

07. 03.01.2024
Court No.6
(Tanmoy)

MAT 2285 of 2023

**Swapan Kumar Pan @ Swapan Pan
-Versus-
The Kolkata Municipal Commissioner & Ors.**

**With
IA No: CAN/1/2023
With
IA No: CAN/2/2023**

Mr. Sardar Amjad Ali, Ld. Sr. Adv.,
Mr. Sakya Sen, Adv.,
Ms. Manika Sarkar, Adv.

...for the appellant.

Mr. Alok Kr. Ghosh, Adv.,
Mr. Subhrangsu Panda, Adv.

...for the Kolkata Municipal
Corporation.

Mr. Tapan Kr. Mukherjee, Adv.,
Mr. Shamim ul Bari, Adv.,
Mr. Somnath Naskar, Adv.

...for the State.

Mr. Iqbal Hussain, Adv.

...for the respondent no.5.

By consent of the appearing parties the appeal and the connected applications are taken up together for hearing.

In an earlier round of litigation, the respondent no.5 herein had approached a learned Single Judge of this Court by filing WPA 8463 of 2021, complaining that the present appellant was making unauthorized construction after filling up a water body. The learned

Single Judge disposed of the writ petition with the following directions:-

“As the communication reveals certain unauthorized construction, accordingly, the present writ petition is disposed of by directing the Municipal Commissioner to take appropriate steps to deal with such unauthorized construction in accordance with law after giving reasonable opportunity of hearing to all the necessary parties and pass a reasoned order and communicate the same to the parties.

The aforesaid exercise shall be completed positively within a period of three months from the date of communication of a copy of this order.

The writing forwarded by the Director General (Building), KMC signed on December 13, 2022 is retained with the records.”

Being aggrieved, the present appellant, who was the private respondent in that writ petition, came up before a co-ordinate Bench by filing MAT 427 of 2023. That appeal was disposed of by the Bench by a judgment and order dated May 2, 2023, the operative portion whereof reads as follows:-

“We are of the view that since the order of the learned Single Judge has been carried out and a demolition order has already been passed, no fruitful purpose will be served by continuing with the present appeal. The appellant has a statutory right of appeal against the demolition order before the Municipal Building Tribunal. We are of the view that the appellant may approach the Tribunal, if so advised, assailing the demolition order. If the appellant approaches the Tribunal with an appeal against the demolition order within a period of three weeks from date and makes an application therein, for interim relief, the Tribunal shall dispose of such application within four weeks from the date of receipt of the application, in accordance with law and the applicable rules and regulations, without being influenced by anything in this order or in the order of the learned Single Judge, which is under challenge in this appeal. Naturally the Tribunal shall pass a reasoned order

after affording full opportunity of hearing to all concerned parties, including the writ petitioner/respondent no.1 herein. Copies of documents that the Corporation may wish to rely upon before the Tribunal, shall be made available to the appellant or his learned advocate well in advance. All points are left open for the appellant to urge before the Tribunal. We have not gone into the merits of the case.

For a period of eight weeks from date, there will be an unconditional stay of operation of the demolition order. If the appellant approaches the Tribunal within the time period indicated above and is successful in obtaining interim stay of operation of the demolition order from the Tribunal, naturally the stay will continue for so long as the Tribunal directs. In the event, the appellant is unsuccessful in obtaining interim relief from the Tribunal, the Corporation will be at liberty to implement the demolition order, subject to interdiction by any competent forum.”

It appears that thereafter, the present appellant filed a statutory appeal against the demolition order and a stay application therein before the Municipal Building Tribunal. The stay application was dismissed by the Municipal Building Tribunal. Assailing such dismissal order, the present appellant approached the learned Single Judge in the present round of litigation. The learned Judge, by a judgment and order dated November 1, 2023, which is impugned in this appeal, dismissed the writ petition. Hence this appeal.

The sole point that has been urged by learned Advocate for the appellant is that after the demolition order was passed on April 11, 2023, by the Executive Engineer (Civil), a notice dated April 27, 2023 was issued by the Executive Engineer (C), Building

Department, Borough No. XV, addressed to, amongst others, the appellant herein, which reads as follows:-

**“Subject: Joint site inspection on 04.05.2023.
WPA 8463 of 2021 (Sk. Abdul Karim Vs Kolkata Municipal
Corporation and Ors)
Re. Premises No. T-99/1, S.A. Farooque Road, Ward-
138, Br-XV**

Due to discrepancy pointed out in the case file (vide D/case No. 20-D/Br-XV/22-23 dated 28.11.2022) about the actual area of land of the aforesaid premises and the area of unauthorized construction as per order of E.E.(C)/Bldg./Br-XV dated 11.04.2023 a joint inspection is scheduled on 04.05.2023.

You are requested to be present at the site at 3:00pm with all relevant documents regarding the aforesaid matter to demarcate the land and further assess the extent of the unauthorized construction.”

The notice was signed also by the Sub-Assistant Engineer (C)/Building/Borough-XV and Assistant Engineer (C), Building Department, Borough no.XV, Kolkata Municipal Corporation (in short, ‘KMC’).

Learned Advocate for the appellant argued that the contents of the aforesaid notice would indubitably demonstrate that KMC is not sure as regards the extent of unauthorized construction. Hence, the notice for joint inspection was issued. Without finally ascertaining the extent of unauthorized construction, no demolition activity ought to be undertaken by KMC.

Mr. Ghosh, learned senior Counsel representing KMC, however, argued that the language of the said notice may not be very happy but it was not meant to reopen the issue of the nature or extent of unauthorized

construction made by the appellant herein. The fact is that there are a number of buildings adjacent to and adjoining each other one of which is that of the present appellant. All such buildings have been constructed without any sanctioned plan. Demolition proceeding was initiated in respect of the appellant's building and the same culminated in a demolition order. To ensure that while demolishing the unauthorized construction put up by the appellant, all other constructions, in respect of which demolition proceedings have not yet been initiated, are not adversely affected, a joint inspection was contemplated. There is no ambiguity as regards the nature and extent of illegal construction made by the appellant herein.

Learned Advocate appearing for the respondent no.5 herein also says that the impugned construction is wholly illegal and has been made by filling up a water body. The appellant deserves no sympathy from a Court of law, far less from a Court of equity which the writ Court is.

Mr. Sen, learned Advocate appearing for the appellant, strongly denies and disputes the submissions made on behalf of KMC as well as the private respondent herein. He says that his client has used a supplementary affidavit disclosing documents which will demonstrate that his client has done nothing illegal.

We have anxiously considered the rival contentions of the parties. It is an undisputed fact that the demolition proceeding initiated in respect of the impugned construction put up by the appellant culminated in a demolition order dated April 11, 2023. There would have been no problem had KMC proceeded to execute such demolition order. The entire confusion has been created by issuance of the notice dated April 27, 2023. The language of the notice is clear. There is no ambiguity in such language. The language unequivocally indicates that further joint inspection is necessary to assess the extent of unauthorized construction, by reason of discrepancy pointed out in the relevant case file.

Mr. Sen submitted that the Municipal Building Tribunal, while dismissing the present appellant's statutory appeal against the demolition order, did not consider the aforesaid notice although the same was specifically mentioned in the pleadings filed before the Tribunal. He may well be correct. The order of the Tribunal does not refer to this notice at all.

We are of the view that the Tribunal should revisit the issue and decide the stay application filed by the present appellant in the statutory appeal afresh after taking into consideration the aforesaid notice dated April 27, 2023. KMC may well have a good explanation for issuance of such notice which KMC will be at liberty to

furnish before the Tribunal. We are passing this order since the language of the notice dated April 27, 2023, without any ambiguity indicates that further enquiry may be necessary in the matter by KMC. KMC will be at liberty to urge before the Tribunal that no such further enquiry is necessary. We only want the Tribunal to apply its mind to the notice dated April 27, 2023. We clarify that we are not binding the hands of the Tribunal to decide the stay application afresh in any particular manner. It will pass a fresh order in accordance with law observing the principles of natural justice, within a period of four weeks from the date of communication of this order by KMC and/or the appellant and/or the private respondent herein to the Tribunal.

Till a fresh order is passed by the Municipal Building Tribunal, no coercive action shall be taken by the Corporation Authorities in respect of the impugned construction.

We further direct that in the event the stay application is dismissed by the Tribunal, no effect be given to such order for a period of ten days from the date of the order.

We make it clear that we are passing this direction only to grant a breathing space to the appellant herein to assail any adverse order of the Tribunal before any available forum, if he is so advised.

We further make it clear that if after dismissal of the stay application, the appellant within the next ten days is unable to obtain any favourable order from any competent forum, KMC will immediately proceed to demolish the impugned construction.

The order impugned is set aside.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 2285 of 2023 and the connected applications being IA No: CAN/1/2023 and IA No: CAN/2/2023 are disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)