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19-03-2024
(Ct. no.06)
debajyoti

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

**MAT 518 of 2024
+
IA NO:CAN/1/2024**

**Sankar Mandal
Vs.
Kolkata Municipal Corporation & Ors.**

Mr. Debdutta Basu,
Mr. Souvik Sen,
Ms. Moumita Nandan
... For the Appellant.

Mr. Alak Kumar Ghosh,
Mr. Atis Kumar Biswas
... For Kolkata Municipal Corporation.

Mr. Arindam Banerjee,
Mr. Bimalendu Das,
Ms. Arpita Saha,
Mr. Shomrik Das
... For Respondent Nos.7 & 8.

A judgment and order dated February 27, 2024, whereby the writ petition of the respondent nos.7 and 8 herein being WPA 16461 of 2023 was disposed of by a learned Judge of this Court, is under challenge in this appeal at the instance of the private respondent in the writ petition.

The writ petitioners approached the learned Single Judge with the grievance that the private respondent in the writ petition, i.e., the appellant herein, was raising unauthorized construction touching the boundary wall of tower four of the multi-storeyed complex called South City Apartment on Prince Anwar Shah Road, Kolkata. It was submitted that the representation made before Kolkata

Municipal Corporation (in short 'KMC') did not receive the attention of the Competent Authority.

The learned Judge recorded the submission made on behalf of the private respondent that the impugned construction is being made in accordance with a sanctioned plan.

On behalf of KMC, it was submitted that inspection revealed that the person responsible had constructed a two-storeyed structure without obtaining any sanction from KMC. Stop work notice under Section 401 of the KMC Act, 1980 was issued on May 24, 2023. Action under Section 400(8) of the KMC Act, for demolition of the structure, was sought to be taken on September 21, 2023. But the same was not successful as the building was found to be fully occupied. The learned Judge noted from the supplementary affidavit filed by the writ petitioners that during pendency of the writ petition, an additional storey had been added to the unauthorized construction.

The learned Judge disposed of the writ petition with the following observations and directions:

“ The engineers of the Corporation after invoking the provision of Section 400(8) of the Act ought to have taken prompt necessary steps to prevent the private respondent from carrying on any further construction and at the same time should have taken positive steps for implementation of the order of demolition passed under Section 400(8) of the Act. None of the above has been done.

On the contrary, the person responsible continued with the unauthorized construction and presently the structure is occupied. It is the

duty and responsibility of the Corporation to ensure that the order of demolition is executed without any further delay.

The Officer-in-Charge, Jadavpur Police Station is directed to take necessary steps to vacate the unauthorized construction so that the Corporation can demolish the same under Section 400(8) of the Act.

The occupiers of the unauthorized construction are restrained from interfering with the men and agents of the Corporation at the time of implementing the order of demolition.

The unauthorized construction shall be brought down at the earliest but positively within a period of sixty days from the date of communication of this order. ”

Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

Learned advocate for the appellant says that no notice under Section 400(1) of the KMC Act was ever served on him or any other occupant of the building in question. The stop work notice was also not served on the appellant. The appellant is in occupation of a portion of the building from where he runs a small shop, for the last 30 years or so. He has inherited that shop room from his father. He does not even know who the owner of the building is. He says that nobody also collects rent from him. Learned counsel says that in the facts and circumstances of the case, there was no legitimate reason for KMC to press into service Section 400(8) of the KMC Act, 1980. There is no emergency in the matter and that emergency provision ought not to have been invoked.

We have not called upon the respondents to make submission.

We enquired of learned advocate for the appellant if there was a sanctioned plan supporting the impugned construction. He very fairly said that he is in no position to produce any such plan.

We have noted that the appellant has been, according to him, in occupation of a portion of the building for a very long time. However, that would not render legal or authorized a structure, which is illegal and unauthorized *ab initio*. It is high time that the municipal authorities wake up and take due action to identify and remove illegal constructions, which have assumed alarming proportions in the city.

KMC submitted before the learned Judge that the impugned structure is not backed by any sanctioned plan. No sanctioned plan could be produced by the appellant. The only inference is that can be drawn is that the impugned construction is an unauthorized one and ought not to be permitted to stand even for a day.

We find no infirmity in the order of the learned Single Judge. The appeal and the connected application are, accordingly, dismissed. There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)