

APOT/51/2024
with
WPO/18/2024
IA NO:GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MD. SHAHID IQBAL
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE M. V. MURALIDARAN
Date : February 9, 2024.

Appearance:

Mr. Partha Sarathi Deb Barman, Advocate
Mr. Anindya Bose, Advocate
Mr. Amit Gupta, Advocate
....for Appellant

Mr. Gurudas Mitra, Advocate
Mr. Swapan Kr. Debnath, Advocate
...for KMC

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

This appeal is directed against a judgement and order dated January 16, 2024, whereby the appellant's writ petition being WPO/18/2024 was dismissed by a learned Judge of this Court.

The appellant approached the learned Judge with the case that a stop-work notice under Section 401 of the Kolkata Municipal Corporation Act,

1980, was served on him describing him as the person responsible for making the impugned construction. Such notice was served on November 24, 2023. The appellant immediately stopped the construction work. However, thereafter, Kolkata Municipal Corporation (in short, 'KMC') has not taken any action. He prayed before the learned Judge that Kolkata Municipal Corporation be directed to take further steps in accordance with the Office Circular No.16/2021-22 dated March 2, 2020. That Circular pertains to deposit of security money before starting of hearing regarding unauthorised construction under Sections 400(1) and 416 of the KMC Act, 1980.

Learned counsel for KMC submitted before the learned Judge that the writ petition is premature. The writ petitioner cannot insist that KMC must take further steps in a particular manner. It is upto KMC to decide in what manner it should proceed.

The learned Judge dismissed the writ petition with the following observations:

“The Court is of the opinion that as the Corporation has already detected unauthorized construction and issued notice under Section 401 of the Act directing the person responsible to stop the construction work, accordingly, it will be open for the Corporation to take steps in the matter in accordance with law to deal with such unauthorized construction.

Whether the Corporation will invoke the provision of Section 400(1) or Section 400(8) of the Act depends upon the facts and circumstances of the case. It is neither for the writ petitioner to seek for any direction nor for the

Court to decide which provision of law would the Corporation invoke to deal with the unauthorized construction.

At this stage, prayer sought for by the petitioner to act in accordance with the Office Circular No.16 cannot be allowed.”

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

Mr. Deb Barman, learned advocate appearing for the appellant/writ petitioner, says that the only apprehension of the appellant is that since the learned Judge has referred to Section 400(8) of the KMC Act, 1980, in the second paragraph on the second page of the order, the same may be construed as a direction on KMC to invoke that emergency provision. If that is done, the appellant will suffer grave prejudice as action for demolition will be taken without granting any opportunity of hearing or conducting any demolition proceedings.

Mr. Mitra, learned advocate representing KMC, says that the learned Judge has not given any specific direction in the matter. Her Ladyship has left it open to KMC to decide in what manner to proceed in the matter. He further says that when the unauthorised construction was detected, there were four columns. However, presently there is a construction, which is in deviation from the sanctioned plan to the tune

of 4580 sq.ft. This submission is strongly disputed by Mr. Deb Barman, learned advocate for the appellant.

We have carefully read the order under appeal. There is no such direction in the order as is apprehended by the appellant. The learned Judge has not directed KMC to proceed in any particular manner or under any particular provision of KMC Act, far less, Section 400(8) of the KMC Act. The order cannot be in any manner construed as a direction on KMC to invoke the provision of Section 400(8) of the KMC Act. It is entirely within the discretion of KMC to decide in what manner it will proceed against the impugned construction.

The appeal and the connected application stand disposed of with the aforesaid clarification.

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

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)