

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/532/2024

BANANI DUTTA AND ANR
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE :
THE HON'BLE JUSTICE ANIRUDDHA ROY
Date : 6th June, 2024.
(Vacation Bench)

Appearance :
Mr. Raghunath Chakraborty, Adv.
Mr. Mehboob Ahmed, Adv.
... for the petitioner.

Mr. Alak Kr. Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.
... for the KMC.

The Court:- Affidavit-of-service is already on record.

Mr. Raghunath Chakraborty, learned Counsel appears for the petitioner.
Mr. Alak Kr. Ghosh, learned Counsel appears for respondent nos. 1,2,3,5 and 6.
Private respondent no.8 is not represented.

Learned Counsel for the petitioner has shown a returned envelope and submits that no notice can be served as the envelope has returned with the postal remark 'doors are locked'. However, since the postal envelope is not supported by any affidavit-of-service the same is not taken on record.

The issue involved in this writ petition has a chequered history. The petitioner is principally aggrieved with the action of the Municipal Corporation demolishing the unauthorized and illegal structure at the subject premises.

Annexure P1 at page 21 to the writ petition is an order for demolition dated April 11, 2022. The said demolition order was issued in exercise of power under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 (for short 'KMC Act'). The petitioner carried out an appeal from the said order of demolition before the Jurisdictional Municipal Building Tribunal. The prayer for stay of operation of the said demolition order was rejected by the Jurisdictional Tribunal on March 17, 2023 at page 30 to the writ petition. After rejection of the said prayer for stay by the Building Tribunal the Corporation authority immediately demolished the unauthorized structure at the subject premises. The admitted fact is that no further challenge was carried out by the petitioner from the said order dated March 17, 2023 passed by the Building Tribunal rejecting the prayer for stay of demolition.

The petitioner then submitted a representation before the Corporation authority which was not considered according to the petitioner.

Challenging the illegality in holding the hearing by the Corporation authority touching the same issue of unauthorized construction, the petitioner filed a writ petition being WPO/81/2024. The unauthorized construction as alleged by the petitioner, was of two collapsible gates originally. The said writ petition was disposed of by an order dated February 8, 2024, annexure P8 at page 43 to the writ petition by a co-ordinate Bench. The co-ordinate Bench has directed the Corporation to conclude the proceeding to deal with the unauthorized construction in accordance with law.

Being aggrieved by the said order dated February 8, 2024, the petitioner preferred an appeal being APOT/60/2024. By an order dated February 13,

2024, the Hon'ble Division Bench disposed of the appeal, annexure P9 at page 46 to the writ petition, directing the Corporation to conduct a fresh hearing in respect of the same premises on the basis of the materials as was made available to the petitioner within a stipulated time. A contempt proceeding was also initiated by the petitioner being CC/20/2024 and an order was passed therein by the Hon'ble Division Bench dated March 7, 2024, annexure P10 at page 51 to the writ petition.

Pursuant to the direction of the Hon'ble Division Bench the Corporation authority passed the order dated May 6, 2024, annexure P50 at page 60 to the writ petition.

The petitioner has impugned the said order dated May 6, 2024 through this writ petition.

Mr. Raghunath Chakraborty, learned Counsel for the petitioner submits that the said impugned order was passed under Section 400(1) of the KMC Act. The petitioner has already preferred an appeal from the same before the Jurisdictional Building Tribunal but since the Chairman is not available the Tribunal is not functioning and the petitioner has become remediless and filed this writ petition. The petitioner submits that till disposal of the said appeal filed by the petitioner from the order dated May 6, 2024, unless the impugned order for demolition is stayed, the petitioner shall suffer immense hardship and prejudice and his appeal pending before the Jurisdictional Building Tribunal would become infructuous.

Mr. Alak Kr. Ghosh, learned Counsel for the Corporation referring to the said impugned order dated May 6, 2024 submits that the same was passed

following the directions of the Hon'ble Division Bench and in terms of the previous order of demolition dated April 11, 2022, at page 21 to the writ petition. He submits that after demolition of the unauthorized construction being effected pursuant to the said order of demolition dated April 11, 2022, as the same was not stayed by the Building Tribunal by its order dated March 17, 2023, there was no question for raising any further construction at the same place at the self-same premises by the petitioner, hence there is no scope for passing any order for stay on demolition. He submits that after demolition of the unauthorized structure in terms of the said demolition order dated April 11, 2022, if any further structure has been constructed by the petitioner, as contended by the petitioner that the petitioner has constructed one aluminium sliding gate the same is totally illegal and wrongful and is also liable to be demolished.

In the light of the above, Mr. Ghosh submits this writ petition is totally mis-conceived and frivolous and should be dismissed.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, it appears to this Court that, admittedly the petitioner has not challenged the order of the Building Tribunal dated March 17, 2023 at page 30 to the writ petition by which the prayer for stay of operation of the demolition order dated April 11, 2022 was rejected. The appeal may be pending but since the prayer for stay was rejected there was no wrong or illegality on the part of the Corporation authority to carry out the demolition of the unauthorized construction in terms of its demolition order dated April 11, 2022. Accordingly, the unauthorized construction was demolished. Once the unauthorized construction is demolished, the petitioner should not have

constructed any further construction at the self-same place of the self-same premises, as was also unauthorized, equally. Therefore, if the petitioner has constructed any further construction at the self-same place where the unauthorized construction was demolished by the Corporation authority, such construction, may it be by way of construction of an aluminium sliding door, is also unauthorized.

It is not the case of either of the parties that other than the unauthorized construction mentioned in the said demolition order dated April 11, 2022, any further construction or portion of the premises has been demolished.

Insofar as the contention of Mr. Ghosh that no appeal is maintainable from the impugned order dated May 6, 2024 though has been filed by the petitioner, this Court keeps this point open to be urged before the Jurisdictional Appellate Authority, at the appropriate stage.

The unauthorized construction has been demolished under the said order of demolition dated April 11, 2022 as discussed above, therefore the issue raised by the petitioner through this writ petition has no limb to stand in the eye of law.

In view of the forgoing discussion and reasons, this Court is of the firm view that, this writ petition is totally devoid of any merit and is liable to be dismissed.

Accordingly, this writ petition **WPO/532/2024** stands dismissed, without any order as to costs.

However, the appropriate authority of the Corporation shall take steps to make Jurisdictional Building Tribunal functional forthwith. After the

Jurisdictional Building Tribunal shall be made functional the appeals filed by the petitioner shall be taken up and decided expeditiously in accordance with law.

Learned Counsel for the petitioner prays for stay of operation of this order. Such prayer is considered and rejected.

(ANIRUDDHA ROY, J.)

mg