

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/3/2024
WITH
WPO/1846/2023
MAT/2452/2023
IA NO:GA/1/2024

SADHAN KUMAR CHATTERJEE
VS.
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 18th January, 2024.

Mr. Kashinath De, Adv.
Mr. Sandip Kr. De, Adv.
Mr. Abhijit Sarkar, Adv.
Ms. Abhipiya Sarkar, Adv.
...for Appellant (in APOT/3/2024)

Mr. Robiul Islam, Adv.
Mr. K. M. Hossain, Adv.
Ms. Keya Sutradhar, Adv.
Mr. Kazi Ardan Ali, Adv.
...for Appellant (in MAT/2452/2023)

Mr. Gopal Chandra Das, Adv.
Mrs. Suranjana De Sarkar, Adv.
...for the KMC

Mr. Debangshu Dinda, Adv.
...for State

RE: MAT/2452/2023, CAN/1/2023

GOPAL CHANDRA SAHA & ORS.
VS.
THE STATE OF WEST BENGAL & ORS.

The Court:- By consent of the parties, the appeal is taken up for hearing along with the connected application treating the same as on day's list.

A judgement and order dated October 9, 2023, whereby the writ petition of the appellants being WPA/21991/2023 was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal.

The dispute involves a wall separating two adjoining premises being premises nos. 38 & 40, Dhiren Dhar Sarani and 42A, Dhiren Dhar Sarani, Kolkata. The appellants are the owners of premises Nos. 38 & 40. The private respondent in the appeal is the owner of premises No.42A.

The learned Judge disposed of the writ petition with the following observations and directions:

“After hearing all the parties and upon perusal of the materials on record it appears that permitting the private respondent to demolish the supporting wall will cause serious prejudice to the petitioners. Accordingly, the Court directs that the wall which the private respondent seeks to demolish shall not be demolished till a separate wall as submitted by the learned advocate appearing for the private respondent is constructed.

In the event there is no supporting wall between the structure of the petitioners and the premises no. 42A, Dhiren Dhar Sarani, then the existing wall shall not be demolished.

Any work of demolition shall be conducted in the presence and under strict supervision of the empanelled structural engineer/ licensed building surveyor of the Kolkata Municipal Corporation.”

The appellants are aggrieved by the following portion of the order under appeal:

“It was noted that the structures were constructed long back. Demolition of the existing vertical walls of the existing building of premises No.42A will cause damage to the existing staircase landing, toilets, kitchen etc.”

Learned advocate for the appellants says that the aforesaid observation of the learned Judge may be interpreted as a finding of the learned Judge that the wall in question is a part of premises No.42A and therefore, belongs to the respondent no. 6. It is actually a common wall and has been so for years together.

It appears that the aforesaid observation of the learned Judge is based on a report filed by the engineers of the Corporation. No officer of the Corporation, nor the Writ Court can decide a question of title. Hence, we clarify that the aforesaid observation by which the appellants are aggrieved, shall not in any manner be interpreted as a finding to the effect that the wall in question belongs to the respondent no.6. Since there is a dispute as regards ownership of the wall, the parties would be at liberty to approach the appropriate civil forum for resolution of such dispute.

The appeal **(MAT/2452/2023)** and the connected application **(CAN/1/2023)** stand disposed of.

Since we have not called for affidavits, the allegations made in the application are deemed not to have been admitted by the respondents.

Parties are to act on a server copy of this order.

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

RE: APOT/3/2024
WITH
WPO/1846/2023
IA NO:GA/1/2024

By consent of the parties, the appeal is taken up for hearing along with the connected application.

A judgement and order dated December 21, 2023, whereby the appellant's writ petition being WPO/1846/2023 was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal.

The respondent nos. 8 to 10 in this appeal had earlier approached the Writ Court by filing WPA/21991/2023 (Gopal Chandra Saha & Ors. Vs. The State of West Bengal & Ors.) making certain

complaints against the present appellant. The present appellant and the private respondents in this appeal are neighbours. There appears to be a dispute regarding a wall, which separates two adjoining premises belonging to the parties. While the appellant herein says the wall is a part of his premises, the private respondents say that the wall is a common wall.

The earlier writ petition was disposed of by a judgement and order dated October 9, 2023, the operative portion whereof read as follows:

“After hearing all the parties and upon perusal of the materials on record it appears that permitting the private respondent to demolish the supporting wall will cause serious prejudice to the petitioners. Accordingly, the Court directs that the wall which the private respondent seeks to demolish shall not be demolished till a separate wall as submitted by the learned advocate appearing for the private respondent is constructed.

In the event there is no supporting wall between the structure of the petitioners and the premises no. 42A, Dhiren Dhar Sarani, then the existing wall shall not be demolished.

Any work of demolition shall be conducted in the presence and under strict supervision of the empanelled structural engineer/ licensed building surveyor of the Kolkata Municipal Corporation.”

The present writ petition was filed by the appellant alleging that the aforesaid order passed in the earlier writ petition cannot be

implemented by the appellant herein because of non-cooperation on the part of the private respondents. The said respondents are not allowing the appellant due access so that the appellant may carry out the aforesaid order.

The learned Judge disposed of the writ petition with the following observations:

“Upon hearing the parties, it appears that there are several disputed questions of facts which cannot be ascertained in the present writ petition. The Court relied upon the report submitted by the engineers of the Corporation and passed necessary orders. One of the parties to the writ petition has preferred an appeal. The parties will be at liberty to make appropriate submissions before the Hon’ble Division Bench.

No order can be passed in the present writ petition.”

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

Having heard learned counsel for the parties, we are of the view that there is really no infirmity in the order under appeal. Indeed, disputed questions of fact are involved which may not be conveniently adjudicated by the Writ Court. However, we find that the appellant herein has made a representation dated November 22, 2023, addressed to various officers of Kolkata Municipal Corporation, including the Executive Engineer (Building), Borough-VI, Kolkata Municipal Corporation, being the respondent no.6 herein. In our opinion, ends of

justice will be served if that representation is disposed of by the respondent no.6, in accordance with law, and the appellant says he will be happy with that.

Accordingly, we direct the respondent no.6 to dispose of the aforesaid representation of the appellant dated November 22, 2023, in accordance with law and the applicable Rules and Regulations, by a reasoned order within a period of eight weeks from the date of communication of this order along with the copy of the aforesaid representation to him by the appellant, after giving opportunity of hearing to all concerned parties including the appellant and the private respondents. The order so passed shall be communicated to the parties within a week from the date of the order.

If the respondent no.6 comes to a finding that action needs to be taken, then it shall take necessary action in accordance with law.

We clarify that we have not gone into the merit of the dispute between the parties. The respondent no.6 shall take an informed decision in accordance with law without in any manner touching any title dispute between the parties.

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

Since we have not called for affidavits, the allegations made in the application are deemed not to have been admitted by the respondents.

Parties are to act on a server copy of this order.

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

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)

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