

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/127/2024
WITH WPO/1539/2023
GA/1/2024
SABITA SARKAR.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 8TH April, 2024.

Appearance:
Mr. Partha Sengupta, Adv.
Mr. Indrajit Bhattacharjee, Adv.
Mr. Biswarup Samanta
...for Appellant
Mr. Alak Kr. Ghosh, Adv,
Mr. Swapan Kr. Debnath, Adv.
For KMC
Mr. Partha Pratim Roy, Adv.
Mr. D. Banerjee, Adv.
For private respondent .

The Court:- The appellant is one of the private respondents in the writ petition. Inadvertently, the other private respondents have not been impleaded in the appeal. Leave is granted to the Advocate-on-Record for the appellant to implead the other respondents in the writ petition as respondents in the appeal and carry out necessary amendment to the cause title of the appeal papers.

An order dated March 12, 2024, passed in WPO/1539/2023 being a writ petition filed by the respondent no. 1

herein, is under challenge in this appeal at the instance of one of the private respondents in the writ petition.

The matter pertains to premises no. 1/H/5, Kalimuddin Sarkar Lane, Ward-34, Borough-III. It appears that a demolition order was passed in respect of the said premises by the Special Officer (Building) in Demolition Case no. 20-D/III/21-22. Some of the occupants of the said premises including the present appellant preferred a statutory appeal before the Municipal Building Tribunal, challenging the demolition order. During the pendency of the statutory appeal, Kolkata Municipal Corporation (in short 'KMC') issued a notice dated March 21, 2023, under Sections 544 and 546 of the KMC Act, 1980 calling upon the occupants of the said premises to vacate the premises so that KMC can implement the demolition order.

The appellant herein and some other occupants of the premises in question challenged the said notice under Sections 544 and 546 by filing WPO/823 of 2023. The writ petition was dismissed by the learned single Judge. The said writ petitioners preferred an appeal being APOT/97/2023. The appeal was disposed of by this Bench with the following direction:

“Accordingly, we direct the Municipal Building Tribunal to dispose of BT Appeal No. 35 of 2023 along with any connected

application that may have been filed, by the end of this month, i.e. April 30, 2023. For this purpose, Executive Engineer (Building), Borough-III, is directed to forthwith and in any event within a period of five days from the date of communication of this order to him, transmit the records of the case to the Tribunal. We are told that the next hearing has been fixed by the Tribunal on April 18, 2023. All the parties shall appear before the Tribunal on that date. No further notice is required. The Tribunal shall not grant unnecessary adjournment and shall spare no effort to ensure that the appeal and the connected application are disposed of on merit after hearing all concerned parties by the end of this month.

Till pronouncement of the order by the Tribunal, no coercive steps shall be taken by the respondents herein in respect of the impugned construction. After disposing of the appeal, the Tribunal shall forthwith send back the records of the case to the concerned department in KMC.

Till disposal of the appeal by the Tribunal, the appellants shall make no further construction in the premises in question.

The Officer-in-Charge, Beliaghata Police Station is directed to ensure that no further construction is made by the appellants at the site in question. The appellants shall also not

create any third party interest or put anybody in possession of the concerned premises till disposal of the appeal by the Tribunal.

The order under appeal is set aside.”

The statutory appeal preferred by the present appellant and some other occupants of the said premises being BT Appeal No. 35 of 2023 was dismissed by the Municipal Building Tribunal by an order dated April 28, 2023. Therefore, the demolition order has been confirmed.

The present writ petition has been filed by the respondent no. 1 herein for implementation of the demolition order. The learned judge passed an order on March 12, 2024 directing implementation of the order and passed appropriate direction on the Police authorities for rendering necessary assistance. The learned Judge also directed disconnection of the electricity supply to the unauthorised premises.

Being aggrieved, one of the private respondents in the writ petition has come up by way of this appeal.

Learned Advocate for the appellant says that no notice of the writ petition was served on the appellant herein. The appellant came to know of the order of the learned single Judge only when the KMC people visited the concerned premises for carrying out the

demolition order. Learned Advocate further says that a civil revisional application challenging the order of the Municipal Building Tribunal, at the instance of the appellant and another person, is pending in this Court. There was an interim order protecting the petitioners in that civil revisional application till the end of January, 2024. On February 1, 2024, an application has been filed for extension of the interim order. However, presently there is no interim protective order. Learned Advocate also submits that an application has been made in November, 2023, before the Thika Controller praying for 'no objection' so that on the basis thereof a sanctioned plan can be obtained from KMC. Learned Advocate says that till such application is disposed of by the Thika Controller and also till the civil revisional application is disposed of by this Court, no coercive action should be taken against the alleged unauthorised construction.

Learned Advocate for the respondent/writ petitioner says that it is absolutely incorrect to allege that service was not effected on the private respondents in the writ petition. Affidavit of service was duly filed before the learned single Judge and the same is a part of the records. Admittedly, there is no sanctioned plan in respect of the unauthorised portion of the building in question. The challenge of the present appellant to the demolition order has

failed. Learned Single Judge, in the present round of litigation, has merely directed implementation of the demolition order since there is no order from any competent forum staying the execution of the demolition order.

We have also heard Mr. Ghosh, learned senior Counsel appearing for KMC. He submits that KMC should be permitted to carry out its statutory duties.

Having given our anxious consideration to the rival contentions of the parties, we are of the considered view that the learned Judge has committed no error by directing implementation of the demolition order in question. The appellant and another interested party assailed the demolition order by way of a statutory appeal, which has been dismissed. Although a civil revisional application against the said order of the Tribunal is said to be pending in this Court, admittedly there is no restraint order in such application as of date, which would stand in the way of implementation of the demolition order. Unauthorised construction cannot be allowed to stand. Admittedly, there is no sanctioned plan in respect of the unauthorised construction in question. Persons who raise construction without obtaining prior sanction from the competent authority deserve no sympathy from the Court of law, far less a Court of equity which the Writ Court is.

We find no reason to interfere with the order under appeal. The appeal and the connected application are dismissed.

Learned Advocate for the appellant says that some time may be granted to the appellant and other occupants of the unauthorised construction to vacate the premises. We are of the view that such prayer should be made before the learned single Judge before whom the writ petition is pending. If such a prayer is made before the learned Judge, Her Ladyship is requested to decide whether in the facts and circumstances of this case, the appellant deserves such indulgence. We say nothing in that regard.

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)

(APURBA SINHA RAY, J.)

dg/