

06.05.2024
Item No. 01.
Court No.6.
AB

M.A.T. 846 of 2024
With
CAN 1 of 2024
CAN 2 of 2024

Mohammad Reazuddin
Vs
Md. Mustafa Kamal & Others

Mr. Arindam Banerjee,
Ms. Ina Bhattacharya,
Mr. Sumitava Chakrabortyfor the Appellant.

Mr. Srijan Nayek,
Ms. Suranjana De Sarkarfor the KMC.

Mr. Bijay Bag,
Ms. Brototi Pramanik
.....for the Respondent No.1.

Affidavit of service filed in Court today, be kept
with the records.

In re : CAN 1 of 2024

This is an application for leave to prefer appeal against an order dated April 15, 2024, passed by a learned Judge of this Court in WPA 7688 of 2024, being a writ petition filed by the respondent no.1 herein. The intending appellant is not a party to the writ petition, which is pending before the learned Single Judge. However, he says that he is the developer of the building in question and is, therefore, vitally affected by the order of the learned Single Judge directing implementation of the demolition order issued by Kolkata Municipal Corporation (in short “KMC”).

Having heard Mr. Banerjee, learned Counsel for the intending appellant, we are satisfied that the applicant has sufficient locus standi to prefer appeal against the order dated April 15, 2024.

Accordingly, leave to prefer appeal is granted.

CAN 1 of 2024 is disposed of.

In re : MAT 846 of 2024, CAN 2 of 2024

The learned Judge noticed from a report forwarded by the engineers of the KMC signed on April 4, 2024 that the six storeyed structure in question is not supported by any sanctioned plan. Notice under Section 401 of the KMC Act, 1980, was issued on February 8, 2024. A part of the building has been demolished. The demolition could not be completed by reason of mob resistance and unavailability of sufficient police force. The learned Judge passed the following order:

“The D.C. South, East Division is directed to render adequate police personnel at the time of implementing the order of demolition.

The Corporation is directed to fix up further date of demolition and affix the date of demolition at various conspicuous places of the subject structure to make the occupants of the structure aware of the date of demolition. The occupants of the unauthorized structure are restrained from interfering with the process of the demolition.

The electricity service provider that is CESC Ltd. is directed to forthwith disconnect electric supply to the entire structure, as the whole building is an unauthorized one.

The Corporation shall forthwith disconnect the water supply connection to the subject premises. Aforesaid steps are required to be taken in the aid of demolition of the unauthorized construction.

Further date of demolition shall be intimated to this Court on 29th April, 2024 when the matter will appear in the list.”

Mr. Banerjee, learned Advocate appearing for the appellant, in his usual fairness, admits that there is no sanctioned plan in support of the impugned construction. However, he says that the building is fully occupied. Some time may be granted for having the building vacated prior to its demolition.

We would have liked to allow some time to the occupants of the building to vacate the same, on humanitarian grounds. However, we are unable to do so because we do not know how stable the impugned structure is. Any illegal building is a potential threat to the people occupying such building or the people in the vicinity thereof. There is always a risk of an accident happening. The building may collapse. Such risk cannot be taken. Hence, we are unable to accede to the request of Mr. Banerjee.

We find no infirmity in the order under appeal. The appeal and the connected application are dismissed. This will not prevent the appellant from making appropriate prayer before the learned Judge in the writ petition that is pending. For that purpose, we add the appellant as a party respondent in the writ petition.

Learned Advocate on record for the writ petitioner is requested to carry out necessary amendment to the cause title of the writ petition.

This order will not be construed as conferring any kind of right on the appellant. If any prayer is made by the appellant before the learned Single Judge, Her Ladyship is requested to consider the same independently.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)