

08. 22.04.2024
Court No.6
(Tanmoy)

MAT/762/2024

**RAJIV SHARMA AND ORS.
VS
THE STATE OF WEST BENGAL AND ORS.**

**With
IA No: CAN/1/2024**

Mr. Moyukh Mukherjee, Adv.,
Ms. Sagnika Banerjee, Adv.

...for the appellants.

Mr. Jayanta Samanta, Ld. Jr. Govt. Adv.,
Ms. Indumouli Banerjee, Adv.

...for the State.

Mr. Alak Kr. Ghosh, Adv.,
Mr. Dwijadas Chakraborty, Adv.

...for KMC.

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

A Judgment and order dated April 16, 2024, whereby the writ application of the appellants being WPA 10362 of 2024, was dismissed by a learned Judge of this Court, is the subject matter of challenge in this appeal.

The appellants are aggrieved by an order passed by Kolkata Municipal Corporation (in short, 'KMC') directing demolition of a building which is not backed by any sanctioned building plan. They approached the learned Single Judge contending that they are in occupation and possession of the ground floor of the premises

no.15/H/1, Narkeldanga North Road, Kolkata, as *thika* tenants, for the last five decades. Before the demolition order was passed by KMC in respect of the said premises, no opportunity of hearing was granted to them.

The learned Judge noted that earlier a writ petition being WPA 23522 of 2023, was filed by one Suprabhat Basu, claiming to be the owner of the premises in question, challenging the demolition order. The writ petition was dismissed. The matter was carried to the Division Bench. By a judgment and order dated January 9, 2024, the Division Bench dismissed the appeal.

Having noted as above, the learned Judge dismissed the writ petition with the following observations and directions:-

“...Learned advocate appearing for the petitioners submits that the Corporation will conduct further demolition day after tomorrow i.e. 18th April, 2024. Prayer has been made to stall the demolition process and to afford an opportunity of hearing to the petitioners.

The Court has considered the submission made on behalf of the petitioners. Admittedly, a four storied building has been raised without obtaining any sanction. The petitioners claim to be the thika tenants of the subject structure. The Corporation took recourse to Section 400(8) of the Act. There is no provision for affording prior opportunity of hearing if the aforesaid provision is invoked. Steps taken by the Corporation were affirmed by the Single Bench as well as the Hon’ble Division Bench.

At this stage, there is hardly any scope to stall the work of demolition.

The Corporation is directed to proceed with the demolition work and continue the same till the entire unauthorized structure is brought down.

The Officer-in-Charge of the Narkeldanga Police Station is directed to render all necessary help and assistance to the men and agents of the Corporation at the time of implementing the order of demolition.”

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

Learned Advocate for the appellants strenuously argued that it is a fundamental right of the tenants of the said property to be granted an opportunity of hearing before any demolition order is executed any further. They were completely in the dark about any demolition proceeding having been initiated in respect of the structure in question. Principles of natural justice warranted that the appellants be heard by KMC, before the building is demolished. There is no urgency in the matter so as to justify invocation of the emergency power under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 (in short, ‘KMC Act’).

Learned Advocate for KMC says that demolition of the impugned structure is in process.

We see no infirmity in the order under appeal. In an earlier round of litigation, a gentleman claiming to be the owner of the building in question had approached the learned Single Judge. His writ application failed. The Division Bench affirmed the order of the learned Single Judge. Presently, some other persons, claiming to be *thika* tenants in respect of the ground floor of the building in question, approached the learned Single

Judge. Their writ application was dismissed and in our opinion, rightly. The admitted fact is that there is no sanctioned plan supporting the impugned construction. No such construction can be allowed to remain. We unhesitatingly affirm the order of the learned Single Judge. The question of granting hearing to the appellants herein does not arise. This is not a case of demolition proceedings under Section 400(1) of the KMC Act. The emergency power under Section 400(8) has been invoked.

Consequently, the appeal being MAT/762/2024 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.)

(Prasenjit Biswas, J.)