

21.05.2024
Item No.12
Court No.6.
S. De

M.A.T. 922 of 2024
With
I.A. No.CAN/1/2024
Irfan Ahmad & Anr.

Vs
The State of West Bengal & Ors.

Ms. Laxmani Rakshit,
Md. Tarique Masood,
Mr. Mostafizur Rahaman,
Mr. Rakesh Gupta,
...for the appellants.
Mr. Sandipan Banerjee,
Ms. Manisha Nath,
...for the KMC.
Ms. Piyali Sengupta,
...for the State.

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

A judgment and order dated May 10, 2024, whereby a learned Judge of this Court dismissed the writ petition of the appellants herein being WPA 13463 of 2024, is the subject matter of challenge in this appeal at the instance of the writ petitioners.

It appears that the appellants are the owners/developers of premises no.15, Meher Ali Mondal Street, Kolkata, within the territorial limits of Kolkata Municipal Corporation (KMC). It further appears that in a previous round of litigation, one Md. Akbar Ali had approached a learned Judge of this Court by filing WPA 7041 of 2023 alleging unlawful construction at the said premises at the instance of

the present appellants who were the private respondents in that writ petition. That writ petition was disposed of by an order dated June 26, 2023, whereby the concerned Executive Engineer of KMC was directed to initiate appropriate proceedings to deal with the alleged unauthorized construction, in accordance with law, after giving reasonable opportunity of hearing to all necessary parties.

It appears that thereafter proceedings were initiated by KMC and a demolition order was passed. When the demolition order was sought to be executed by pasting a copy thereof on the outer wall of the premises in question, the appellants say that for the first time they came to know of such demolition order. They approached the learned Single Judge challenging the notice of engagement calling upon the appellants to vacate the premises for the purpose of demolition thereof.

On the day the matter was taken up by the learned Single Judge, there was no representation on behalf of the writ petitioners before her Ladyship. The learned Judge recorded that the person responsible chose not to appear at the hearing initiated by the KMC authorities. The learned Judge dismissed the writ petition with the following observations :

*“The infringement statement
mentioned in the order of demolition*

shows that there has been infringement on all the four sides, in respect of the FAR and ground coverage. The structural design and the workmanship and the quality of materials are unknown. The Corporation proceeded to implement the order of demolition.

Learned advocate representing the Corporation submits that today (10.05.2024) is the date of demolition but due to non-availability of a adequate police force, the demolition has been re-scheduled.

The Court does not find any error in the order of demolition, accordingly, the Court is not inclined to entertain the present writ petition.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

Learned advocate for the appellants says that no notice of any hearing before the Officer of KMC was ever served on the appellants. Therefore, the appellants could not attend such hearing.

Mr. Banerjee, learned advocate representing KMC says that to cut the matter short, without going into any controversy, KMC shall hold a hearing on May 28, 2024, in the office of the Executive Engineer (Civil),

Building Department, Borough-IX, at 12.00 noon. Let that be so. The appellants or their authorized representative shall be at liberty to attend such meeting and make appropriate submission and place all relevant documents before the officer of KMC. It is made clear that there will be no adjournment of the hearing that is hereby fixed on May 28, 2024. After granting due opportunity of hearing to the appellants, the KMC shall pass a fresh order as regards the alleged unauthorized construction raised by the appellants. The demolition order that was passed earlier is set aside, since the same appears to have been done without issuing notice of hearing to the appellants. The Executive Engineer shall pass a fresh order in accordance with law and the applicable rules and regulations and shall take necessary consequential steps depending on the order that he passes. We have not gone into the merits of the dispute between the parties. The Executive Engineer shall pass a fresh order without being influenced by any observation either in this order or in the order passed by the learned Single Judge which is impugned before us.

MAT 922 of 2024 is disposed of along with the application being I.A. No. CAN 1 of 2024.

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

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.)

(Prasenjit Biswas, J.)