

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/122/2024
WITH WPO/66/2024
IA NO: GA/1/1024

ANANDA MOHAN ROY
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : 19TH April, 2024.

Appearance:
Mr. Srijib Chakraborty, Adv.
Mr. Dyutiman Banerjee, Adv.
Mr. Deb Kumar Deasthi, Adv.
For appellant
Mr. Mr Fazrul Haque , Adv.
Ms. Manisha Nath, Adv.
...for respondent KMC.
Mr. Biswabrata Basu Mallick, AGP.
For State.
Mr. Sayantan Bose, Adv
Mr. Sarbajit Mukherjee, Adv.
For respondent nos. 9 and 10.

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

A judgment and order dated February 23, 2024, whereby the appellant's writ petition being WPO/66/2024, was dismissed by

a learned Judge of this Court, is the subject matter of challenge in this appeal filed by the writ petitioner.

The appellant approached the learned single Judge with the allegation that the private respondents are constructing a five storeyed building by demolishing an old construction at premises no. 11/A, Anukul Mukherjee Road, Ward No. 21, Borough- IV under Kolkata Municipal Corporation (in short 'KMC'). It was alleged that the construction was being raised in violation of the applicable Building Rules without maintaining requisite open space. A prayer was made for directing a spot inspection to ascertain whether or not the construction is being made in accordance with the sanctioned plan.

Learned Advocate for the private respondents denied the allegations made by the writ petitioner. It was submitted that the writ petition was an effort on the part of the petitioner to stall the construction work which is being undertaken strictly adhering to the sanctioned plan.

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

“An earlier writ petition being WPO No. 1085 of 2023 was filed by one of the other neighbours of the private respondents,

that is, Bijoli Basak. The Court vide order dated 21.06.2023 took note of the order of regularisation issued by the Corporation and observed that since the order is an appealable one, it would be open for the petitioner, that is, Bijoli Basak to approach the appropriate forum. The order of the learned Single Judge was carried in appeal and the Hon'ble Division Bench vide order dated 22nd September, 2023 passed in APOT/303/2023 with WPO/1085/2023, IA No. GA/1/2023 and IA No. GA/2/2023 was pleased not to interfere with the order passed by the learned Single Judge.

The report of the Corporation suggests that the construction is being made in accordance with the plan sanctioned by the Kolkata Municipal Corporation. The details of the plan sanctioned are mentioned in the instruction forwarded by the engineers of the Kolkata Municipal Corporation.

It appears from the submissions made on behalf of the parties and upon perusal of the materials of record that the construction in question is done in terms of the sanction issued by the Kolkata Municipal Corporation. There is indeed an order of regularisation. The said order is an appealable one. The submission of the petitioner is that the order of regularisation

could not be passed without granting an opportunity of hearing to the petitioner. The said issue can be raised before the appropriate forum in the event the petitioner chooses to challenge the order of regularisation. Apparently, it does not appear, that there is any illegal construction as alleged by the petitioner requiring the Writ Court to exercise the jurisdiction in the matter.”

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

Mr. Chakraborty, learned Advocate for the appellant/writ petitioner, says that the plan sanctioned by KMC in favour of the private respondents is liable to be cancelled. In any event, the construction that is being made by the private respondents does not conform to the sanctioned plan. He says that KMC should conduct a spot inspection and take a decision in the matter.

Mr. Bose, learned Advocate appearing for the private respondents strongly opposes the prayer made on behalf of the appellant. He says that this is the fourth round of litigation. The appellant and/or his associates have been trying to stall the construction of the building by the private respondents with oblique motive. A false allegation has been made in the writ petition

to the effect that a five storeyed building has been constructed by the private respondents. This has been verified as being true to the knowledge of the writ petitioner. That is a blatantly false statement. No indulgence should be shown to a person who practises falsehood. There is nothing illegal about the construction that the private respondents are making.

Mr. Haque, learned Advocate representing KMC produces a copy of a report filed by KMC before the learned single Judge. Let the same be kept with the records. The report is to the effect that apparently there is nothing illegal about the construction that is being made by the private respondents.

We do not find any apparent infirmity in the order under appeal. We do not interfere with the same.

We enquired of Mr. Chakraborty as to whether or not his client has made any complaint or representation to KMC alleging illegal construction on the part of the private respondents. He candidly says that there is no such representation as of now.

In the event the appellant makes any representation to the KMC making any complaint against the private respondents herein, the competent authority in KMC shall dispose of such representation in accordance with law after granting due

opportunity of hearing to all the concerned parties including the appellant and the private respondents herein. If KMC deems it necessary, it may make spot inspection in the presence of all concerned parties.

Both the appeal and the application are disposed of.

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

(ARIJIT BANERJEE, J)

(PRASENJIT BISWAS, J.)

dg/