

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 1601 of 2024
(CAN 1 of 2024)***

Shyamsundar Mishra & Ors.

-Vs-

The Kolkata Municipal Corporation & Ors.

For the Appellants : Mr. Ashoke Banerjee, Sr. Adv.,
Mr. M. A. Samad, Adv.,
Mr. P. Sharma, Adv.,
Mr. M. Zahedi, Adv.

For the KMC : Mr. Biswajit Mukherjee, Adv.,
Mrs. Sima Chakraborty, Adv.

Heard on : 20.08.2024

Judgment on : 20.08.2024

Joymalya Bagchi, J. :-

1. By an earlier judgment and order dated 25.06.2014 in MAT 1144 of 2024 prayer of the appellants to set aside the demolition order under Section 400(8) of the Kolkata Municipal Corporation Act had been dismissed. Thereafter, appellants have come up with another subterfuge to delay the demolition proceeding. To achieve this end,

they have taken out an application under Rule 142 of the Kolkata Municipal Corporation Buildings Rules, 2009 (for short The Rule, 2009) and have prayed for relaxation of rules with regard to sanction of a building plan to reconstruct a building after demolition of an old structure.

2. It is contended that the application is accompanied by documentary evidence of tenants signifying consent to the demolition.
3. Earlier appellants have taken out an application for regularization. The structure in question is wholly unauthorized and was built in blatant violation of mandatory provisions of the Act and the Building Rules. There is no scope for regularization of the structure under Law. Realising this, another application has been taken out under Rule 142 of the Building Rules seeking relaxation of Rules with regard to construction of a building after demolition of the old structure. Sub-Rule (2) of Rule 142 provides such relaxation may be granted only when an existing building is :
 - i) more than 50 years old and partly or fully occupied by tenants
or
 - ii) if the building is less than 50 years old and partly or fully occupied by tenants and has been rendered unfit for human occupation by natural causes.

4. Applicability of Rule 142 pre-supposes the existence of a building which has been validly constructed. An unauthorized structure without sanction plan in regard to which a demolition order is subsisting cannot be treated as an existing structure to which the relaxation under the Rule is envisaged. The scheme of Rule 142 is to provide for some relaxation for sanction of a new building when the existing building is more than 50 years old or which has been declared unfit for human habitation due to natural causes and in both cases is occupied fully or partly by tenants. The object of relaxation is to give some latitude in construction of a new building for accommodating the occupants in a fifty year old building or one of which has become unfit for human habitation for natural causes. By no stretch of imagination the rule can be applied to accommodate occupants of an unauthorized construction in regard to which a demolition order has already been passed. To hold otherwise, would amount to giving concession to individuals occupying an unauthorized structure.
5. Hence, the application under Rule 142 of the appellants seeking relaxation of rules for sanction of a new building after demolition of existing unauthorized structure in respect of which a demolition order is passed is wholly misconceived. It is open to Calcutta Municipal Corporation to deal with the application of the appellants

under Rule 142 in accordance with law and in light of the aforesaid observations.

6. Accordingly, pendency of such misconceived application cannot stand in the way of the Corporation to proceed with the implementation of the demolition order which has already been upheld by this Court in MAT 1144 of 2024.
7. With these observations, appeal and the connected applications are dismissed.
8. There shall be no order as to costs.
9. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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