

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/60/2024
with
WPO/81/2024
IA NO:GA/1/2024
BANANI DUTTA
Vs.

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE PARTHA SARATHI SEN

Date : February 13, 2024.

Appearance:

Mr. Raghunath Chakrabarty, Advocate
Ms. Arpita Patra, Advocate
....for Appellant

Mr. Gurudas Mitra, Advocate
Mr. Swapan Kr. Debnath, Advocate
...for Kolkata Municipal Corporation

Mr. Sujay Bandyopadhyay, Advocate
Mr. Shambhu Mahato, Advocate
Mr. Pradipta Siddhanta, Advocate
...for respondent

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

Heard learned advocates for the parties. Perused a server copy of the order passed by the learned Single Bench on February 8, 2024, which is impugned before us.

On perusal of the entire materials placed before this Court and after hearing learned advocates for the contending parties, it appears that in respect of the concerned building, initially an unauthorised construction took place at the instance of the present appellant, i.e., construction of two collapsible gates and one toilet. A demolition proceeding was started which culminated in a demolition order. Challenging the said demolition order, an appeal was preferred and since the appellate forum refused to pass any order of stay, the order of demolition was executed by demolishing the two collapsible gates. However, the alleged illegal toilet was permitted to be retained subject to deposit of requisite fees. It is learnt that since such fees were not deposited by the appellant, the said toilet has also been demolished.

In the second round of litigation, it is placed on record that allegedly the present appellant has again erected one sliding gate on the staircase on the third floor causing obstruction to free movement in the staircase and the roof and the rooftop reservoir has also been made inaccessible on account of keeping the sliding gate under lock and key.

The matter was reported to Kolkata Municipal Corporation (in short, 'KMC') by the private respondent. The private respondent carried the

matter before the learned Single Bench by filing WPA 21609/2023. While disposing of the said writ petition, the learned Single Bench by its order dated December 19, 2023, directed the respondent no.7 in the said writ petition being the Executive Engineer, Borough-I, to consider and dispose of the representation made by the petitioner (who is the private respondent herein), strictly in accordance with law after giving an opportunity of hearing to all the necessary parties including the petitioner (the private respondent herein) within a period of three months from the date of communication of the said order with a further direction to pass a reasoned order and to communicate the same to all the parties concerned. In the said writ petition, a spot inspection was also directed to be conducted by the learned Single Bench.

After spot inspection, according to learned counsel for KMC, a spot inspection report has been prepared. In course of hearing, learned advocate for the appellant vehemently complained of non-supply of such spot inspection report, the proposed demolition sketch plan and other allied documents and it was further contended by learned advocate for the appellant that without supplying such copies, KMC is proceeding with the demolition proceedings violating the principles of natural justice. Learned advocate for the appellant, thus, submits that for effective disposal of the instant appeal, the impugned order may be stayed.

Such contention has been opposed on behalf of learned counsel for KMC. It is contended by him that he has instruction from his client, i.e., the KMC, that in the said proceedings a spot inspection report has been prepared and according to him, such spot inspection report is the only requirement for proceeding with the proposed demolition.

After hearing the rival contentions as raised by learned advocates for the parties to the instant appeal, this Court considers that justice would be sub-served if the KMC is directed to supply a copy of the spot inspection report to the present appellant well before hand before the next date of hearing and in the event the same is not possible, positively on the next date of hearing so as to afford the present appellant a reasonable opportunity to counter such spot inspection report. It is further directed that in course of the said demolition proceedings if KMC prepares any further document, copy of the same shall be served upon the present appellant also well before hand. Since the private respondent is also a party to the said demolition proceedings, copies of the spot inspection report and other documents, if there be any, shall be served upon the private respondent.

Learned counsel for the appellant says that the law requires KMC to prepare a demolition sketch before actual demolition is effected. The appellant will be at liberty to urge such point before the Hearing Officer or any

other fora. We also make it clear that any demolition that KMC may effect will be strictly, in accordance with law.

Since there is nothing left in the instant appeal, with the aforesaid observations, the instant appeal and the pending interim application in connection with this appeal are 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.

(ARIJIT BANERJEE, J.)

(PARTHA SARATHI SEN, J.)

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