

06 29.04.2024
rkd Ct.15

W.P.A. 8819 of 2018

Rabin Chatterjee & Anr. [Tuli Chatterjee (since
deceased)]

-vs-

State of West Bengal & Ors.

Mr. Soumya Majumder,
Mr. Ravi Kumar Dubey

....for the petitioners.

Mr. Souma Subhra Ray,
Mr. Amarnath Agarwal

....for the respondent nos.8 & 9.

Mr. Alak Kumar Ghosh,
Mr. Gopal Chandra Das

....for the KMC.

In the writ petition order of the Special Officer (Building) of Kolkata Municipal Corporation (for short KMC) dated 28th February, 2018 is under challenge whereby in consideration of the relevant provisions of the Kolkata Municipal Corporation (Regularization of Building) Regulations 2015 deviations made while making construction by the respondent nos. 8 & 9 have been regularized.

Mr. Majumder, learned counsel representing the petitioners submits that challenge is laid against the order of the Special Officer (Building) of KMC in the writ petition wherein vires of Section 14 of the Kolkata Municipal Corporation (Amendment) Act, 2014 and Kolkata Municipal Corporation (Regularization of Building) Regulations 2015 have been questioned.

It has been submitted on behalf of the petitioners that since vires of Section 14 of the Kolkata Municipal Corporation (Amendment) Act, 2014 is one of the issues in this writ petition the Appellate Authority contemplated under Section 400(3) may not be treated as an appropriate Authority to decide the lis.

It is also contended that nature of alleged deviations made by the respondent nos. 8 & 9 while making construction have been delineated in the order of the Special Officer (Building) of KMC dated 28th February, 2018. According to the petitioners unless vires of the aforesaid statutory provisions is not decided in the present writ petition other part of the issue involved in this writ petition cannot be decided.

Kolkata Municipal Corporation and the respondent nos.8 & 9 are represented by learned advocates.

Mr. Ghosh, learned advocate representing the KMC submits that there is an appeal provision under Section 400(3) of the Kolkata Municipal Corporation Act, 1980 which permits the petitioners to prefer an appeal before the Municipal Building Tribunal appointed under Section 415 against the order passed by the concerned

authority under Section 400(1).

Having considered the submissions made on behalf of the parties and on perusal of the order of the Special Officer (Building) of KMC dated 28th February, 2018 it appears that alleged deviations made by the respondent nos.8 & 9 while making construction have been regularized on certain conditions upon consideration of Regulation 3(1) of the Kolkata Municipal Corporation (Regularization of Building) Regulations 2015. There is nothing as it emanates from the order of the Special Officer (Building) of KMC dated 28th February, 2018 that the Special Officer (Building) arrived at a conclusion relating to the alleged deviations made by the respondent nos. 8 & 9 are conforming to the expression “minor deviation” used in the said Regulation 3(1).

As it has been submitted on behalf of the petitioners that Regulations 2015 vis-à-vis Section 14 of the Kolkata Municipal Corporation (Amendment) Act, 2014 have not attributed definition of “minor deviation”; therefore question comes up on what basis Special Officer (Building) concluded that the alleged deviations made by the respondent nos.8 & 9 is in consonance with the said expression “minor deviation” as used in

Regulation 3(1) of 2015 Regulations.

Since there is an alternative efficacious remedy available to the petitioners against the order of the Special Officer (Building) of KMC dated 28th February, 2018 this Court at this stage has decided to direct the Municipal Building Tribunal to decide the fate of the alleged deviations made by the respondent nos. 8 & 9 while making construction in accordance with law taking note of the observations made by this Court above, in the event petitioners prefer an appeal under Section 400(3) of the Kolkata Municipal Corporation Act, 1980 within a period of three weeks from date.

Since contemporaneously writ petition was preferred by the petitioners, point of delay will not be a relevant consideration before the Tribunal while deciding the appeal, if preferred by the petitioners within aforesaid time.

The Tribunal shall make an endeavour to decide the appeal, if preferred by the petitioners as expeditiously as possible but not later than four months from the date of instituting the appeal.

All the points are kept open to be decided by the Tribunal at the time of consideration of the appeal.

With the aforesaid observations and

directions the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)