

02. 02.04.2024
Court No.6
(Tanmoy)

MAT/626/2024

**RAJ KUMAR SINGH AND ANR.
VS
THE STATE OF WEST BENGAL AND ORS.**

**WITH
IA NO: CAN/1/2024**

Mr. Srijib Chakraborty, Adv.,
Mr. K.M. Hossain, Adv.,
Mrs. Paramita Pal, Adv.,
Mr. Soumajit Sen, Adv.

...for the appellants.

Mr. Subhrangsu Panda, Adv.,
Ms. Ina Bhattacharyya, Adv.

...for Kolkata Municipal Corporation.

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

A judgment and order dated March 28, 2024, whereby the writ petition of the appellants herein being WPA 9021 of 2024, was dismissed by a learned Judge of this Court, is assailed in this appeal filed by the writ petitioners.

The appellants approached the learned Single Judge challenging a notice of engagement dated March 14, 2024, issued by Kolkata Municipal Corporation (in short, 'KMC'), under Sections 544 and 546 of KMC Act, 1980, intimating the writ petitioners that the KMC people will be entering the premises no. J-474/C/1, Paharpur Road, Ward No. 134, Borough-XV, Kolkata, for the purpose of demolishing the unauthorized structure

as directed to be demolished by the Special Officer (Building) *vide* order dated July 7, 2023, following demolition proceedings under Section 400(1) of the KMC Act, 1980.

The appellants submitted before the learned Single Judge that the order of the Special Officer (Building) has been carried in appeal before the Municipal Building Tribunal by way of B.T. Appeal No. 212 of 2023, which is pending consideration and the next date of hearing has been fixed in the month of April, 2024. Prayer was made for a direction on KMC to defer the demolition activities till the appeal is decided by the Tribunal.

The learned Judge perused the order of the Special Officer (Building) and noticed that the extent of unauthorized construction is 1141.867 square meters. There is a sanctioned building plan for erection of a G+4-storeyed building, but, the learned Judge observed, the building has been constructed in gross deviation from the sanctioned plan. The mandatory side open spaces on all four sides have been infringed. The floor area ratio has been enhanced by erection of RCC columns in the open spaces. There is unauthorized construction on all floors of the building. The learned Judge dismissed the writ petition with the following observations:-

“The time to execute the order of demolition expired long back. The petitioners submit that an appeal has been preferred before the appellate forum. It is settled law that mere filing an appeal does not act as stay of the order appealed against.

In the present case, it appears that massive unauthorised construction has been made which has been directed to be demolished. The person responsible for making construction ought to have been obtained an order of stay within the time limit as mentioned in the order of demolition. As on date, there is no order staying operation of the order of demolition.

The Court does not find any error on the part of the Corporation in taking steps to implement the order of demolition. There is hardly any scope on the part of the plan sanctioning authority to regularize the massive unauthorised construction to the extent of 1141.867 sq. meters by infringing upon all the mandatory side open spaces.

No amount of leniency or mercy ought to be shown to such unscrupulous and dishonest builders who raise constructions in deviation of the plan sanctioned.

The Court is not inclined to exercise jurisdiction in the matter. The men and agents of the KMC are directed to proceed with the demolition work and continue the same on day to day basis till the entire construction is brought down.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Mr. Chakraborty, learned Advocate appearing for the appellants/writ petitioners, says that the statutory appeal against the order of the Special Officer (Building) will become infructuous if some breathing space is not granted to the appellants to try and obtain an *interim* protective order from the Tribunal. The next hearing has been fixed on April 9, 2024. At least for a fortnight the demolition activities should be stayed to grant an opportunity to the appellants to obtain an *interim* order from the Tribunal.

To our query as to when the appeal was filed before the Tribunal, Mr. Chakraborty says on instruction that the statutory appeal was filed on November 18, 2023,

with an application for condonation of delay. Therefore, we see that the appeal was presented much beyond the time period prescribed in the statute. Even from November 18, 2023, till date, the appellants herein have not been able to obtain any *interim* protective order from the Tribunal. We cannot say that the appellants have been diligent in the matter.

We find from the records that substantial unauthorized construction has been made by the appellants. We see no infirmity in the order of the Special Officer (Building) and hence we find no deficiency in the order of the learned Single Judge refusing to interfere with the order of the Special Officer (Building). Citizens, who have scant regard for the law of the land, deserve no sympathy from the Courts, far less a Court of equity which the Writ Court is. The appellants have flouted the applicable Building Rules. No unauthorized construction can be allowed to stand. The message should go loud and clear to all concerned that ultimately it does not pay to raise illegal constructions and nobody can violate the law of the land with impunity.

We see no reason to interfere with the order under appeal. The appeal being MAT/626/2024 and the connected application being IA No: CAN/1/2024 fail and are dismissed.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)