC. We further clarify that in the event of the appellant complying with this order, KMC shall demolish the building in its entirety upon being handed over vacant possession by the appellant

at the end of two months from date or before. In the event the appellant fails to file the undertaking as directed above, upon the expiry of a week from date, the KMC shall proceed to demolish the building.

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

MAT 466 of 2024 is disposed of along with the application being I.A. No. CAN 2 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)