

20th December,
2024
(AK)
08

C.P.A.N 1435 of 2024
IA No: CAN 1 of 2024
in
WPA 9863 of 2021

Akash Jain and others
Vs.

Dhaval Jain, represented by the Municipal
Commissioner, the Kolkata Municipal Corporation

Mr. Debasish Banerjee
Mr. Shuvanil Chakraborty
Mr. Prem Kumar Singh
Mr. Soumabrata Ganguli
Ms. Moumita Mondal

...for the petitioners.

Mr. Alok Kumar Ghosh
Mr. Swapan Kr. Debnath
Ms. Ina Bhattacharyya

...for the KMC.

Mr. Chanchal Kumar Dutta
Mr. Nirmalya Das Gupta
Ms. K. Mullick

...for the applicant.

1. Affidavits-in-opposition by the Kolkata Municipal Corporation and replies by the applicants in CAN 1 of 2024 and the petitioners in CPAN 1435 of 2024 filed today be kept on record.
2. CAN 1 of 2024 is an application for recalling an order dated November 29, 2024 passed by this court in CPAN 1435 of 2024, whereby this court had directed, in connection with the contempt proceeding, the Kolkata Municipal Corporation to

demolish the illegal portion of the disputed property.

3. Learned counsel appearing for the applicant in CAN 1 of 2024 submits that the said applicant, although given a hearing by the Kolkata Municipal Corporation in terms of the parent order of this court dated November 29, 2024, received no copy of the decision taken thereon by the Kolkata Municipal Corporation.
4. It is also submitted that a portion of the demolition work has already been carried out by the Kolkata Municipal Corporation in the meantime.
5. Learned counsel appearing for the Kolkata Municipal Corporation submits that the Kolkata Municipal Corporation complied with the order of this court by giving an opportunity of hearing to all concerned, including the present applicant, and took a decision to demolish the illegal portion of the construction by placing reliance on a previous order of demolition which had already been passed in the year 2022 but was awaiting the approval of the Mayor-in-Council of the Corporation in the meantime.
6. It is submitted that due to communication gap, the said order of 2022 could not be pointed out to this court when the order dated November 29, 2024 was passed in WPA 9863 of 2021.

7. Learned counsel for the Kolkata Municipal Corporation also files an affidavit today where it has been disclosed that copies of the last order dated July 9, 2024 were sent by registered post to the applicant on July 13, 2024, in support of which postal receipts have been annexed to the affidavit of the Kolkata Municipal Corporation.
8. Learned counsel for the applicant disputes the said service.
9. However, upon hearing learned counsel, I find that the copies of the order were sent to the correct address of the applicant as appearing from the records and as such, a presumption of good service ought to be drawn.
10. Moreover, since a substantial portion of the demolition work has already been carried out, no further purpose would be served in keeping the application pending.
11. The remedy of the applicant now lies in an appropriate challenge being preferred against the Kolkata Municipal Corporation order of demolition dated July 9, 2024.
12. The court is apprised by learned counsel for the alleged contemnor and the petitioners that there are already pending appeals in respect of the previous demolition order, at least one of which was preferred by the present applicant.

13. Be that as it may, in order to enable the present applicant to prefer an appeal against the last-mentioned demolition order dated July 9, 2024, the Kolkata Municipal Corporation is directed to stay its hands on the demolition order dated July 9, 2024 till January 17, 2025 and/or till any order in that regard, if passed by the concerned tribunal in connection with an appeal, if preferred by the present applicant.
14. It is made clear that the above order directing the Kolkata Municipal Corporation to stay its hands is being passed entirely on an *ad hoc* basis, to provide some breathing space to the applicant for preferring a challenge against the order dated July 9, 2024, and shall not be construed before any competent forum as any final adjudication of the contentions of the parties in connection with the demolition order. It will be completely open to the appropriate tribunal, if an appeal is preferred by the applicant, to decide all issues in accordance with law, independently and without being influenced in any manner by any of the observations made herein and/or by the above restraint order passed on the Kolkata Municipal Corporation.
15. It will also be open to the tribunal, as and when moved by the applicant, to pass orders varying, modifying, vacating or extending the restraint order

passed by this court, upon giving opportunity of hearing to all parties.

16. Insofar as the contempt application is concerned, I find from the records that the alleged contemnor has complied with the order of this court by giving appropriate opportunity of hearing to all concerned and thereafter passing a fresh order of demolition by relying on its previous order of demolition of 2022.
17. Even thereafter, the alleged contemnor has taken action on the basis of such order by starting the demolition process, as admitted by the parties.
18. Hence, I do not find any necessity to keep the contempt application pending further.
19. Accordingly, CPAN 1435 of 2024 is disposed of as infructuous.
20. In view of the above observations, CAN 1 of 2024 also stands disposed of.

(Sabyasachi Bhattacharyya, J.)