

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.O. No. 2428 of 2015

With

C.O. No. 3620 of 2015

Balai Chand Kundu

-Versus-

The Municipal Commissioner, KMC & Ors.

For the Petitioner : **Mr. Biswajit Mukherjee,
Mr. Barin Banerjee,
Ms. Sima Chakraborty,
Ms. Manisha Nath.**

For the Opposite Parties : **Mr. Alok Kumar Ghosh,
Mr. Fazlul Haque**

Hearing concluded on : **19.03.2024**

Judgment On : **05.04.2024**

Prasenjit Biswas, J:-

1. Both the revisional applications have been taken together for passing order. The revisional application (C.O. 3620/15) is preferred challenging the impugned order dated 21.08.2015 passed by the learned Municipal Building Tribunal, Kolkata Municipal Corporation in connection with Appeal No. 81 of 2005 in which order passed by the Special Officer (Building) in Demolition Case No. 43-D/2004-05 was affirmed on 05.10.2005.
2. This petitioner also preferred another revisional application being C.O. No. 2428 of 2015 challenging the order dated 13.05.2015 passed by the learned Municipal Building Tribunal, Kolkata Municipal Corporation in the same appeal being No. 81 of 2005 where the application filed by the petitioner with a prayer for passing fresh order for inspection was rejected.
3. Only point involved in this revisional application is whether the Special Officer (Building) lacks inherent authority or jurisdiction to entertain a proceeding under Section 400 (1) of the Kolkata Municipal Corporation Act as delegated to the Municipal Commissioner.
4. It is submitted at the behest of the petitioner that the opposite parties Nos. 3 and 4 (herein) filed a complaint against the petitioner regarding alleged unauthorized construction of a stair-case and at the instance of the complaint filed by those opposite parties the Kolkata Municipal Corporation initiated a demolition proceeding being Demolition Case No. 43-D of 2004-2005. After opportunity of being heard of the parties a demolition order was passed by a

Special Officer (Building), Kolkata Municipal Corporation by which direction was given to demolish the stair-case of the present petitioner. It is further submitted that the present petitioner preferred an appeal before the Municipal Building Tribunal being Appeal No. 81 of 2005 challenging the said order of demolition passed by the Special Officer (Building) of the Kolkata Municipal Corporation but the said appeal was dismissed by the Tribunal by passing the order under challenge.

5. It is stated by the petitioner that during pendency of the appeal before the learned Tribunal he filed an application with a prayer for inspection to be made by an Engineer from the Kolkata Municipal Corporation on the points as set out in the said application. The learned Tribunal by passing an order dated 18th February, 2011 allowed the application with direction for inspection of the premises in question by an Engineer of the Corporation. Accordingly, inspection was made by the Engineer after due service of notice to the respective parties and filed a report before the Tribunal. Being dissatisfied with the report submitted by the Engineer concerned a petition was taken out on behalf of the petitioner with a prayer for cancellation of the report dated 18.04.2011 submitted by the Assistant Engineer, Kolkata Municipal Corporation and prayed for fresh order of inspection but the said petition filed by the petitioner herein was rejected by the Tribunal by passing an order dated 13.05.2015 and being aggrieved and dissatisfied with the said order the revisional application being C.O. No. 2428 of 2015 is preferred by the appellant.

6. At the time of hearing learned Counsel appearing on behalf of the petitioner draws attention of the Court about the decision rendered by a Co-ordinate Bench of this Court in case of **Susama Saha vs. Kolkata Municipal Corporation** reported in **(2015) 5 CHN 309**. The attention of this Court is further drawn by the learned Counsel of the petitioner to the decision rendered by a Co-ordinate Bench of this Court dated 15.12.2023 in case of **Sri Nemai Naskar vs. Sri Pradip Acharya & Ors.** in **CO 1089 of 2008**. It is argued by the learned Counsel that self same point was raised before the Co-ordinate Bench of this Court wherein the Co-ordinate Bench observed that the Municipal Commissioner cannot delegate his powers and functions under Section 400(1) of the unamended Kolkata Municipal Corporation Act, 1980. As per submission of the learned Counsel that the present revisional applications may be disposed of in the light of observations as referred above.

7. Learned Counsel appearing on behalf of the Kolkata Municipal Corporation submits that the matter may be referred before the appropriate authority for proper decision.

8. In **Susama Saha (supra)** Co-ordinate Bench of this Court observed *interalia* that:

23. According to Section 48 of the Act it appears that the Municipal Commissioner can delegate any of his powers and functions including the powers and functions conferred under Sub-section 1 of Section 400 but such delegation can only be made to any other officer or employee of the Corporation. The

officer must be a validly appointed officer and by included in the establishment of the Corporation before the Municipal Commissioner delegates the powers and functions. Since the post of the Special Officer is not recognized either in the Act or in the Regulation the person appointed on such post cannot be brought within the ambit of the officer or an employee of the Corporation. This Court, therefore, holds that the order of Municipal Commissioner to delegate his powers and functions under Sub-section 1 of Section 400 of the code is bad, illegal and contrary to the provisions contained under Section 48 of the Act

9. Following observations of this Court in case of **Susama Saha** the another Co-ordinate bench of this Court in case of **Sri Nemai Naskar (supra)** held interalia that:

“On perusal of the aforesaid judgment more specifically the relevant provisions which have quoted above it appears to this Court that admittedly in view of the provisions of the unamended Act of Kolkata Municipal Corporation Act, 1980 the Special Officer is not the competent authority for passing a direction for demolition of the alleged unauthorised construction over the property in question since the delegatory power which he claimed to have been received from the Municipal Commissioner is found to be bad, illegal and contrary to the provision of Section 48 of the Act as held in the case of Susama Saha.”

10. In view of observation of the Court rendered in case of **Susama Saha** the order of demolition passed by the Special Officer dated 05.10.2005 is a nullity as he was not an employee or officer of KMC as per provision of the unamended Kolkata Municipal Corporation Act. The Municipal Commissioner did not have the authority to delegate the relevant power to the person who is opposite party no. 2 in this case. As the commissioner lacked the competence to delegate the relevant power to that person, accordingly that person lacked jurisdiction to pass the demolition order at the relevant point of time under Section 48(3)(b). The commissioner could delegate the power under Section 400(1) of the Kolkata Municipal Corporation Act only to an officer or employee of the Kolkata Municipal Corporation.

11. It is not to be out of place to mention here that a special leave petition was filed before the Hon'ble Apex Court of India challenging the decision rendered by this Court in case of Susama Saha but subsequently, that was not pressed. Therefore, the decision passed by this Court in case of Susama Saha holds good till date. So, it is clear to this Court that in view of unamended provision of the Kolkata Municipal Corporation Act, 1980 the special officer had no jurisdiction to pass any direction for demolition of the alleged unauthorized construction over the premises in question.

12. It is to be mentioned here that subsequently, an amendment was carried out to Section 400 of the Kolkata Municipal Corporation Act which empowers the Municipal Commissioner to delegate his powers and functions under the first and third proviso of the sub-Section to the special officer

appointed by him with the approval of the State Government but this provision is not relevant here as the same came in the year 2015 with no retrospective effect.

13. In view of above facts and circumstances and discussions made above the impugned order dated 21.08.2015 passed in connection with Appeal No. 81 of 2005 and the order dated 13.05.2015 in connection with Appeal No. 81 of 2005 passed by the learned Municipal Building Tribunal, Kolkata Municipal Corporation are hereby set aside.

14. Liberty is hereby given to the Kolkata Municipal Corporation to proceed afresh against the alleged construction in terms of the provisions of the amended Kolkata Municipal Corporation Act, 1980. Since Kolkata Municipal Corporation is of the view that the impugned construction is unauthorized and illegal they should initiate fresh action at the earliest and conclude the same to its logical conclusion in accordance with law after giving opportunity of being heard to the parties to the case.

15. It is made to be clear here that the question of making alleged illegal construction over the premises in question is kept open as this Court has not go into the merits of the impugned orders passed by the Municipal Building Tribunal as well as Special Officer of the Corporation.

16. With the aforesaid observations made above the revisional application being C.O. No. 3620 of 2015 and C.O. No. 2428 of 2015 are hereby allowed and disposed of.

17. Consequently, other applications, if any, are also hereby disposed of.

18. There will be no order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)