

11.06.2024
ct. 6/SI. No.12
tkm

MAT 991 of 2024
CAN 1 of 2024

In re : Kum Kum Mali

...appellant

Mr. Syed Ehtesham Huda
Md. Zeeshan Uddin
Ms.Amrin Khatoon

... ... for the appellant

Mr. Alok Kr. Ghosh
Mr. S Panda
Ms. Ina Bhattacharyya

... ... for the KMC

1. Order dated 10.5.2024 directing demolition of unauthorized construction in terms of demolition order dated 7.1.2022 has been assailed. Documents annexed to the stay application show that on 4.1.2022 a show cause notice was issued upon the appellant to respond why encroaching of mandatory open space in the eastern side of first floor and covering it by tin shed and construction of new door blocking the mobility of traffic of the adjacent premises in premises no. 1H/20 Ramesh Dutta Street, Ward 026, Borough IV, Kolkata 700006 be not demolished. Appellant was directed to appear before the engineer concerned on 7.1.2022 with relevant documents.
2. On 7.1.2022 Executive Engineer passed the demolition order, inter alia, recording as follows :

“As per the said show cause you had been called for appearing the hearing on 07.01.2022 for hearing before the

undersigned, you failed to satisfy undersigned for such unauthorized construction as detected at the case premises.

On the basis of the complaint, your absence to appear the said hearing and departmental reports, I am of the view that the said structure has been made (without sanction). If it retain, it may endanger or is likely to endanger human life, or any property of the Corporation.”

3. Learned counsel for the appellant submits his client was present during the hearing but it was recorded that she was absent during the hearing.
4. Appellant challenged the aforesaid order in WPA 870 of 2022. By order dated 3.3.2022 learned single judge set aside the order impugned dated 7.1.2022 and directed the competent authority to pass a reasoned order in accordance with law after hearing all parties.
5. Pursuant to the said order appellant appeared before the competent authority on 28.3.2022 and made submissions. However, by a mechanical non-speaking order dated 1.4.2022 the demolition order was reiterated. She again approached this Court for setting aside the said order. It is contended without considering the submission made on her behalf, learned single judge by the impugned order directed implementation of the demolition order and if necessary with police force.

6. Mr. Ghosh while admitting that the appellant was present during hearing submits no written reply and/or relevant documents had been filed to justify the construction.
7. We have considered the materials on record in light of the submissions made at the bar. Learned single judge in WPA 870 of 2022 had directed the competent authority to pass a reasoned order after hearing all parties including the appellant.
8. Perusal of the impugned order would show that the same is a facsimile repetition of the earlier non-speaking order dated 7.1.2022 which had been set aside in WPA 870 of 2022. That apart, finding recorded in the impugned order that the appellant had failed to satisfy the officer with regard to unauthorized construction runs contrary to the recording in the subsequent paragraph that she had not appeared during the hearing. Ex facie the order is a perverse one and was passed without application of mind. Such a perverse order is void *ab initio* and not liable to be implemented. These aspects had been glossed over by the learned single judge who directed implementation with police help.
9. In light of the aforesaid facts, we set aside the demolition order dated 1.4.2022 and direct the respondent no. 3, Executive Engineer Building Department, Borough Iv & V Kolkata Municipal Corporation to give an opportunity of hearing to the

appellant on 21.6.2024 at 12 noon and pass a reasoned order within a fortnight thereof.

10. The reasoned order shall be communicated to the appellant.

11. No further intimation need be given to the appellant for hearing and in the event she fails to appear before the concerned officer without reasonable cause on the aforesaid date, the said officer shall pass order ex parte.

12. With the aforesaid directions MAT 991 of 2024 and CAN 1 of 2024 are disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)