

**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 1951 of 2024
(CAN 1 of 2024)***

Haru Dutta

-Vs-

Dhiraj Ali @ Md. Akash & Ors.

For the Appellant : Mr. R. Chakroborty, Adv.,
Mr. A. Z. Mondal, Adv.,
Mr. Avirup Mondal, Adv.,
Ms. Shahnaz Parveen, Adv.

For the State : Mr. Amal Kr. Sen, AGP,
Mr. Lal Mohan Basu, Adv.

For the KMC : Mr. Srijan Nayek, Adv.
Mr. Atis Kr. Biswas, Adv.

Heard on : 07.10.2024

Judgment on : 07.10.2024

Joymalya Bagchi, J. :-

1. With consent of the parties, matter is taken up for hearing today.

2. By the impugned order, appellant was directed to add new incumbent as contemnors. Contemnors were also directed to demolish the unauthorized construction by the adjourned date, failing which they were directed to be physically present.
3. Mr. Chakraborty contends his clients have challenged the demolition order before the Municipal Building Tribunal under Section 400(3) of the Kolkata Municipal Corporation Act. He contends direction to demolish be stayed.
4. We have considered the materials on record. By order dated 28.03.2022, Hon'ble Single Judge directed the competent authority of Kolkata Municipal Corporation to inspect the structure and after giving opportunity of hearing to pass a reasoned order. The order further clarified that the hearing officer would only look into the validity of the construction i.e. whether the construction was in absence of a sanctioned plan or was in deviation of sanctioned plan or in violation of rules and nothing more.
5. The order did not direct the respondent authorities to demolish the structure, if the same is found to be unauthorized. This direction came to be passed in the contempt proceeding. It is settled law that the original order cannot be improved or modified in contempt jurisdiction.

6. Under such circumstances, we set aside the impugned order to the extent it directs the contemnors to demolish the unauthorized structure until further orders.
7. This order shall not stand in way of Corporation authorities to independently exercise their powers in accordance with law.
8. Appeal is allowed to the aforesaid extent. Connected application is disposed of.
9. There shall be no order as to costs.
10. 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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