

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/123/2024
WITH
WPO/184/2024
IA NO:GA/1/2024, GA/2/2024

ASRAF HOSSAIN MALLICK
VS.
SATYAM PANDEY AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE M. V. MURALIDARAN

Date : April 3, 2024.

Appearance:

Mr. Prasenjit Mukherjee, Adv.

Mr. Md. Shakir, Adv.

....for Appellant

Mr. Narayan Ch. Mandal, Adv.

Ms. Ankita Dey, Adv.

....for Respondent no.1

Mr. Debjit Mukherjee, Adv.

Ms. Susmita Chatterjee, Adv.

...for KMC

Mr. Amitesh Banerjee, Sr. Standing Counsel

Mr. Akash Dutta, Adv.

...for State.

The Court: An order dated March 22, 2024, passed by a learned Judge of this Court in WPO/184/2024 being a writ petition filed by the respondent no.1 herein, is sought to be challenged in this proposed appeal.

It appears that the respondent no.1 herein made a complaint to the Kolkata Municipal Corporation (in short, "KMC") that unauthorized construction has come up at 3D/H/7, Dr. M. N. Chatterjee Sarani, P.S. –

Narkeldanga, Kolkata – 700009, where a G+6 storeyed building has been constructed without there being any sanctioned building plan in respect thereof.

Alleging that his representation to KMC was not being considered, the respondent no.1 approached the learned Single Judge. The learned Judge recorded in the order dated March 19, 2024, that the Corporation has invoked the provision of Section 400(8) of the Kolkata Municipal Corporation Act, 1980 (in short, “1980 Act”) and has passed an order of demolition on December 6, 2023. This was obviously an erroneous recording since records would reveal that KMC actually initiated demolition proceedings under Section 400(1) of the 1980 Act, which culminated in the demolition order. It is not in dispute that there is no sanctioned building plan in support of the G+6 storeyed building in question.

On March 22, 2024, a report was filed before the learned Judge by the engineers of KMC. The learned Judge noticed that demolition of the illegal structure has started. The learned Judge adjourned the matter till April 4, 2024, after giving the following direction:

“Officer-in-Charge, Narkeldanga Police Station is directed to render all assistance to the men and agents of the Corporation at the time of executing the order of demolition. The demolition shall be conducted in such a manner that both the internal and external unauthorized constructions are demolished completely. The demolition work shall continue on day to day basis till the entire unauthorized construction is pulled down.”

Being aggrieved, the applicant has come up by way of this proposed appeal with an application for leave to appeal since he is not a party to the writ petition which is pending before the learned Single Judge.

The applicant says that he and his family reside in a portion of the building in question. His father and uncle had purchased the building way back in 1975. He draws our attention to a registered Deed of Conveyance. He also draws our attention to receipts evidencing payment of property tax in respect of the concerned property wherein the name of "*Md. Ibrahim Mallick & Ors.*" appears. He says that he did not receive notice of any demolition proceedings initiated under Section 400(1) of the 1980 Act. Under the statute, as an occupier of the premises in question, he was entitled to participate in the demolition proceedings. The demolition order has been passed in breach of the principles of natural justice, in so far as he is concerned. He prays for setting aside of the order under appeal. He further says that he was deliberately not impleaded as a respondent in the writ petition only to have the matter decided behind his back.

Learned advocate for KMC produces copies of relevant records. He submits that notice of the demolition proceedings was sought to be served on the person responsible but he refused to accept the same. Thereupon, the notice was pasted on the outer wall of the building in question. Nobody came forward to participate in the demolition

proceedings. If the applicant was indeed residing in the said building, he would have had notice of the demolition proceedings. Obviously, he is not residing in the said building.

Learned Senior Standing Counsel representing the State submitted that upon local inspection it was found that the building in question is vacant and not occupied by anybody. That is why, demolition work could start. Otherwise, if the building was under anybody's occupation, demolition activities could not have begun.

We have carefully considered the rival contentions of the parties.

Even assuming that the applicant was residing or resides in the building in question, he would definitely have had notice of the demolition proceedings since such notice was put up for public display by pasting the same on the outer wall of the building. He, however, chose not to participate in the proceedings.

The most important point is that the entire G+6 storeyed structure is unauthorized. It is not backed by any sanctioned plan. Such illegal structures at the behest of reckless and unscrupulous promoters/developers/builders have assumed menacing proportions in our city. The same requires to be dealt with very strictly.

We find no reason to interfere with the order under appeal. Hence, it will be futile to grant leave to the applicant to prefer appeal against the order of the learned Single Judge.

The application for leave to prefer appeal is dismissed.

Consequently, the appeal and the stay application also stand rejected.

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)

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