

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Contempt)
ORIGINAL SIDE

[Commercial Division]

CC-COM/2/2024
IA No. GA-COM/1/2024

KONSORTIA PROJECT PRIVATE LIMITED
-VS-
SANJAY SARAF AND OTHERS

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date: January 25, 2024.

Appearance:

Mr. K. Thaker, Adv.
Mr. Chayan Gupta, Adv.
Mr. Ritwik Chowdhury, Adv.
Mr. Dwip Raj Basu, Adv.
...for the petitioner

Mr. Sabyasachi Choudhury, Adv.
Mr. Shaunak Mukhopadhyay, Adv.
Mr. Kollol Saha, Adv.
...for the alleged contemnors nos. 1 to 3

Mr. Sudarshan Roy, Adv.
Mr. Debayan Ghosh, Adv.
Mr. Deep Narayan Mukherjee, Adv.
...for the alleged contemnor no.4

Mr. Rahul Karmakar, Adv.
Mr. S. K. Poddar, Adv.
Mr. Abir Lal Chakravarti, Adv.
...for the alleged contemnors nos. 5 & 6

The Court: The petitioner has filed the present application being GA-COM/1/2024 in CC-COM/2/2024 praying for appointment of a fit and proper person as Special Officer to make an inventory of the said premises, taking symbolic possession of the same and to ensure that there is no change in the status of the said premises with regard to the nature, character and user thereof in any manner whatsoever.

The application filed by the petitioner was taken up for hearing on 15th January, 2024 and by an order dated January 15, 2024 this Court appointed a Special Officer for the purpose of visiting the suit property to ascertain whether any construction is going on over the property or not and to submit report before this Court.

In terms of the order passed by this Court dated January 15, 2024, the Special Officer has submitted report after serving copy to the learned counsel for the respective parties.

Today the matter is taken up for hearing.

Learned counsel for the petitioner submits that in the report, the Special Officer has categorically mentioned with regard to the condition of the suit property in five positions i.e. outer portion of the suit premises, entrance of the suit premises, ground floor of the suit premises, first floor of the suit premises and second floor and terrace of the suit premises.

The Special Officer while submitting the report has also enclosed the photographs of the premises. In the report the Special Officer has stated that with respect of outer portion of the suit premises he has found that a hoarding of 'M-Baazar' is already installed and a bamboo structure was also erected and a few labourers were found carrying out certain works thereon. He also found that labourers were unloading sacks containing merchandise and apparel and carrying the same to be stored inside the premises. As regard entrance of the premises, the Special Officer stated that he has found some electrical wiring and fitting works which were carried out. As regard ground floor of the premises he has mentioned that

false ceiling was partly constructed with electrical wires hanging therefrom and few columns were also found to be in existence. He also mentioned that on the rear portion of the ground floor he found a false ceiling was already constructed with Air Conditioner vents and electrical wires found hanging from such false ceiling. In conclusion with regard to the ground floor of the premises, the Special Officer held that open areas of the ground floor were also inspected where “no construction activity was found”.

As regard first floor of the suit premises, the Special Officer has mentioned that the main hall on the first floor was found to be in shambles with Air Conditioners, electrical wires, paint buckets and other articles strewn across everywhere but he has stated that “no construction activity was found ongoing on the first floor at the time of such inspection”.

He also stated that while inspecting the first floor he found a staircase leading to the ground floor. However, the same was blocked by a brick wall but that was not plastered and in conclusion he has stated that “no construction activity was found to be ongoing”.

As regard second floor of the building, the Special Officer stated that in the second floor an office space was found in existence with no construction activity going on.

The petitioner has accepted the report filed by the Special Officer and has relied upon the photographs annexed with the report. By pointing out the photographs along with the report, learned counsel for the petitioner submits that this Court has passed an order of injunction restraining the defendant from making any construction.

But from the photographs it has been crystal clear that the defendants are making construction over the property and have willfully and deliberately violated the order of injunction passed by this Court and thus the Special Officer may be directed to take symbolic possession of the suit property.

Mr. Thaker learned advocate appearing for the petitioner has relied upon the judgment reported in *(1996) 4 SCC 622 (Delhi Development Authority -vs- Skipper construction Co. (P) Ltd. And Another)* and submitted that it is a settled law that if the Court has passed an order of injunction and after the order of injunction if the Court finds that the opposite party has violated the order, then Court cannot wait for execution of the said order with the provision of law but can take appropriate action by invoking the inherent power provided under the Code of Civil Procedure. Mr. Thaker also relied upon the judgment reported in *1985 SCC OnLine Cal 146 (Sujit Pal -vs- Prabir Kumar Sun and others)* and submitted that the judgment passed by the Division Bench of this Court is also affirmed by the Hon'ble Supreme Court in the case referred above and submitted that this is a fit case wherein a direction can be given to the Special Officer for taking symbolic possession as the defendants are carrying on construction in violation of the order passed by this Court.

Per contra, Mr. Sabyasachi Choudhury, learned advocate appearing for the alleged contemnor nos. 1, 2 and 3 submits that the report submitted by the Special Officer has favoured the alleged contemnors and in the report it is categorically mentioned by the Special Officer that no construction is going on. Mr. Choudhury

further submits that with regard to the ceiling work and other works which is being carried on by the alleged contemnors are not coming under the purview of the construction work. Mr. Choudhury has relied upon the Kolkata Municipal Corporation Building Rules 2009 and referred Rule 3(2) of the said Rules and submitted that in the said Rules also it is mentioned that for the works which are mentioned in the said Rules do not require any permission from the Municipal Corporation and that are not coming under the purview of the construction.

He submits that fitting the ceiling Air Conditioner, electrical wire are not coming under the purview of the construction work and it cannot be said that the respondents have violated the order passed by this Court.

Mr. Choudhury also draws the attention of the order passed by this Court wherein this Court has restrained the respondents, their men and agents from making any construction over the premises in question and as per report of the Special Officer, no construction is going on and as such, the application filed by the petitioner is liable to be dismissed with exemplary cost.

Mr. Choudhury further submits that in the injunction application, the petitioner has made several prayers wherein this Court has only passed an order of injunction restraining the respondents from making any construction over the property with respect of prayer (b) of the injunction application and not with respect of prayer (c) of the said application and as such the application filed by the petitioner is liable to be dismissed.

Mr. Rahul Karmakar, learned advocate appearing for the alleged contemnor nos. 5 and 6 submits that he has adopted the submission made by Mr. Choudhury. He only submits that the case laws cited by Mr. Thaker are not applicable in the facts and circumstances of the present case.

Mr. Sudarshan Roy, learned advocate appearing for the alleged contemnor no.4 submits that he adopted the submission made by Mr. Choudhury and Mr. Karmakar and he submits that he is not in occupation of the property in question.

Heard learned counsel for the respective parties.

Perused the application and the report of the Special Officer.

This Court by an order dated January 4, 2024 had passed an order of injunction restraining the respondents, their men and agents and servants from making any construction over the premises no.39, Bentinck Street, Municipal Ward no.46, P.S. Hare Street Kolkata – 700069 till 7th February, 2024.

After the order passed by this Court, the petitioner has filed the present application on the allegation that the alleged contemnors in violation of the order passed by this Court dated January 4, 2024 are making construction over the property. This Court on the allegation of the petitioner has appointed a Special Officer and the Special Officer has submitted report. In the report, the Special Officer has categorically stated that no construction was going on, only ceiling works, fitting of Air Conditioners and electrical wires is going on at the time of inspection of the premises. Photographs which the petitioner are relying upon also corroborate the report of the Special Officer

which reveals that no construction is there only some fittings work is going on in the suit premises.

This Court by an order dated January 4, 2024 has specifically restrained the respondents, their men and agents and servants from making any construction. As per the Kolkata Municipal Corporation Building Rules 2009, erection of false ceiling in any floor for installing Air Conditioners, lightening or decorative purpose or re-flooring of the surface of the existing floor is not coming under the purview of the construction work and no approval is required.

Considering the above, this Court finds that the application filed by the petitioner is misconceived and, accordingly, the same is dismissed. GA-COM/1/2024 is thus dismissed.

The Special Officer is discharged from the present case.

(KRISHNA RAO, J.)