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2024
AKG
Ct. 15

WPA 27450 of 2024
Sadaf Iran & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.
With
WPA 27455 of 2024
Md. Noor Hussain & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Aditya Mondal,
Mr. Tirthankar Mukherjee,
Ms. Madhurima Sarkar
...for the Petitioners in WPA 27450/2024

Mr. Biswaroop Bhattacharya,
Mr. Sumitava Chakraborty,
Ms. Urmi Biswas
...for the Petitioners in WPA 27455/2024

Mr. Himadri Sikhar Chakraborty,
Ms. Susnita Saha
...for the State in WPA 27450/2024

Mr. Gourav Das,
Ms. Priyanka Jana
...for the State in WPA 27455/2024

Mr. Tanmoy Mukherjee,
Mr. Suman Mandi
...for Respondent No. 8 in WPA 27450/2024

Mr. Kajal Ray,
Mr. Suman Mandi
...for Respondent No. 8 in WPA 27455/2024

Mr. Alak Kr. Ghosh,
Ms. Manisha Nath
...for KMC

Both the writ petitions are taken up for hearing together since they relate to a construction at premises no.1, Kavi Md. Iqbal Road, Ward No.77, Borough-IX of the Kolkata Municipal Corporation.

WPA 27455 of 2024

The present writ petition challenges the order dated October 3, 2024, issued by the Commissioner of

the Kolkata Municipal Corporation.

The background of the case can be traced to the order dated May 21, 2024, passed in WPO No. 208 of 2024 by a co-ordinate Bench of this Court. The relevant portion of the order is reproduced below:

“The Court:- A G+V storied building has come up at premises no.1, Kavi Md. Iqbal Road, Ward No.77, Borough-IX of the Kolkata Municipal Corporation.

A plan was obtained for constructing G+II storied structure relying upon fraudulent documents. Over and above the G+II storey two additional floors have been constructed without any sanction at all. The Corporation has already been directed by an earlier order of this Court to take steps to demolish the top two floors constructed without any sanction.

As regards the construction made on the basis of the plan obtained on furnishing fraudulent documents, the Commissioner of the Corporation is directed to initiate appropriate proceeding under Section 397 of the Kolkata Municipal Corporation Act, 1980 for cancelling the subject plan.

Be it recorded that the plan in question was sanctioned in the name of the erstwhile mutuwalli who is no longer alive. The Corporation shall, accordingly, serve notice of hearing under Section 397 of the Kolkata Municipal Corporation Act, 1980 to the present mutuwallies, upon the persons responsible for making construction and upon the occupants of the top two floors constructed unauthorizedly.

Steps shall be taken under Section 397 at the earliest but positively within a period of twelve weeks from the date of communication of this order. All consequential steps shall be taken by the Corporation pursuant to the order passed immediately thereafter.”

In a subsequent round of writ proceedings (WPA 15725/2024), by an order dated June 14, 2024, this Court observed as follows:

“The parties do not dispute that a plan was sanctioned by Kolkata Municipal Corporation for constructing a G+3 storeyed structure. It is also not in dispute that on the land in question a G+5 building has been raised and the petitioners are in occupation of the 4th and 5th floor of the building.

.....

I am of the view that since a Co-ordinate Bench of this Court directed the occupants in respect of the 4th and 5th floor premises to be heard in a proceeding under Section 397 of the Kolkata Municipal Corporation Act, 1980, it will be a proper compliance of the said order if the petitioners are heard before any demolition proceeding is initiated in respect of the aforesaid two floors.

Accordingly, this Court directs respondent no.3 to give an opportunity of hearing to the petitioners on June 20, 2024, at 12 p.m. No separate notice of hearing is required to be given to the petitioners.”

It is not in dispute that, after hearing all concerned as directed by this Court, the order impugned, dated October 3, 2024, was passed by the Municipal Commissioner of the Kolkata Municipal Corporation. The relevant portion of the order is quoted below:

“Official of the concerned Building Department verbally submits that Director General (Building) already passed an order for initiation proceeding under section 397 of the K.M.C. Act, 1980 in compliance with the orders of the Hon’ble Court at Calcutta

dated 21.05.2024 & 14.06.2024. They also submit that for verifying the authenticity of the development permission issued by Chief Executive Officer, Board of Wakfs West Bengal vide No. 3413 dated 04.05.2007. Executive Engineer (C)/Bldg/Br.-IX sent letters lastly on 23.07.2024 to the CEO, Board of Wakfs. They also submit that in reply of the aforesaid letter, Chief Executive Officer, Board of Auqaf, W.B. issued a letter on 27.08.2024 vide Memo No. 1/550580/24 wherein it is stated that the copy of so called Board's letter of development permission claimed to be issued by C.E.O. B.O.A. vide no. 3413 dated 04.05.2007, is not issued by this office and alleged resolution dated 22.03.2007 and 05.04.2004 are not part of officials record of the Board of Auqaf, West Bengal.

From the said submission and relied on documents it appears that based on the documents as submitted by the applicant, Kolkata Municipal Corporation awarded the sanction plan vide B.P. No. No. 2007090024 dated 08.10.2007 are vague, false and fabricated.

Hence it is."

A copy of the letter dated August 27, 2024, from the Chief Executive Officer has been provided to the learned advocate for the petitioner.

Mr. Biswaroop Bhattacharya, the learned advocate for the petitioner, argues that the findings made by the Municipal Commissioner are perverse, as there is nothing in the impugned order of October 3, 2024, to substantiate the claim that the permission dated May 4, 2007, is a forged document. Mr. Bhattacharya further submits that the permission dated May 4, 2007, was communicated to all

concerned, including the predecessor-in-interest, respondent no. 8. He also contends that based on this communication, the Corporation sanctioned a building plan for a G+3 structure, which was subsequently renewed at least two times by the Kolkata Municipal Corporation.

I am of the view that the findings concerning the authenticity of the permission dated May 4, 2007, were made after hearing all parties and examining the relevant official records by the Commissioner, Kolkata Municipal Corporation. Consequently, I find no grounds to interfere with these factual findings through judicial review in order to arrive at a contrary conclusion.

Therefore, **WPA 27455 of 2024** is dismissed.

WPA 27450 of 2024

The learned advocate for the petitioner, through this writ petition, challenges the demolition proceedings initiated under Section 400(8) of the Kolkata Municipal Corporation Act, 1980, for the demolition of the 4th and 5th floors of the relevant building.

It is argued that the facts and circumstances of the case do not justify the invocation of Section

400(8) of the Kolkata Municipal Corporation Act, 1980, bypassing the regular proceedings under Section 400(1) of the same Act.

No sanctioned plan has been produced before this Court to support the construction of the 4th and the 5th floor of the building, as per the submissions made by the learned advocate for the petitioner.

Such substantial construction cannot be regularised under the relevant rules and regulations of the Kolkata Municipal Corporation. In my view, relegating the matter under Section 400(1) of the Kolkata Municipal Corporation Act, 1980, will serve no useful purpose, given that the concerned parties have been heard before this Court and failed to justify the impugned construction.

In light of the foregoing, I am not inclined to interfere with the Corporation's actions.

Accordingly, **WPA 27450 of 2024** is dismissed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)