

15.04.2024
Item No.03
Court No.6.
S. De

M.A.T. 722 of 2024
With
I.A. No. CAN/1/2024
I.A. No. CAN/2/2024
I.A. No. CAN/3/2024
Gitarani Roy.
Vs
Khokan Dey & Ors.

Mr. Srijib Chakraborty,
Mr. Sumitava Chakraborty,
Ms. Rupsa Sreemani,
...for the appellant.
Mr. Aniruddha Chatterjee,
Mr. Rahul Karmadar,
...for the respondent no.1.
Mr. Biswabrata Basu Mallick,
Mr. Biman Halder,
...for the State respondents.
Mr. Gopal Chandra Das,
Ms. Manisha Nath,
... 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/2/2024

This is an application for leave to prefer appeal
against a judgment and order dated February 6, 2023,
whereby a learned Judge of this Court disposed of the
writ petition being WPA 19823 of 2019, filed by the
respondent no.1 herein. Pursuant to the said order,
the Kolkata Municipal Corporation (in short 'KMC') has
passed an order for demolition of a structure which is
under the occupation of the intending appellant herein

who says that she is a Bharatia in respect of the said structure under the thika tenant thereof.

The applicant says that the demolition order was passed without serving any notice of demolition proceedings on her. She will be gravely prejudiced if such order is implemented and the order has in fact been directed to be implemented in a contempt proceeding initiated by the respondent no.1. She should be allowed to prefer an appeal against the order dated February 6, 2023.

Having heard learned counsel for the applicant, we are of the view that she has sufficient standing to maintain an appeal against the order dated February 6, 2023.

The application for leave to prefer an appeal is allowed.

I.A. No. CAN/2/2023 is disposed of.

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

This is an application for condonation of delay of 424 days in preferring the appeal against the order dated February 6, 2023. Causes shown being sufficient, the delay is condoned.

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

In re : MAT 722 of 2024 & I.A. No. CAN/3/2024

The respondent no.1 herein had approached the learned Single Judge by filing WPA 19823 of 2019, alleging illegal construction at premises

no.16/1/H/43, Murari Pukur Road under Borough-III of the Kolkata Municipal Corporation. It was submitted by the writ petitioner that neither any sanctioned building plan was obtained from the KMC nor permission from the thika controller had been obtained as is necessary since the property is a thika property.

The learned Judge noted that a representation made by the writ petitioner who is the respondent no.1 herein, regarding the alleged illegal construction at the aforesaid premises is pending consideration at the end of the respondent authorities. Accordingly, the learned Judge disposed of that writ application with the following observations and directions :

“The writ petition is accordingly disposed of by directing the respondent no.5 being the Executive Engineer (Building) to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the necessary parties

including the petitioner immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioner is directed to forward a copy of the legal representation dated 9th September, 2019 to the aforesaid

*respondent at the time of communicating
the order of the Court.”*

It appears that pursuant to the aforesaid order, a demolition proceeding was conducted by the Executive Engineer (Building) of KMC, which culminated in an order for demolition of the impugned structure. The Executive Engineer based his order on the finding that the impugned structure is not backed by any sanctioned building plan.

Alleging violation of the parent order dated February 6, 2023, the respondent no.1 herein has filed a contempt application being CPAN 951 of 2023, contending that necessary follow-up action has not been taken by KMC in spite of the finding that the impugned construction is illegal. The learned Judge has directed implementation of the demolition order by an order dated March 28, 2024 passed on the contempt application.

The appellant says that he was not aware of any of the aforesaid things. No notice of the demolition proceedings was served on her. It now appears that the thika tenant was notified but the appellant had no knowledge that demolition proceedings were being carried on. Only when the notice for execution of the demolition order was pasted on the outer wall of the building in question, the appellant became aware of the entire thing and has rushed to this Court

challenging the learned Judge's parent order dated February 6, 2023.

Referring to Sections 5 and 6 of the West Bengal Tenancy (Acquisition and Regulation) Act, 2001, Mr. Aniruddha Chatterjee, learned advocate argued that the thika controller has the authority to grant a license in favour of a Bharatia in respect of portion of the premises under his/her occupation even if it is found that the impugned construction has not been made after obtaining sanctioned building plan from KMC. Other points of law have been raised by learned counsel as well.

We are not inclined to allow learned counsel to urge such points before us as we do not see any reason to interfere with the order under appeal which, according to us, has in effect merged with subsequent orders passed by the learned Single Judge on the contempt application.

On behalf of KMC, Mr. Gopal Chandra Das, learned advocate, argues that the appellant has no right in respect of any portion of the impugned construction. The appellant is in occupation of the ground-floor of the building in question. The tenancy in respect of the ground-floor is protected by Section 10 of the West Bengal Thika Tenancy (Acquisition and Regulation Act), 2001.

The appellant will be at liberty to challenge the demolition order that has been passed by the Executive Engineer (Building) of KMC pursuant to the learned Single Judge's parent order dated February 6, 2023, before the appropriate forum, in accordance with law. That demolition order is not the subject matter of challenge before us nor has the same been challenged till date before any competent forum. However, having heard learned advocates for the parties, we are of the prima facie view that the appellant may have some legal points to argue to protect the impugned construction from demolition. However, this is to be considered as a final finding by this Court. This observation is made only for the purpose of disposing of this appeal. If the appellant approaches any competent forum with an appeal or any other legal proceeding, that forum is requested to decide such appeal or other legal proceeding in accordance with law without being influenced by any observation in this order.

We are told that the demolition activities have started. KMC has already demolished a part of the impugned structure. KMC is scheduled to continue such demolition activities on a day-to-day basis.

Let no further coercive action be taken in respect of the impugned construction for a period of a fortnight from date (April 28, 2024). This is only to

grant a window or a breathing space to the appellant to challenge the order passed by the KMC's officer for demolition of the impugned structure. We clarify that if, within a fortnight, the appellant is unable to obtain any protective order from a competent forum staying operation of the demolition order or otherwise interfering with it, the demolition order shall be implemented forthwith in accordance with law. We further clarify that we have not adjudicated the legality or otherwise of the construction in question. The forum that may be approached by the appellant assailing the demolition order will be at liberty to decide that issue.

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

MAT 722 of 2024 is disposed of along with the application being I.A. No. CAN 3 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.)

(M.V. Muralidaran, J.)