

OD-11

APOT/110/2024
With
WPO/214/2024
IA NO. GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

FULESWARI PAL
-VS-
KOLKATA MUNICIPAL CORPORATION AND OTHERS

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY
Date : 8th April, 2024

Appearance:
Mr. Suddhasatva Banerjee, Adv.
Mr. Krishnendu Bera, Adv.
Ms. Debolina Chakraborty, Adv.
Mr. Suvodeep Chakraborty, Adv.
...for the appellant

Mr. Gurudas Mitra, Adv.
Mr. Swapan Kr. Debnath, Adv.
...for the KMC

The Court : A judgment and order dated March 19, 2024, whereby the appellant's writ petition being WPO/214/2024, was dismissed by a Learned Judge of this Court, is the subject-matter of challenge in this appeal.

It appears that Kolkata Municipal Corporation (in short, KMC) sought to take action against alleged unauthorised construction made by the appellant at premises no.19A, Maharaja Tagore Road, Kolkata – 31, under Section 400(8) of the KMC Act, 1980. The appellant approached the Learned Single Judge challenging such action on the part of KMC.

On behalf of KMC it was submitted before the Learned Judge that stop work notice under Section 401 of the KMC Act, 1980, was sought to be served upon the appellant who refused to accept it. In spite of issuance of stop work notice, the appellant continued with unauthorised construction. Therefore, KMC was constrained to invoke the emergency provision under Section 400(8) of the KMC Act, upon intimation to the concerned police authorities.

The Learned Judge, observing that since the emergency provision has been invoked, there was no scope for interference, dismissed the writ petition directing the police authorities to render all necessary assistance to the KMC people for execution of the demolition order. The police was also directed to ensure that the shop room in question does not run from the said premises as the construction in question is an unauthorised one.

Being aggrieved, the writ petitioner has come up by way of this appeal.

On the last occasion, we had asked Mr. Mitra, learned advocate representing KMC as to whether or not there is evidence of service of Section 401 notice on the appellant. Today, Mr. Mitra produced extracts from the official records which go to show that such notice was affixed on the wall of the building in question since apparently the person who was there at the site refused to accept service. We are inclined to give credence to the official acts of KMC, also keeping in mind Section 114(e) of the Evidence Act.

This is , however, not one of those palpable cases where a building has been raised without obtaining any sanctioned plan. Even if there is unauthorised construction, as KMC says there is, and which is disputed by the appellant, the same does not appear to be of such a proportion that even an opportunity of hearing should be denied to the appellant. We find that a show-cause notice dated March 30, 2024, has been issued by KMC to the appellant calling upon the appellant to show cause as to why the certificate of enlistment granted in her favour should not be cancelled. Another notice dated April 1, 2024, has been issued by the Assistant Assessor Collector to the appellant for submitting necessary documents regarding change of user of the property in question. These actions of KMC are under Sections 416 and 435(A) of the KMC Act. In those proceedings, the appellant will be granted an opportunity of hearing.

We feel that a hearing should also be granted insofar as the allegation of unauthorised construction is concerned. Let such hearing be granted and

an order be passed by the competent authority in KMC within three weeks from date. We would have restrained the appellant from carrying on with her business from the premises in question pending issuance of a fresh order by the KMC upon hearing her. However, Mr. Banerjee, learned advocate representing the appellant, says that firstly, in view of the ensuing Bengali New Year (Poila Baisakh), if the business is stopped right now, the appellant will suffer huge financial loss which she may not be able to absorb and the business may have to be shut down altogether for good. Secondly, Mr. Banerjee says that KMC will not gain anything at all by stopping the appellant's business.

On an overall consideration and balancing the equities, we are inclined to allow the appellant to carry on with her business till April 16, 2024. From April 17, 2024, the appellant shall not run her business from the premises in question till a fresh order is passed by KMC upon granting an opportunity of hearing to the appellant. The time period stipulated in this order is peremptory and the KMC authorities must adhere to the time schedule.

Mr. Mitra, learned advocate for KMC, says that there are other parties in the same building who have made unauthorised constructions and at least one other party who has changed the user of the portion of the premises under his/her occupation. This order will not apply to them.

We agree with Mr. Mitra. This order will apply only to the present appellant. We further clarify that KMC shall take a fresh decision in the

matter in accordance with law without being influenced by any observation in this order or in the order of the Learned Single Judge which is under challenge before us.

The order under appeal is set aside.

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

The appeal and the connected applications are disposed of.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

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