

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/38/2024
WITH
WPO/74/2024
IA NO:GA/1/2024

IQRAMUL HAQUE & ANR.
VS.
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA
Date : March 13, 2024.

Appearance:

Mr. Aniruddha Chatterjee, Adv.
Mr. Avirup Chatterjee, Adv.
Mr. Abir Lal Chakraborty, Adv.
Mr. Rishov Das, Adv.
...for Appellant
Mr. Biswajit Mukherjee, Adv.
Ms. Manisha Nath, Adv.
...for the KMC
Mr. Dhiman Kumar Sengupta, Adv.
Ms. Sweta Saha, Adv.
Ms. Farhin Mustaque, Adv.
...for respondent no.5
Mr. Sumitava Chakraborty, Adv.
...for respondent no.6

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

An order dated February 22, 2024 whereby the appellants' writ petition being WPO/74/2024, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the writ petitioners.

The writ petitioners approached the learned single Judge challenging a stop work notice dated January 17, 2024, issued by Kolkata

Municipal Corporation (in short, "KMC"), under Section 401 of the KMC Act, 1980.

The writ petitioners contended that such notice was issued without following the due provision of law.

The learned Judge noted that the writ petitioners have made a representation through their learned advocate to the Assessor Collector, Assessment Collection Department of KMC, seeking withdrawal of the stop work notice and opportunity of hearing.

It was submitted on behalf of the respondent No.5 that a civil suit is pending before the learned 5th Civil Judge (Senior Division) at Alipore (Gurnit Kaur Patheja vs. Bilayat Hossain & Ors.) wherein an order of injunction has been passed restraining the defendants and their associates from making any construction or illegally and forcefully occupying and/or changing the nature and character of the suit premises being premises No.851, Laskarhat, which was later re-numbered as 1724, Laskarhat. It was submitted that the respondent No.5 has filed a writ petition challenging the mutation granted by KMC in respect of the suit property in favour of the person from whom the present writ petitioners claim to have purchased the property.

The learned Judge disposed of the writ petition with the following observations and directions:

"It appears from the submissions made on behalf of both the parties that there are several question of facts which are to be answered prior to withdrawing and/or taking any steps further to the notice issued under Section 401 of the Kolkata Municipal Corporation Act, 1980. A civil suit with an order of injunction is pending consideration before the learned Court. Whether the suit premises and the premises

no.1724, Laskarhat in respect of which Section 401 notice has been issued is the same or not is required to be ascertained.

It appears that the petitioners made representation before the Assessor Collector seeking withdrawal of the stop work notice. The Assessor Collector is not the competent authority to take any step in connection with the impugned notice under Section 401, accordingly, it will be open for the petitioners to approach the competent authority seeking withdrawal of the impugned notice. The competent authority of the Corporation, prior to taking any further steps in connection with the impugned notice dated 17.01.2024, shall afford reasonable opportunity of hearing to all the necessary parties and thereafter take a decision in the matter.”

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

Mr. Chatterjee, learned advocate appearing for the appellants, drew our attention to the stop work notice dated January 17, 2024. He said that the notice does not bear any signature.

Mr. Mukherjee, learned advocate representing Kolkata Municipal Corporation, however, says that the notice bears the serial number and date and there can be no question about the authenticity of the notice. In any event, the appellants/writ petitioners have made a representation seeking withdrawal of that notice. Therefore, they must have accepted the genuineness of the notice.

Mr. Chatterjee further says that there is a sanctioned building plan in favour of the appellants and the appellants should be permitted to make construction strictly adhering to such plan.

We have considered the rival contentions of the parties. The pendency of the civil suit or the interim order of injunction passed therein, as of

date, cannot affect the appellants in any manner since they are not parties to that suit.

Learned advocate for the respondent No.5 said that steps are being taken to implead the appellants as party defendants in that suit. The respondent No.5 is free to do so. We make no comments.

We are of the view that the representation of the appellants should be disposed of expeditiously by a reasoned order by the competent authority in KMC, in accordance with law, and the applicable rules and regulations, observing the principles of natural justice.

Mr. Mukherjee, learned advocate appearing for KMC said that the representation has been made to a wrong officer. The Assessor Collector is not the officer who considers matters like violation of a condition of a sanctioned plan. The representation should be made to the Director General (Building), Kolkata Municipal Corporation.

The appellants will be at liberty to make a fresh representation addressed to the Director General (Building) by the end of office hours tomorrow (March 14, 2024).

We fix a meeting in the office of the Director General (Building) on Saturday (March 16, 2024) at 12 Noon. The appellants and the respondent No.5 will be at liberty to attend such meeting to present their respective cases. The Director General (Building) shall pass a reasoned order in accordance with law upon hearing the parties within a week thereafter. No further notice of that meeting shall be issued to the parties herein. This order shall serve as such notice.

The Director General (Building) shall take an independent and informed decision in the matter, particularly on the issue as to whether violation of any condition of the sanctioned plan has been committed by the appellants, which justifies issuance of notice under Section 401 of the KMC Act, 1980.

We clarify that we have not gone into the merits of the dispute between the parties.

In view of the above, the appeal and the connected application 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.)

(SUPRATIM BHATTACHARYA, J.)