

D/L  
Item No. 09  
05.03.2024  
KOLE

**MAT 2495 of 2023  
With  
IA CAN 1 of 2024**

**Madan Kanu  
-Vs.-  
The State of West Bengal & Ors.**

*Mr. Nilanjan Bhattacharjee,  
Mr. Abhilash Chatterjee,*  
*...for the appellant.*

*Mr. Suman Sengupta,  
Mr. Amrita Panja Moulick,*  
*...for the State.*

*Mr. Sandipan Banerjee,  
Mr. Ankit Surekha,  
Md. A. Molla,*  
*...for the HMC.*

*Mr. Surajit Basu,  
Mr. Dev Kumar Sharma,*  
*...for the respondent no. 7.*

By consent of the parties, the appeal and the connected application are taken up for hearing together.

The appellant's writ petition being WPA 22849 of 2023, was dismissed by a learned Judge of this Court by a judgment and order dated November 28, 2023, which is under challenge in this appeal at the instance of the writ petitioner.

It is not in dispute that a G+2 storeyed building has been constructed by the appellant without obtaining any sanctioned plan from Howrah Municipal Corporation (in short 'HMC').

However, the appellant says that on November 21, 2019, he received a letter from the Assistant Engineer,

Borough-III, HMC, directing him to meet the concerned Sub-Assistant Engineer and to submit 'as made plan' and other necessary relevant documents. He says that very soon thereafter, i.e., in December 2019, he submitted the 'as made plan'. However, consideration of the plan remained pending.

A writ petition being WPA 4769 of 2022 was filed by the private respondent in this appeal, complaining of illegal construction at the instance of the present appellant and failure of HMC to consider and dispose of the representation made by the private respondent herein bringing to the attention of the HMC the unauthorized construction raised by the present appellant. The learned Judge noted that the present appellant's writ petition being WPA 23740 of 2022 regarding the issue of regularization of the concerned construction is pending. The learned Judge disposed of WPA No. 4769 of 2022 by a judgment and order dated January 10, 2023, the operative portion whereof reads as follows:-

*"As it appears that the representation of the petitioner objecting to the illegal and unauthorized construction is pending consideration at the end of the respondent authorities, no useful purpose will be served by keeping the writ petition pending.*

*The writ petition is accordingly disposed of by directing the respondent no. 3, the Commissioner or his delegate to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same*

*to all the necessary parties including the petitioner immediately thereafter.*

*In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.”*

By a judgment and order of the same date, i.e, January 10, 2023, the present appellant’s writ petition being WPA 23740 of 2022, was dismissed by the learned Judge. The learned Judge observed that no provision of law has been produced showing that regularization of an entire building constructed without sanction, is permissible.

Subsequent to the order of the learned Single Judge, HMC considered the representation made by the private respondent and held hearings wherein the concerned parties participated. Finally an order dated July 12, 2023, was passed by the Competent Authority in HMC, the operative portion whereof reads as follows:-

*“That the Respondent has violated the HMC Act 1980 and KMC Building Rules 2009 as extended for Howrah and the respondent is hereby directed to cause Self Demolition of the unauthorized constructions and deviated portions as mention in the Inspection Report within 15 days from the date of receipt of this order and in default HMC will cause demolition of the unauthorized construction and deviated portions and the costs of such demolition will be borne by the respondent.”*

Challenging the aforesaid order of HMC the appellant approached the learned Single Judge in the present round of litigation.

The learned Judge referred to the earlier order dated January 10, 2023, whereby the appellant's earlier writ petition was dismissed with an observation that according to the provisions of law, construction can be made only after obtaining sanction and not prior thereto. The learned Judge dismissed the appellant's present writ petition with the following observations:-

*“In the instant case, the entire G+2 storied structure has been constructed without any sanction. The construction is absolutely illegal. The Court refuses to exercise jurisdiction in the present case.”*

Being aggrieved, the writ petitioner is before us by way of this appeal.

Mr. Nilanjan Bhattacharjee, learned Advocate appearing for the appellant/writ petitioner says that although the appellant has constructed the building in question without obtaining prior sanction from HMC, as a matter of fact, none of the relevant building rules has been violated. It is a residential building where the appellant and his family reside. They are not wealthy people. The matter should be considered sympathetically. If HMC finds that the construction is in accordance with the applicable building rules, the appellant should be permitted to retain the construction upon payment of such retention charges or penalty that HMC may decide.

We have not called upon the respondents to make submission.

HMC is a creature of statute. A statutory corporation must act within the four corners of the parent statute. It can

do only such things as the statute has empowered it to do. It is incompetent to do something which the statute does not contemplate. This is the fundamental difference between a statutory corporation and a natural person. A natural person is free to do anything excepting that which is forbidden by law. A statutory corporation can do only such things which the parent statute authorizes it to do and nothing more.

No provision in the HMC Act has been drawn to our attention which would permit HMC to regularize the building or any portion thereof constructed by the appellant without obtaining prior sanction. HMC is not empowered to permit a person to retain such a construction. Hence, although we may have sympathy for the appellant and his family, we are unable to grant any relief to them. Sympathy cannot be the basis for passing orders in a court of law.

In view of the aforesaid, we do not find any infirmity in the order of the learned Single Judge.

However, on the request made by Mr. Bhattacharjee, learned Advocate for the appellant, and on humanitarian grounds, we allow three months time to the appellant to vacate the building in question so that the same can be demolished by HMC in accordance with law. The appellant shall file an undertaking in the form of affidavit with the learned Registrar General of this Court within a week from date, to the effect that he along with his family members and associates who reside in the building in question, shall vacate the building within three months from date, upon

intimation to HMC. Once the appellant and his family members vacate the premises in question, HMC shall forthwith proceed to demolish the same in accordance with law.

Learned Advocate for the appellant further says that once the building is demolished, the appellant should be granted the liberty to apply for sanction of a building plan and make fresh construction in accordance with the sanctioned plan. That liberty the appellant always has.

Mr. Banerjee, learned Advocate for HMC says that at the time of demolition, the jurisdictional police should render all assistance to HMC. If such assistance is necessary and if the jurisdictional police is approached by HMC, the police authorities shall render full cooperation and assistance for carrying out the order of demolition as contemplated in Section 225 of the HMC Act, 1980.

The appeal and the connected application are, accordingly, disposed of.

However, let this matter be listed under the heading “To Be Mentioned” on 12.03.2024 only for the purpose of ascertaining whether the appellant has filed the undertaking in the form of affidavit with the learned Registrar General of this Court, as directed above.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**(M. V. Muralidaran, J.) (Arijit Banerjee, J.)**