

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE

APOT/111/2024  
WITH  
WPO/162/2024  
IA NO:GA/1/2024

RATHINDRA NATH MAITRA & ORS.  
VS  
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE M. V. MURALIDARAN

Date : April 1, 2024.

Appearance:

*Mr. Raghunath Chakraborty, Adv.*

*....for State-Appellants*

*Mr. Srijan Nayak, Adv.*

*Mr. G. C. Das, Adv .*

*....for Respondents*

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

An order dated March 12, 2024, passed on a writ petition of the appellants being WPO 162/2024, is under challenge in this appeal at the instance of the writ petitioners.

It appears that unauthorised construction at the instance of the writ petitioners was detected at premises No. 68, Nandi Bagan, Ward No. 106, Borough-XII of the Kolkata Municipal Corporation (in short, 'KMC'). KMC issued notice dated January 2, 2024, under Section 401 of the

Kolkata Municipal Corporation Act, 1980, (in short, '1980 Act') requiring the persons responsible to forthwith stop all constructions including addition and alteration in respect of the impugned construction.

On January 13, 2024, the writ petitioners informed the concerned Executive Engineer of KMC that they had stopped all construction work. On January 18, 2024, the writ petitioners made a representation to the Municipal Commissioner with a request for regularisation of the impugned construction. It was admitted in the representation that under a Joint Venture Development agreement dated March 28, 2022, a three-storeyed building had been raised at the aforesaid premises without obtaining any sanctioned building plan from KMC. A request was made to regularise the construction upon payment of requisite fees.

With the grievance that KMC was not considering the representation made by the writ petitioners and with the prayer directing KMC to dispose of such representation, the writ petitioners approached the learned Single Judge. A further prayer in the writ petition was for a direction on KMC to initiate proceedings under Section 400(1) of the 1980 Act.

Learned Advocate for KMC opposed the prayer of the writ petitioners. It was submitted that since the three-storeyed building was not backed by any sanctioned building plan at all, no question of regularisation of such a structure could arise. Prayer was made for dismissal of the writ petition.

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

*“I have heard the submissions made on behalf of both the parties and perused on all materials of record. It is admitted that the construction in question which is a three storied building has been raised without any sanction at all. According to the Kolkata Municipal Corporation Act, 1980 and the Rules framed thereunder there is a specific bar from raising construction without obtaining prior sanction. The said provision of law has been violated by the petitioners and a three storied building has come up. Had the unauthorized construction not been detected, the petitioners would have continued further with the construction work and later on transferred the newly constructed structure to unsuspecting buyers. Prayer of the petitioners for regularisation of a three storied building, constructed without any sanction, does not arise at all.*

*The Court is shocked to see the guts of the builders who raised construction without any sanction and thereafter approach the Court for regularization of the same upon payment of requisite fees. The conduct of the petitioners appears to be extremely adventurous. The petitioners, in complete disregard to the building rules, proceeded with the unauthorized construction work and thereafter approached the Writ Court for regularisation of the same. The act of the petitioners is liable to be dealt with strictly so that a strong message goes out to similar type of builders who raise construction without valid sanctions. Any sympathy or leniency shown to such dishonest and unscrupulous builders will be a block in addressing the issue of unauthorized constructions which are going on in a rampant manner.*

*The writ court is a court of equity and whoever approaches the Court should always come with clean hands. The petitioners have approached this Court only to abuse the process of law and they ought to be dealt with appropriately. The writ petition is liable to be dismissed with costs. The Commissioner, Kolkata Municipal Corporation is directed to take prompt necessary steps to demolish the unauthorised construction that has been made.*

*The writ petition is, accordingly, dismissed with costs assessed at Rs. 1,00,000/- (one lac only) to be deposited by the petitioners within 18.03.2024 in the office of the Commissioner, Kolkata Municipal Corporation. A receipt shall be issued upon acceptance of the aforesaid amount.*

*The costs is directed to be paid in the office of the Commissioner, Kolkata Municipal Corporation only to bring it to the notice of the Commissioner the action on the part of the engineers of the Corporation who are not vigilant enough to detect and restrict such constructions at the very initial stage resulting in the constructions to go up to such level that it becomes difficult to demolish the same.*

*The Commissioner, Kolkata Municipal Corporation should issue proper advisory to engineers of all the Boroughs of the Corporation so that regular vigil is maintained to identify any new construction that is being made. If it is found that the said construction is without sanction, then immediate action should be taken to deal with the same in accordance with law.*

*The aforesaid amount of Rs. 1,00,000/- shall be used by the Commissioner, Kolkata Municipal Corporation for the purpose of improving the greenery around the High Court at Calcutta”.*

The matter was made returnable by the learned Single Judge on March 20, 2024, to ascertain whether the writ petitioners had paid the costs imposed on them.

The writ petitioners filed the present appeal on March 19, 2024. When the matter was listed before the learned Judge on March 20, 2024, it was submitted that the costs had not been paid since an appeal has been preferred against such direction and the same was pending. It appears that when the matter was taken up by the learned Judge on March 20, 2024, prayer was made on behalf of the writ petitioners for extension of time to pay costs in view of pendency of the appeal. The learned Judge, however, was pleased not to extend such time but to impose additional costs of Rs.1 lakh on the writ petitioners. The matter was again directed to be listed on March 27, 2024.

On March 27, 2024, receipt-showing payment of Rs.1 Lakh was produced by the writ petitioners. Prayer was also made for condoning the additional costs of Rs.1 lakh. The learned Judge refused to waive such costs. The matter has been made returnable on April 5, 2024 by the learned Judge.

We have heard learned Counsel for the parties at some length.

In so far as the merits of the case are concerned, we only modify the judgment and order impugned before us to the extent, that since unauthorised construction has been detected, KMC shall take necessary steps in respect thereof invoking the appropriate provision of Section 400

of the 1980 Act. It is entirely the prerogative of KMC as to which provision of Section 400 to invoke. We are sure this is what the learned Judge meant. We merely deem it proper to clarify the same to avoid any possible confusion. We further clarify that we are not putting any kind of fetter on KMC's power under the 1980 Act to deal with the unauthorised construction. However, whatever action KMC takes, will be in accordance with law and will be taken expeditiously.

In so far as the imposition of costs is concerned, we do not see any reason to interfere with the portion of the impugned order directing deposit of costs of Rs.1 lakh. In fact, such deposit has already been made, although, under compulsion as learned Advocate for the appellants says. In any event, we are of the view that the learned Judge, in the facts and circumstances of the case, was perfectly justified in imposing the costs of Rs.1 lakh while dismissing the writ petition. This would send the correct signal to other builders who may be contemplating construction of buildings without obtaining sanctioned building plan from the competent authority.

In so far as the order dated March 20, 2024 is concerned, which has been made part of this appeal by way of a supplementary affidavit, we are inclined to set aside the same to the extent the same imposes additional costs of Rs.1 lakh. Such direction may not have been warranted in the facts of the case.

The appeal and the connected application are disposed of accordingly.

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

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)

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