

**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

MAT 1646 of 2024

CAN 1 of 2024

CAN 2 of 2024

CAN 3 of 2024

Hitesh Sharma

Vs

Sabyasachi Mullick Chowdhury & Ors.

For the Appellant : Mr. Siddhartha Banerjee
Mr. Rahul Karmakar
Mr. Abhisek Baran Das
Mr. S Ghongdar

For the KMC : Mr. Alok Kr. Ghosh
Ms. Sima Chakraborty

For respondent no. 1 : Mr. Rupak Ghosh
Mr. Vishwarup Acharya

For respondent no. 6 : Mr. Ankit Sujreka
Mr. Asis Dutta

Heard on : 04.09.2024

Judgment on : 04.09.2024

Joymalya Bagchi, J.:-

1. Having considered the averments made in the application for condonation of delay, delay in preferring the appeal, is condoned.

2. CAN 1 of 2024 is allowed.
3. Leave is granted to prefer appeal.
4. We have examined the order impugned. By the order impugned the Hon'ble Single Judge has relegated the matter to the Kolkata Municipal Corporation to take a decision in the proceeding under section 397 of the KMC Act after giving an opportunity of hearing to all interested parties provided there is no order passed in other writ petitions placed by some of the flat owners.
5. Mr. Banerjee with Mr. Karmakar argue the writ petitioner/respondent had approached this Court for demolition of the buildings situated on Dag no. 268 only. It is further argued the appellant owns plot CZ 15A which does not stand on Dag no. 268 but on Dag no. 267. In such view of the matter the Hon'ble Single Judge ought not to have directed the proceeding under section 397 of the KMC Act, shall, inter alia, relate to the appellant's plot.
6. In reply, Mr. Ghosh contends his client is the owner of a water body popularly known as *Ukil Beel*. Both Dag no. 268 and Dag no. 267 were recorded as water body in the municipal records. Co-operative Society namely Eastern Metropolitan Co-operative Society constructed multi-storied building adjoining the water body. They encroached on the water body and allotted various plots in Dag no. 268 and Dag no. 267 to its members. The appellant is one of the members of the Co-operative Society and his building was also illegally constructed by filling up the water body. He had obtained sanction plan through misrepresentation.
7. We have considered the rival submissions at the bar. We find the matter relates to filling up of a water body namely *Ukil Beel*. The issue had been taken up for consideration by the National Green Tribunal. A 8-member committee

submitted a report before the National Green Tribunal. After referring to relevant records the following findings were recorded :

1. *Plot nos. CZ 9B, CZ 14A, CZ 14B, CZ 15A, CZ 20A, CZ 21A and CZ 26A/B/C have been created after 2013 by filling up of water body i.e. Ukil Bheri. Hence these need to be demolished.*
2. *The KMC shall take steps to immediately restore the water body at plot nos. CZ 9B, CZ 14A, CZ 14B, CZ 15A, CZ 20A, CZ 21A and CZ 26A/B/C in compliance with the order of the Hon'ble National Green Tribunal dated 03.01.2022.*
3. *After restoration of the water body, the KMC shall take management control of the same in accordance with The West Bengal Inland Fisheries Act, 1984.*
4. *The KMC will demarcate Ukil Bheri boundary with concrete pillars and do the geo tagging with the help of ADM&LRO, Dist South 24 Parganas*
5. *The KMC shall submit a compliance report after restoration of the above mentioned plots before the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata within a period of 6 months.*
8. Referring to the aforesaid finding the Hon'ble Single Judge had directed proceeding under section 397 of the KMC Act relating to cancellation of sanctioned plan to be considered by the Municipal Commissioner after giving an opportunity of hearing to all the interested parties and upon taking into consideration any order passed in other writ proceeding by some of the plot holders.
9. In view of the aforesaid, we are of the opinion no final decision affecting the right of the appellant has been taken by the Hon'ble Single Judge. It is open to the appellant as one of the plot owners to agitate his case before Municipal Commissioner in the aforesaid proceeding in accordance with law.
10. With this clarification appeal is disposed of.
11. There shall be no order as to costs.

12. Urgent Photostat certified copy of judgment, order if applied for be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)