

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/209/2024
with
WPO/257/2024
IA NO: GA/1/2024
IA NO: GA/2/2024
SWAPNA AGARWAL
VS.
ALAKENDU BODH NIKETAN & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : May 24, 2024.

Appearance:

Mr. Moloy Roy, Adv.
Ms. Sonal Agarwal, Adv.
Mr. Ankush Majumder, Adv.
...for Appellants

Mr. Biswajit Roy, Adv.
Ms. Kankana Bhattacharya, Adv.
Ms. Sreya Hazra
...for respondent Nos. 4 and 5

Mr. Alak Kr. Ghosh, Adv.
Ms. Manisha Nath, Adv.
...for KMC

RE: GA/1/2024

The Court: The applicant says that she is vitally affected by the order dated April 18, 2024, whereby two writ petitions being WPO/257/2024 and WPA/7373/2024 were disposed of by a learned judge of this Court.

The applicant says that she was not made a party to either of the said writ petitions. However, since she would be prejudicially affected by the

order of the learned single Judge, she wishes to prefer an appeal against such order and accordingly, prays for leave to prefer appeal.

Having heard learned advocate for the appellant, we are of the view that the applicant has sufficient standing to challenge the order dated April 18, 2024. Accordingly, GA/1/2024 is allowed.

APOT/209/2024, IA NO: GA/2/2024

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

WPO/257/2024 was filed by one Asoke Kumar Datta for implementation of an order of demolition of unauthorised construction made at Premises No.80/3, Mahatma Gandhi Road, Kolkata, within the territorial limits of Kolkata Municipal Corporation [in short, 'KMC']. WPA/7373/2024 was a writ petition filed by one Sanskari House and another being the developers of the premises in question, challenging the order of demolition passed by the Director General (Building), KMC. The learned judge, by the impugned order, dismissed the developers' writ petition and allowed the writ petition that Asoke had filed, directing the Executive Engineer of KMC to proceed with the work of demolition of the unauthorised structure at the earliest.

The appellant says that she has purchased the first floor and above of the said premises. She is not the person responsible for the alleged

unauthorised construction. If the construction that presently stands at the said premises is unauthorised, the same may be regularised by KMC upon payment of necessary fees or penalty, as the case may be. As part owner of the premises in question, the appellant would be entitled to raise construction there after obtaining sanctioned building plan. Therefore, rather than demolishing the structure that presently stands, it would be in the interest of all concerned, if the structure is regularised.

Mr. Ghosh, learned senior counsel representing KMC says that the old building that was there at the said premises was brought down by the developers and a new construction was raised without obtaining any sanctioned building plan from KMC. Therefore, the entire structure that presently stands at the said premises is unauthorised. The structural stability or workmanship of such construction is unknown. The building may collapse endangering life and properties in and around the property.

We have considered the facts and circumstances of the case. The Director General (Building), KMC, pursuant to an earlier order of this Court, held proceedings and passed an order of demolition. The finding is that the entire construction in question is without the support of any sanctioned building plan. Therefore, we find no infirmity in the order of the learned single judge directing implementation of the demolition order. We are unable to accede to the request of the appellant that KMC should be directed to

regularise the illegal structure in question. Nothing can be constructed without obtaining prior permission of the competent authority, as per the law of the land. The law is not that a construction can be first raised and then post facto permission obtained from the concerned authority for raising such structure.

We find no infirmity in the order under appeal as would persuade us to interfere.

The appeal and the connected application stand dismissed.

However, this order will not prevent the appellant from approaching the competent authority in KMC with an appropriate prayer, if she is entitled to do so in law.

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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