

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE**

Present :-

**The Hon'ble JUSTICE JOYMALYA BAGCHI
And
The Hon'ble JUSTICE APURBA SINHA RAY**

APOT/194/2024
WITH
WPO/381/2024
IA NO: GA/1/2024

IQRAMUL HAQUE AND ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

For the appellants	:	Mr. Arindam Banerjee Mr. Avirup Chatterjee Mr. Sumitava Chakraborty Mr. Rishov Das
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For the KMC	:	Mr. Biswajit Mukherjee Mr. Subhrangsu Panda Ms. Manisha Nath
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For the respondent no. 5	:	Mr. D.K. Sengupta Ms. Sweta Saha
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Last Heard on	:	12.08.2024
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Delivered on	:	12.08.2024
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JOYMALYA BAGCHI, J.

1. Mr. Banerjee contends the condition precedent for issuance of a 'stop work' notice under Section 400(1) of the Kolkata Municipal Corporation Act has not been made out in the facts of the case. His client was neither a party nor aware of the civil suit pending in respect of the property and there was no suppression of such fact at the time of applying for sanction.
2. Mr. Mukherjee contends admittedly a civil suit is pending in respect to the property and an order of status quo with regard to the nature and character of the property has been passed therein. Prayer has also been made to add the appellants as defendants in the suit.
3. We have considered the materials on record. The appellants had commenced construction on the property. It is contended the construction was as per sanctioned plan. But the Corporation argues an order of status quo has been passed in a civil suit in respect of the property which was not brought to the notice of the Corporation when the sanction was granted. Accordingly, a 'stop-work' notice has been issued. It is undisputed that a civil suit has been filed wherein an order of status quo has been passed with regard to the property in question. The predecessor-in-interest of

the appellants is a defendant in the suit. A prayer has been made to add the appellants as co-defendants.

4. Under such circumstances, any change in the nature and character of the property by way of construction thereon would be contrary to the order of status quo passed in the civil suit.
5. Accordingly, we direct the appellants shall not undertake any construction on the property contrary to any order passed in the civil suit, namely, Title Suit No. 1152 of 2016 (*Gurmit Kaur Patiya vs. Bilayet Hossain & Ors.*).
6. Civil Judge is requested to consider the prayer for adding the appellants as parties in the suit at the earliest, preferably within 30 days from communication of this order.
7. It is open to the appellants to seek vacating, variation and/or modification of the order passed in the civil suit in accordance with law, if so advised.
8. We clarify we have not expressed any opinion on the merits of the order passed in the civil suit.
9. Needless to mention, in the event the order of injunction in the civil suit is vacated or modified, the Corporation shall take into consideration this fact and review the order under Section 400(1) of the Kolkata Municipal Corporation Act in accordance with law.

10. With these directions, the appeal and the application are disposed of.

I agree.

(APURBA SINHA RAY, J.)

(JOYMALYA BAGCHI, J.)

kc/sg.