

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/177/2024
WPO/297/2024
IA NO:GA/1/2024

M/S. MUNNA ASSOCIATES
VS.
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE PRASENJIT BISWAS

Date : May 14, 2024.

Appearance:

Mr. Debanik Banerjee, Adv.

Mr. Steven Biswas, Adv.

Mr. Prasenjit Saha, Adv.

...for the Appellant

Mr. Gopal Chandra Das, Adv.

Ms. Manisha Nath, Adv.

...for KMC.

Mr. Avirup Chatterjee, Adv.

Mr. Rishov Das, Adv.

..for the Respondent No.5

Ms. Sipra Mazumdar, Adv.

Ms. Somashree Dey, Adv.

...for State

The Court: Affidavit of service filed in Court today, be kept with
the records.

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

A judgement and order dated April 19, 2024, whereby a learned Judge of this Court disposed of a writ petition filed by the respondent No.5 herein being WPO 297/2024, is the subject matter of challenge in this appeal at the instance of the private-respondent in the writ petition.

It appears that on a complaint lodged by the respondent/writ petitioner herein, Kolkata Municipal Corporation (in short, "KMC") inspected premises No.61A, Bata Krishna Paul Avenue, Kolkata and detected unauthorised construction at the said premises at the behest of the present appellant. Stop work notice was served on the appellant under Section 401 of the Kolkata Municipal Corporation Act, 1980 (in short, "1980 Act") with intimation to Jorabagan Police Station, on April 20, 2023. The site in question was again inspected by KMC people on September 29, 2023 and it was found that the person responsible had resumed construction work defying the stop work notice. An FIR under Section 401A of the 1980 Act, was lodged against the appellant.

KMC invoked the emergency provision of Section 400(8) of the 1980 Act and started demolition work with the assistance of the local police. At that time, the appellant produced a copy of an injunction order passed by a learned civil Court in a title suit instituted by the appellant herein against the owners of the property in question and certain other

persons who have been described as proforma defendants in the plaint of that suit. KMC immediately stopped the demolition work.

In the aforesaid factual background, the respondent/writ petitioner approached the learned Single Judge by filing the present writ petition for demolition of the alleged unauthorised construction made by the present appellant.

The learned Judge disposed of the writ petition with the following observations and directions:

“The petitioner has annexed copy of the order dated 22nd December, 2023 passed in Title Suit No.2613 of 2023 (M/S. Munna Associates Vs. Sri Tapas Mukherjee). On a perusal of the said order, it does not appear that the issue of unauthorized construction was before the learned Court. In the present case, specific averment is of unauthorized construction.

It is settled law that in respect of unauthorized construction, the order of injunction cannot be passed to hold on to a structure which has been constructed unauthorizedly without any sanctioned plan. In the instant case, it appears that the construction is going on without any sanctioned plan. Despite stop work notice being issued, the person concerned continued with further unauthorized construction and is presently relying upon the order of the Court not to proceed with the order of demolition.

Once unauthorized construction is detected, the same is liable to be dealt with in accordance with law. The Corporation has already invoked provision under section 400(8) of the Act and proceeded with the demolition work. The Executive Engineer of the Building Department, Borough-II is directed to continue with the demolition of the unauthorized construction till the entire unauthorized construction is brought down and to conclude the same at the earliest.

Officer-in-Charge, Jorabagan Police Station is directed to render all necessary help and assistance to the men and agents of the Corporation at the time of execution of the order of the demolition, if sought for.

Be it recorded that the writ petition was sought to be served upon the private respondent at the address mentioned in the cause title of the Title Suit mentioned hereinabove filed at the behest of the private respondent before the learned Civil Court but the postal endorsement shows that the postal envelope has been returned with the remark 'Out of Station, hence left and 'addressee moved'."

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

Learned advocate appearing for the appellant says that admittedly, service of the writ petition was not effected on the appellant. Had the appellant got an opportunity of making submission before the learned Single Judge, he would have brought to the learned Judge's notice all relevant facts including the pendency of the civil suit. All that the appellant prays for is an opportunity of hearing before the learned Judge.

Learned advocate for the respondent/writ petitioner says that service of the writ petition was attempted on the present appellant. However, learned Judge has recorded in the impugned order that the postal department was unable to effect service on the appellant. Service was attempted at the address of the appellant mentioned in the cause title of the civil suit that has been instituted by the appellant and is pending. The same address appears in the cause title of the instant Memorandum of Appeal. In all probability, the appellant somehow managed to evade service.

We have heard learned advocates for the parties. Service of the writ petition was sought to be made on the appellant at the address which the appellant has furnished in the cause title of the title suit that he has filed before the concerned civil court. It appears that the same address has been mentioned in the cause title of this appeal. It is quite possible that somehow the appellant evaded service.

In any event, we have heard learned counsel for the appellant. The learned Judge took note of the pendency of the civil suit and the order of injunction passed by the learned Court in seisin of the civil suit. The learned Single Judge has found that the suit does not pertain to unauthorized construction at all. In fact, we have also seen from the plaint that no relief has been claimed against KMC or its officers, they have been impleaded merely as proforma defendants in the suit.

The learned Judge has held that no order of injunction passed in any civil suit can restrain KMC from discharging its statutory duties and functions. Generally, that would be the correct principle of law. However, we need not dilate on the same since in the present case, there is no order of injunction against KMC or its officers. Hence, nothing prevents KMC from carrying out its statutory duties by removing the concerned unauthorized construction that it had detected.

We find no infirmity in the order under appeal. There should be zero tolerance for unauthorized constructions. Such illegal constructions destroy the entire ecology and upset the planned development of a

town/city. Such constructions also put undue pressure on the civic amenities which are not equipped to cater to illegal constructions. No unauthorized construction should be allowed to stand even for a day.

There is no reason why we should interfere with the order under appeal. The appeal and the connected application fail and are dismissed. In the facts and circumstances of this case, there shall be no order as to costs.

We clarify that none of the observations made in this order or in the order of the learned Judge which is impugned before us, will have any bearing on the proceedings in the suit that has been instituted by the present appellant. The learned civil Court shall decide the suit on its merits uninfluenced by this order or the order of the learned Single Judge.

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

(ARIJIT BANERJEE, J)

(PRASENJIT BISWAS, J.)

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