

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA NO: GA/1/2023
In
APOT/12/2024
WITH
WPO/1741/2023

SMT. ANITA BHANDARI AND ORS.
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 17th January, 2024.

Appearance:
Mr. Arindam Banerjee, Adv.
Mr. Sumitava Chakraborty, Adv.
...For Appellants
Mr. Shrijan Nayak, Adv.
Ms. Piyali Sengupta, Adv.
For KMC
Mr. Sounak Bhattacharya, Adv.
Mr. Sanak Mondal, Adv.
Mr. Abhishek Mukherjee, Adv.
For respondent.

The Court:- Affidavit of service filed in Court today, be kept
with the records.

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

An order dated January 9, 2024 passed in the writ petition of the appellants being WPO/1741/2023, is under challenge in this appeal at the instance of the writ petitioners.

The appellants are the owners of premises no. 116/2B, Sarat Ghosh Garden Road, Kolkata – 700 031 (in short the ‘said premises’). It appears that a four storied building has been raised at the said premises. Admittedly, there is no sanctioned building plan in respect of such construction.

The Kolkata Municipal Corporation (in short, ‘KMC’) sought to take action in respect of such construction under Section 400(8) of the KMC Act, 1980. The appellants approached the learned single Judge for appropriate relief. By an order dated December 13, 2023, the learned Judge noticed that the building had been partly demolished. KMC submitted that further demolition would take place on December 15, 2023. As prayed for by KMC, the learned Judge granted police help to KMC for demolishing the remainder of the structure. The matter was directed to be listed on January 9, 2024.

On January 9, 2024 the following order was passed by the learned single Judge:

“The order dated 27.12.2023 passed by a Co-ordinate Bench in WPA/29213/2023 in Smt. Baby Dutta vs. The Kolkata Municipal Corporation & Ors. has been placed before this Court.

It has been submitted that leave to file an appeal was filed by the developer. The order passed by this Bench on 13.12.2023 was carried in appeal in APOT No. 466 of 2023 [Mallick Constructions Vs. Smt. Anita Bhandari & Ors.] which was taken up for consideration by the Hon’ble Division Bench on 08.01.2024 and the same stood dismissed along with all connected applications.

A report has been filed signed by three engineers of Kolkata Municipal Corporation, Borough-X on 08.01.2024.

The Corporation is directed to proceed in the matter in accordance with law.

Let the matter appear in the list on 24.01.2024.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Learned Advocate for the appellants says that a point of some importance is involved in the matter. Section 400(8) of the KMC Act is an emergency provision, draconian in nature. The words of that sub-section would indicate that the Mayor-in-Council can exercise powers under that sub-section only when

unauthorised construction is continuing. Once the construction is complete, there can be no question of pressing into service that sub-section.

We find that the appellants have an arguable case. This point merits consideration. Since the writ petition is pending before the learned single Judge, we are not inclined to go into the matter. We request the learned single Judge to decide the above point before KMC can take any coercive action against the alleged construction. We also request the learned Judge to give some precedence to this matter, subject to the business of the Court. We make it clear that we have zero tolerance for unauthorised constructions. But even an illegal construction has to be demolished by following the applicable law. We request the learned Judge to decide the point indicated above uninfluenced by the prima facie view we have expressed in this order as regards when the Mayor-in-Council may exercise its power under section 400(8) of the KMC Act, 1980

Accordingly, we set aside the order under appeal. KMC shall not take any coercive steps in respect of the impugned construction till the learned single Judge decides the point of

applicability of Section 400(8) to the facts and circumstances of the present case.

Both the appeal and the application are disposed of accordingly.

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

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(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)

dg/