

14.
09-05-2024
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 887 of 2024
+
IA NO:CAN/1/2024**

**Md. Kausar Warsi
Vs.
Kolkata Municipal Corporation & Ors.**

Mr. Biswaroop Bhattacharya,
Ms. Aishwarya Nanda,
Ms. Urmi Biswas
... For the Appellant.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra,
Mr. Subhrangshu Panda
... For Kolkata Municipal Corporation.

A judgment and order dated May 03, 2024, whereby the appellant's writ petition being WPA 12756 of 2024 was dismissed by a learned Judge of this Court with costs assessed at Rs.1,00,000/- to be paid by the writ petitioner to the Registrar General of this Court for being utilized for the purpose of improving the greenery in the manner to be decided by the Court on the adjourned day, is under challenge in this appeal at the instance of the writ petitioner. Although the matter has been disposed of by the learned Single Judge, it has been directed to be listed under the heading "To Be Mentioned" on May 14, 2024 for direction to be issued as regards utilization of the costs.

In an earlier round of litigation, the present appellant had approached a learned Judge of this Court by filing WPA 10927 of 2023 challenging the

action taken by Kolkata Municipal Corporation (KMC) to demolish a construction raised by the writ petitioner therein, which KMC found to be unauthorized. The learned Judge noted that KMC had invoked emergency provisions under Section 400(8) of the Kolkata Municipal Corporation Act, 1980 and had started demolition activities. There is no sanctioned plan in support of the impugned construction. The learned Judge dismissed the writ application. Such order of the learned Judge was not carried in appeal and, accordingly, attained finality.

The present appellant again approached the learned Single Judge in this round of litigation by filing WPA 12756 of 2024, again challenging KMC's action of demolishing the appellant's unauthorized structure. The learned Judge noted that earlier the appellant had approached this Court. The learned Judge dismissed the writ petition with the following observations:

“ Yesterday i.e 2nd May, 2024 was the day fixed for demolition. The petitioner filed the present writ petition challenging the demolition process all over again.

Learned advocate representing the Corporation has produced the resolution of the Mayor-in-Council approved by the Mayor wherein it was recorded that if the unauthorised construction is allowed to stand, the same may collapse at any moment of time leading to accident resulting in loss of human life and property and will also create several hazards like fire hazards and environmental hazards etc.

Considering the gravity of the situation and safety of the public in general, immediate demolition was called for.

It appears that the petitioner is time and again approaching this Court only to stall the process of demolition of an absolute unauthorised construction. Such reprehensible conduct of the petitioner cannot be accepted by the Court. The same is an abuse of the process of law and is liable to be dealt with very sternly. Any sympathy shown in such cases will cause disservice to the public at large and will be a blotch on the part of the judiciary. ”

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

Learned advocate, appearing for the appellant/writ petitioner, referred to Sections 5 and 6 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. In particular, reference was made to Section 5(5) and Section 6(2)(3) along with the proviso to sub-section (3), which read as under:-

“ 5(5) The *thika* tenants holding directly under the State under sub-section (1) shall be entitled to construct *pucca* structures or to change the nature, character and dimension of an existing structure on the land in accordance with the building plans sanctioned under the Kolkata Municipal Corporation Act, 1980 (West Ben. Act 59 of 1980), and the rules made thereunder, or the Howrah Municipal Corporation Act, 1980 (West Ben. Act 58 of 1980), and the rules made thereunder, according as the land may be situated within Kolkata as defined in clause (9) of section 2 of the Kolkata Municipal Corporation Act, 1980, or Howrah as defined in clause (15) of section 2 of the Howrah Municipal Corporation Act, 1980, for-

- (a) residential and business purposes for themselves and the [*Bharatias* under them;]
- [(aa) residential purposes of *thika* lessee, *thika* assignee or any other

purpose or purposes, as may be prescribed; and]

- (b) essential common facilities like common pathway, common bath, toilet, water supply, drainage, sewerage, lighting and similar other purposes;

Provided that the *thika* tenants holding directly under the State under sub-section (1), shall obtain a no-objection certificate from the Controller before making any *pucca* construction or changing the nature, character and dimension of an existing structure on the land, irrespective of the area of the land.

6(2) Where the *thika* tenant either himself or in collaboration with Bharatia is unable to develop the *thika* land, the Kolkata Municipal Corporation or the Howrah Municipal Corporation or any other Corporation or any local authority of the concerned area may develop *thika* land for construction of building under any housing scheme or otherwise without disturbing proportionate share of *thika* tenant and Bharatia.

(3) The State Government may resume all or any portion of land or structure over any *thika* land with the written consent of *thika* tenant and all Bharatia for the purpose of betterment of living condition of the *thika* tenant and *thika* assignee.

Provided that no compensation shall be payable by the State Government to any *thika* tenant or Bharatia for resumption of land for the purpose of betterment of living condition of the *thika* lessee and *thika* assignee. ”

Learned advocate submitted that the appellant should be permitted to approach the Thika Controller for a “no objection” as admittedly the property in question is a *thika* property. Or else, the matter may be relegated to the Thika Controller for being considered in accordance with law.

We have considered the aforesaid provisions of the 2001 Act. The same in no way abridges the statutory powers or affects the statutory duties of KMC under the Kolkata Municipal Corporation Act, 1980. Admittedly, the structure in question is without a sanctioned plan. Such illegal structure should not be allowed to stand even for a day.

This appellant had earlier approached the learned Single Judge. The learned Judge had dismissed his writ petition. Such order attained finality not having been challenged before any higher forum. The learned Judge rightly refused to interfere in the present round of litigation.

We may also note that in the earlier round of litigation between the same parties, the argument regarding Thika Tenancy Act was not advanced. Hence, according to us, such arguments are barred in the present round of litigation under Explanation IV to Section 11 of the Code of Civil Procedure and/or Order II Rule 2 of the Code and/or principles analogous thereto.

In the result, we see no reason to interfere with the order of the learned Judge. The appeal and the connected application, therefore, fail and are dismissed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Prasenjit Biswas, J.) (Arijit Banerjee, J.)