

24.05.2024
Item No.04
Court No.6.
S. De

M.A.T. 1012 of 2024
With
I.A. No.CAN/1/2024
I.A. No.CAN/2/2024
Sumanta Dey & Ors.
Vs

The Kolkata Municipal Corporation & Ors.

Mr. Sounak Bhattacharyya,
Mr. Ankit Sinha,

...for the appellants.

Mr. S. Majumder,
Mr. Amit Kr. Roy,

...for the respondent no.9.

Mr. Suranjan Mondal,
Mr. Samik Sarkar,

...for the respondent nos. 6 to 8.

Mr. Bibekananda Tripathy,
Mr. Kaustav Chatterjee,

...for the State.

Ms. Sima Chakraborty,
Mr. Atis Kr. Biswas,

...for the KMC.

Mr. Mir Anowar,
Ms. Alisha Gomes,

...for the respondent nos. 10 to 13.

Report filed by the officer-in-charge, Netaji Nagar
PS, Kolkata, be kept with the records.

In re : I.A. No. CAN/2/2024.

This is an application for leave to prefer appeal against an order dated May 1, 2024, passed by a learned Judge of this Court in WPA 20497 of 2023, being a writ petition filed by the respondent nos.10 to 13 in this appeal.

The applicants claim to be the owners of a flat in a building that has been directed to be demolished. The applicants say that they will be gravely prejudiced

by the order which is intended to be assailed in this appeal.

Having heard learned counsel for the applicants, we are of the view that the applicants may be something to say about the aforesaid order. Leave to prefer appeal is granted.

I.A. No. CAN/2/2024 is, accordingly, disposed of.

In re : MAT 1012 of 2024 & I.A. No. CAN/1/2024.

The building in question is a four storeyed one which has been constructed without obtaining any sanctioned plan. The entire building is illegal and unauthorized. In an earlier round of litigation, the present writ petitioners had approached a learned Judge of our Court by filing W.P.A. 25243 of 2022, complaining of illegal construction, at the instance of one Biswajit Saha who is the respondent no.9 herein, at the premises in question. That writ application was disposed of by a judgment and order dated December 2, 2022, by directing the Executive Engineer, Building Department, Kolkata Municipal Corporation (in short "KMC") to consider and dispose of the representation made by the writ petitioners by passing a reasoned order after granting opportunity of hearing to all the necessary parties.

Pursuant to such order, proceedings were held before the Executive Engineer and an order of demolition was passed by that Officer of KMC on January 9, 2023, which was corrected by a corrigendum order dated February 24, 2023 passed by the Special Officer (Building) of KMC. The order directed demolition of the unauthorized building.

Seeking implementation of that demolition order, the present writ petitioners approached the learned Single Judge by filing WPA 20497 of 2023. The learned Judge passed the following order :

“The unauthorized construction of a four-storied building constructed without any sanctioned plan is liable to be demolished in terms of an order dated January 9, 2023 with corrigendum order dated February 24, 2023 passed by the Special Officer (Building) of the Kolkata Municipal Corporation. As on date there is no order staying operation of the demolition order.

The Kolkata Municipal Corporation is directed to proceed with the demolition of such unauthorized construction forthwith.

The Officer-in-Charge of the Netaji Nagar police station is directed to render all necessary assistance to the men and agents of the Corporation at the time of

implementation of the demolition order at the subject spot.

The date of demolition shall be made known to the occupants of the subject structure and the notice of vacating shall be affixed at various conspicuous spaces of the subject structure. The occupants of the unauthorizedly constructed portions are restrained from interfering at the time of execution of the demolition work.

The demolition should continue on a day-to-day basis till the entire structures – both internal and external-are pulled down.

Learned advocate for the Corporation is directed to produce the schedule of demolition before this court.

The parties will be at liberty to make submission with regard to the affidavit filed by the ninth respondent on the adjourned date.”

Being aggrieved, the appellants have come up before us.

The competent authority has passed an order of demolition of a building which is from top to bottom unauthorized and illegal. There is no challenge to that order of demolition from any front. We see no infirmity in the order under appeal whereby the learned Judge

directed implementation of the demolition order on a day-to-day basis.

It is submitted on behalf of the KMC that partial demolition of the building in question has already been carried out.

May be that the appellants have been taken for a ride by the developer of the building. The appellants will have full right to proceed against such developer for damages/compensation if the appellants are entitled to do so in law otherwise.

There is no reason for us to interfere with the order under appeal.

MAT 1012 of 2024 is dismissed along with the application being I.A. No. CAN 1 of 2024.

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.)