

06. 29.01.2024
bd. Ct.15

W.P.A. 5186 of 2015
IA No. CAN 1/2015 (Old No. CAN 12173/2015)
CAN 3/2018 (Old No. CAN 1100/2018)

Chandrachur Biswas & Ors.

-vs-

The Kolkata Municipal Corporation & Ors.

Mr. Shaunak Ghosh

Mr. Rajib Mullick

... for the petitioners.

Mr. Swapa Kumar Debnath

Mr. Dilip Kumar Chatterjee

Ms. Tanushree Dasgupta

... for the KMC

The writ petition is filed *inter alia* challenging order dated 30th January, 2009 passed by the Special Officer (Building) whereby person responsible (PR) was permitted to retain the unauthorised construction made at 18 B, Pasupati Bose Lane, Ward No. 07, Borough-I under the jurisdiction of Kolkata Municipal Corporation.

Learned advocate representing the petitioners while questioning the order dated 30th January, 2009 has submitted the said impugned order is without jurisdiction since the concerned authority of Kolkata Municipal Corporation was not authorised to regularise unauthorised constructions and the concerned authority of Kolkata Municipal Corporation illegally directed the person responsible to pay charges for raising unauthorised constructions.

Substituted respondent no. 10 and two other private respondents being respondent nos. 9 and 11 are not represented today but KMC is represented.

Affidavit of service filed today on behalf of the petitioners is taken on record.

It has been submitted on behalf of KMC that the impugned order dated 30th January, 2009 passed by the Special Officer (Building) is an order under section 400 of the KMC Act, 1980 therefore the same is an appealable order under section 400(3).

Having considered the submissions made on behalf of the parties and on perusal of the impugned order dated 30th January, 2009 and taking note of the provisions as contained under section 400(3) of the KMC Act, 1980 it appears that the order in question is an appealable order against which the writ petitioners are required to approach the appellate forum.

In view of availability of alternative efficacious speedy remedy the present writ petition is disposed of thereby granting leave to the petitioners to file an appeal before the appellate authority under section 400(3) of the KMC Act, 1980 within fortnight from date. If, the appeal is preferred within the period of fortnight against the order dated 30th January, 2009 then the Municipal Building Tribunal shall decide the appeal expeditiously but not later than four months from the date of instituting the appeal. However, it is made clear if the appeal is preferred within fortnight from date the point of limitation shall not be the relevant consideration in deciding the appeal and appeal needs to be decided on merit

since petitioners filed this writ petition in 2009 on the Original Side and same was subsequently converted to a writ petition on the Appellate Side of this Court.

Interim order passed earlier stands vacated. However, status-quo with regard to the construction at premises no. 18 B, Pasupati Bose Lane shall be maintained by the parties till three weeks from date and if appeal is preferred within fortnight from date by the petitioners herein status-quo shall continue till disposal of the appeal by the Municipal Building Tribunal. If, petitioners fail to file appeal within the prescribed time interim order shall stand vacated after three weeks.

Applications, if pending also stand 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.)