

05.04.2024
Item No.17
Court No.6.
S. De

M.A.T. 658 of 2024
With
I.A. No. CAN/1/2024

Smt. Sumana Datta Chatterjee.
Vs
The Kolkata Municipal Corporation & Ors.

Mr. Biswanath Mitra,
Ms. Sujata Mitra,
Mr. Triptimoy Talukdar,
Ms. Chanchala Chatterjee,
Mr. Abhiraj Tarafdar,
...for the appellant.

Mr. Gopal Chandra Das,
Mr. Rudranil De, ...for the K.M.C.

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

A judgment and order dated April 2, 2024, whereby the appellant's writ petition being WPA 9404 of 2024, was dismissed by a learned Judge of this Court, is assailed in this appeal at the instance of the writ petitioner.

It appears that the appellant/writ petitioner had applied to Kolkata Municipal Corporation (in short "KMC") on February 27, 2023, for permission to make certain repairs/construction works at the subject premises. However, no such permission was granted by KMC. The appellant nonetheless, proceeded to

make the proposed construction without having a sanctioned building plan therefor.

On a complaint received by the person residing on the ground floor of the building in question, on the first floor of which the appellant resides, KMC initiated demolition proceedings under Section 400(1) of the KMC Act 1980. The appellant participated in such proceedings. An order dated June 28, 2023 was passed by the Special Officer (Building), KMC, directing demolition of the unauthorized structure.

A notice of engagement dated March 22, 2024, was issued by the concerned Executive Engineer (Building), informing the appellant/writ petitioner that the KMC people will be entering the concerned premises for demolition of the unauthorized structure on April 2, 2024.

The appellant immediately approached the learned Single Judge challenging the engagement notice dated March 22, 2024. The learned Judge dismissed the writ petition with the following observations :

“It appears therefrom that the petitioner was raising a construction on the roof which is a common space to all the residents. As the brick walls were erected on the roof which is a preparatory for construction of a room over the existing two

storied building without any sanction plan, direction was passed for demolition of the unauthorized construction.

The total area of the unauthorized construction is 120.733 sq. mts. The infringement statement mentioned in the order of the Special Officer clearly shows that the mandatory side open spaces and the ground coverage have been infringed.

The demolition order is appealable before the appellate forum within the stipulated time period. The time period within which the appeal ought to have been filed expired long ago. As on date there is no challenge to the order of demolition that has been passed.

The Court does not find any error on the part of the Executive Engineer in proceeding with the demolition work.”

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

Mr. Mitra, learned counsel appearing for the appellant says that the appellant could not challenge the demolition order before the Municipal Building Tribunal due to non-availability of the Bench. Hence, the appellant had no option but to approach the learned Single Judge by invoking the writ jurisdiction.

The learned Judge ought not to have rejected the writ application. Only a wash room was being constructed. No major construction work was being undertaken by the appellant.

We enquired of Mr. Gopal Chandra Das, learned advocate representing KMC as to whether or not the appellant participated in the demolition proceedings. He says, on instruction that the appellant duly participated in such proceedings. The demolition order dated June 28, 2023, was also made available to the appellant.

Having considered the facts and circumstances of the case, we do not find any infirmity in the order of the learned Single Judge. A demolition proceeding was initiated by KMC upon receiving complaint that the appellant/writ petitioner was raising unauthorized construction. Such proceeding culminated in a demolition order dated June 28, 2023. The appellant did not challenge the said order till receipt of the engagement notice dated March 22, 2024. No unauthorized construction can be allowed to stand. We do not find any reason to interfere with the order of the learned Single Judge.

However, we are told that the post of Chairperson of the Municipal Building Tribunal is vacant. As a result, the Tribunal cannot function. This is an alarming situation. Section 400(3) provides

for a statutory appeal by any person aggrieved by an order of the Municipal Commissioner made under Sub-section 1 of Section 400. In the present case and in a vast majority of the cases, the Special Officer (Building) as delegatee of Municipal Commissioner conducts proceedings under Section 400(1) of the KMC Act 1980 and passes appropriate order. Such order may be assailed before the Tribunal. Hence, it is of utmost importance that the Municipal Building Tribunal functions normally.

We direct the State Government to take immediate steps for filling up the vacant post of Chairperson of the Municipal Building Tribunal in Kolkata. The needful should be done as soon as possible and preferably within a month from the date of communication of this order to the Municipal Affairs Department, Government of West Bengal.

Dismissal of this appeal will not prevent the appellant from challenging the demolition order dated June 28, 2023, before the Municipal Building Tribunal once it starts functioning. If such statutory appeal is preferred by the appellant, the same will be decided by the Tribunal, in accordance with law, without being influenced by any observation in this order or in the order of the learned Single Judge impugned before us.

MAT 658 of 2024 is disposed of along with the application being I.A. No. CAN 1 of 2024.

The learned Registrar General of our High Court is directed to immediately send a copy of this order to the Secretary, Municipal Affairs Department, Government of West Bengal for the needful to be done i.e. appointment of Chairperson of the Municipal Building Tribunal.

Requirement of filing certified copy of the impugned order by the appellant is dispensed with.

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.)

(M.V. Muralidaran, J.)