

25.06.2024
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MAT 1144 of 2024
with
CAN 1 of 2024

Shyamsundra Mishra & Ors.
Vs.
Radha Kumari Tiwari & Ors.

Mr. Simanta Kabir
.... for the appellants

Mr. Jitesh Sah
Mr. Ranjeet Prasad
Mrs. Payel Shaw
Mr. Vishnu Kant Tiwari
Mr. Rinku Patel
Ms. Sumana Mukherjee
Ms. Sushma Barua
Ms. Prama Bose
Ms. Sreeparna Kashyap
.... for the respondent no. 1

Mr. Ranjan Kali
Mr. Avik Pramanick
.... for respondents nos. 14 & 15

Mr. Biswajit Mukherjee
Ms. Sima Chakraborty
.... for the KMC

Mr. Dipanjan Datta
Mr. Subhra Nag
.... for the State

1. Appellants are the owners of the premises where unauthorized construction has been made. By the impugned order Hon'ble Single Judge directed demolition of the unauthorized construction

with the help of police. Bank account of the respondent no. 14/ promoter was also attached.

2. Mr. Kabir, learned Counsel for the appellants contends no notice under Section 400(8) of the Kolkata Municipal Corporation Act was served. He also submits respondent no. 1/ writ petitioner has not shown how his legal right was affected and as such he has no locus standi to maintain the writ proceeding. He further contends an order of injunction is subsisting in a civil suit instituted with regard to the property in question.

3. Learned Counsel for the respondent no. 1/writ petitioner opposes the prayer.

4. We have considered the rival submissions of the parties. Firstly, with regard to locus of the respondent no. 1/ writ petitioner, we note that the appellants had complained before the Corporation authorities alleging unauthorized construction be demolished. Section 400 of Kolkata Municipal Corporation Act lays down the procedure for demolition of unauthorized construction. Any individual may approach the Corporation for invocation of its jurisdiction to demolish unauthorized construction.

5. Respondent no. 1/writ petitioner approached the Corporation authorities for taking

immediate steps against unauthorized construction. As the authorities did not respond he approached the Court for appropriate orders against the Corporation authorities. In this factual background, we are of the opinion the respondent no. 1/writ petitioner had locus standi to maintain the writ proceeding against the illegal construction undertaken on the property.

6. The second issue is with regard to the order of injunction passed in the civil suit. The suit relates to partition of the property in question. An injunction was passed in the said suit not to change the nature and character of the property. No prayer to restrain the Corporation authorities from taking steps against any portion of the property on the premises the same is unauthorized is not the subject matter of the suit. In fact, no such prayer is maintainable in light of Section 400(5) of the Kolkata Municipal Corporation Act. Accordingly, this issue also fails.

7. The third issue involves non-service of notice upon the appellants. Admittedly proceedings for demolition had been invoked under Section 400(8) of the Kolkata Municipal Corporation Act. This provision permits Mayor in Council to take immediate ex parte action after recording reasons thereto. Service of notice is not contemplated for invoking the

said provision. No doubt resort to Section 400(8) of the Kolkata Municipal Corporation Act is to be taken in exceptional cases of immediate necessity. Otherwise Corporation authorities are to initiate demolition proceeding under Section 400 of the Kolkata Municipal Corporation Act after due notice to the owner/occupier of the alleged unauthorized construction. Neither the appellants nor the private respondent/promoter have been able to demonstrate even a semblance of defence with regard to the legality of the construction sought to be demolished. Principles of fairness and natural justice are procedural hand-maidens to achieve the ends of justice. Their breach are to be examined in the factual matrix of each case particularly on the touchstone of prejudice. When a party to a proceeding complains of denial of opportunity of hearing due to resort to an emergency provision it is his duty to demonstrate how resort to the emergency provision has caused prejudice to him. To demonstrate prejudice due to denial of opportunity of hearing, a party needs to show the Court a semblance of defence against the demolition order. Otherwise, the hearing would be an empty formality. In spite of repeated queries, appellant and private

respondent/promoter shall singularly failed to show even a shadow of defence justifying the construction.

8. Under such circumstances, we are of the opinion resort to the exceptional provision under Section 400(8) of the Kolkata Municipal Corporation Act against the unauthorized construction undertaken without sanction plan has not caused prejudice to the appellants or the private respondent/promoter.

9. Thus, the impugned order does not call for any interference.

10. Appeal is accordingly dismissed. In view of dismissal of the appeal connected application being CAN 1 of 2024 is also dismissed.

11. There shall be no order as to costs.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)