

OD - 16

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE

APO/73/2024  
WITH WPO/1533/2023  
IA NO: GA/1/2024  
MANAS KUMAR BISWAS ALIAS ASOKE KUMAR BISWAS  
VS  
THE STATE OF WEST BENGAL AND ORS

BEFORE :  
THE HON'BLE JUSTICE DEBANGSU BASAK  
And  
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI  
Date : 10<sup>th</sup> December, 2024

*Appearance :*  
*Mr. Sakya Sen, Sr. Adv.*  
*Mr. Anuj Singh, Adv.*  
*...for the appellant.*

*Mr. Raghunath Chakraborty, Adv.*  
*...for the private respondent.*

*Mr. Alak Kumar Ghosh, Adv.*  
*...for the KMC.*

The Court : The appeal is at the behest of the appellant and directed against the judgment and order dated April 19, 2024 passed in WPO/1533/2023. By the impugned judgment and order, the learned single Judge dismissed the writ petition on the ground of existence of disputed questions of fact. The learned single Judge found that there were disputes with regard to identification of the property. The learned single Judge allowed the parties to approach the competent civil court for demarcation and identification of the subject plots in accordance with law, if so advised.

Learned senior advocate appearing for the appellant submits that, there subsists an order of demolition passed by the Special Officer (Building) in respect of premises no.84, Canal Circular Road, Kolkata. He submits that, the private respondents are seeking to confuse the issue by raising disputes with regard to premises no.76/H/2021, 76/H/ 2022 and 76/H/23, Dr. S. C. Banerjee Road, Kolkata. He submits that, the appellant is not claiming any right, title and interest in respect of those properties.

Learned senior advocate appearing for the appellant draws the attention of this Court by placing various orders passed from time to time. He submits that, in the earlier writ petition upto the Division Bench stage, the order of demolition passed by the Special Officer (Building) was sought to be enforced. In the contempt proceeding before the Division Bench, the Kolkata Municipal Corporation for the first time sought to raise the issue of lack of identification of premises no. 84, Canal Circular Road. He submits that, the private respondents do not possess any right, title and interest in respect of premises no. 84, Canal Circular Road, Kolkata. His client is not claiming any right, title and interest in respect of other properties of the private respondents. He submits that, since there subsists an order of demolition that should be implemented.

Learned advocate appearing for the private respondents draws the attention of this Court to the various orders passed from time to time. In particular, he draws the attention of the Court to the order passed by the Division Bench earlier. He submits that, there is a dispute with regard to identification of premises no. 84, Canal Circular Road, Kolkata. He submits that, civil suits are pending with regard to the immovable properties concerned. According to him, there does not exist an order of demolition

passed by the Kolkata Municipal Corporation in respect of premises no. 84, Canal Circular Road.

Learned advocate appearing for the Kolkata Municipal Corporation submits that, there are issues with regard to the demarcation of the properties involved. The earlier order of demolition was passed on an erroneous assumption of facts.

We considered the rival contentions of the parties.

The appellant approached the writ court for implementation of the order dated December 30, 2021 passed by the Special Officer (Building) in respect of premises no. 84, Canal Circular Road, Kolkata.

There subsists an order of the Special Officer (Building) dated December 30, 2021 passed in respect of premises no. 84, Canal Circular Road, Kolkata – 700 010. Such order demarcates premises no. 84, Canal Circular Road, Kolkata. It puts the three premises in which the private respondents claim right, title and interest beyond the demarcated property of 84, Canal Circular Road, Kolkata.

The so-called boundary dispute or title dispute in respect of premises no. 84, Canal Circular Road, Kolkata doubly establishes the fact that the Corporation was not entitled to sanction any building plan in respect of premises no. 84, Canal Circular Road, Kolkata. We hasten to add that we are not accepting that there are boundary disputes in respect of such property. We are also not deciding any issue raised in the civil proceedings between the parties. We clarify that the civil courts are at liberty to decide the issue raised before such courts in accordance with law without being influenced by any of the observations that we make in this matter.

Ipsa facto, boundary dispute and title dispute, if there be any, in the eye of law, prevents the Corporation from granting the sanction in respect of such property. There exists a structure at premises no. 84, Canal Circular Road, Kolkata. There subsists an order of demolition also. Such order adequately demarcates the property. Corporation allots the premises number. Therefore, Corporation will proceed to demolish the structure at premises no.84, Canal Circular Road, Kolkata. While doing so, the Corporation will proceed on the basis of the demarcation provided by the Special Officer (Building) in his order dated December 30, 2021.

The contentions of the private respondents that, the order of demolition dated December 30, 2021 was set aside cannot be accepted. No order of the High Court set aside such order of the Special Officer (Building). The order of the Division Bench which the private respondents alluded to records the respective contentions of the parties. It does not render any finding that the order of demolition of the Special Officer (Building) dated December 30, 2021 was set aside or obviate it or makes it unimplementable.

With due respect, the so-called property dispute cannot stand in the way of demolition of unauthorised construction. A writ court is not concerned with the title in respect of premises no. 84, Canal Circular Road, Kolkata but whether the structures standing on the property was built after obtaining a valid sanctioned plan or not. In the facts and circumstances of the present case, there is no sanction plan in respect of any structure at premises no. 84, Canal Circular Road, Kolkata.

In such circumstances, Corporation will proceed to demolish all existing structures in premises no. 84, Canal Circular Road, Kolkata in terms of the order of demolition of the Special Officer (Building) dated December 30, 2021 within seven days from date.

The impugned judgment and order dated April 19, 2024 passed in WPO/1533/2023 is reversed. WPO/1533/2023 is allowed. APO 73 of 2024 is allowed without any order as to costs.

Prayer for stay made on behalf of the private respondents is considered and refused.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

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