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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/34/2024
GA/1/2024
WPO/6/2024.

SAJAHAN BISWAS & ORS.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE M.V. MURALIDARAN
Date : 1st February, 2024.

Appearance:
Mr. P.S. Deb Barman, Adv.
Mr. Amit Gupta , Adv.
Mr. S. Alam, Adv.
Md. M. N. Chudhury, Adv.
Mr. Sakhawaf Khandakar, Adv.
…For Appellant.
Mr. Alak Kr. Ghose Adv.
Mr. Gopal Chandra Das, Adv.
Ms. Manisha Nath, Adv.
For KMC

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

An order dated January 19, 2024, passed on the writ petition of the appellants herein being WPO/6/2024, is under challenge in this appeal.

The appellants/writ petitioners constructed a building at premises no. 41/2, Gardener Lane, Kolkata, within Ward-53 Borough-VI of Kolkata Municipal Corporation (in short 'KMC'). It appears that such construction was somewhat in deviation from the sanctioned plan.

Proceedings were initiated by the Special Officer (Building), KMC, being Demolition Case no. 17-D/VI/2018-19. By an order dated February 14, 2019, the demolition case was disposed of. The Special Officer (Building) came to the conclusion that the deviations can be treated as “minor unauthorised erection or work” as defined in Rule 3(1)(C) of the KMC (Regularisation of Building) Regulations 2015. The Special Officer further held that the deviations are regularised and allowed to be retained under Rule 4 of the 2015 Rules subject to certain conditions. One of the conditions was that the person responsible would pay the fees for retention of the deviated portion of the construction within 30 days of receipt of the calculation sheet to be prepared by the concerned department of KMC.

Pursuant to the aforesaid order, a demand was raised on the appellants for Rs.14,92,929/- vide demand notice dated October 30, 2020. The appellants say that it was the Covid period and no payment could be made.

Since the retention fees/charges were not paid by the appellants, KMC issued a notice under Sections 544 and 546 of the

KMC Act, 1980 fixing January 9, 2024, as the date for demolition of the impugned construction. Challenging the said notice, the appellants approached the learned single Judge.

On January 5, 2024, the learned Judge passed an order extending the time for the appellants to deposit the requisite regularisation fees/charges till January 18, 2024. The matter was made returnable before the learned Judge on January 19, 2024, for ascertaining as to whether or not the payment had been made by the writ petitioners. The learned Judge further observed in that order that if payment is not made within the extended time period, it will be open for the Corporation to proceed with the demolition work.

On January 19, 2024, when the matter was taken up by the learned Single Judge, it was submitted on behalf of the writ petitioners that the demand amount of Rs.14,32,929/- was forwarded by the writ petitioners to KMC in the form of a demand draft. However, KMC refused to accept the demand draft. Instead, a revised demand of Rs.47,45,421/- was raised on the appellants. The writ petitioners prayed for reducing the amount mentioned in the revised demand notice.

The learned Judge passed the following direction:-

"The prayer of the petitioner for interfering with the demand that is presently subsisting is not accepted by the Court. Had the petitioner paid the amount demanded in the year 2020, then there would not have been any occasion for filing the present writ petition and there would not have been any scope for enhancement of the demand. The demand has been enhanced in accordance with the budget estimate of the Corporation (Section 131 of the KMC Act, 1980).

Time to deposit the money as demanded is extended till 2nd February, 2024. The matter is made returnable on 7th February, 2024 to ascertain payment. In the event the payment is not made within the time as stipulated herein above, it will be open for the Corporation to proceed with the demolition work."

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

We have heard Mr. Deb Burman, learned Advocate for the appellants and Mr. Alak Kumar Ghose, learned senior Counsel for KMC at some length.

The appellants say that the retention charges pertain to a construction made in 2019. The rates specified in the KMC budget of 2023-24, should not be made applicable for raising demand of retention charges on the appellants.

KMC says that the order for regularisation was conditional upon deposit of the amount of Rs.14,92,929/- within a month from October 30, 2020, when such demand was raised on the appellants. Such payment was not made, whether within a month or at all. Hence, the deviated portions of the concerned building are illegal as of date since the pre-condition for regularisation has not been met by the appellants. Hence, KMC is within its rights to take action for demolition of the deviated portion of the building.

We agree with KMC to the extent it says that as of date it is within its right to proceed for demolition of the deviated portion. We also do not find any glaring illegality in the rate of retention charges prescribed in the 2023-24 Budget of KMC being made applicable to the appellants. This occasion would not have arisen, as observed by the learned single Judge also, had the appellants paid the initial demand within the time period prescribed or at least soon thereafter. Hence, we do not find any infirmity in the order under appeal.

However, Mr. Deb Burman says that the appellants should be granted an opportunity to make a mercy petition to KMC, which may be considered by KMC in accordance with law. We see no harm in granting such an opportunity.

Accordingly, the appellants will be at liberty to make a comprehensive representation to the concerned officer in KMC within a fortnight from date (February 16, 2024). If such representation is made within the time period indicated above, the concerned officer shall decide the same in accordance with law, by a reasoned order, within two weeks of receipt of the representation after granting an opportunity of hearing to any one of the appellants or their authorised representative. We make it clear that this order is not to be construed as a direction on KMC to reduce any amount that it has demanded from the appellants. It will be entirely upto the concerned officer of KMC to take an informed decision on the representation of the appellants.

The decision of the concerned officer, who disposes of the representation of the appellants, be placed before the learned single Judge when the matter is again taken up by Her Ladyship.

It is understood that no coercive action will be taken in respect of the impugned construction till the disposal of the representation to be made by the appellants to the concerned officer of KMC. If no representation is made within a fortnight from date, KMC would be at liberty to take any steps in respect of the impugned construction, in accordance with law.

As no useful purpose will be served in keeping the appeal pending, the appeal and the connected application are disposed of.

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)

(M.V. MURALIDARAN, J.)

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