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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/232/2024
WITH
WPO/403/2024
IA NO:GA/1/2024

MD. OMAR @ HAATHI RAJA
VS.
SATYAM PANDEY & ORS.

BEFORE :

THE HON'BLE JUSTICE JOYMALYA BAGCHI
And
THE HON'BLE JUSTICE GAURANG KANTH
Date : 25th June, 2024

Appearance :
Mr. Surendra Kr. Sharma, Adv.
...for appellant
Mr. Sandipan Banerjee, Adv.
Ms. Manisha Nath, Adv.
...for KMC
Ms. Sabnam De Bardhan, Adv.
Mr. Bikramjit Mandal, Adv.
...for State
Sk. Mustafi Rahaman, Adv.
...for private respondent

The Court :- The appellant is aggrieved by an ex parte order dated 22nd May, 2024, whereby the Hon'ble Single Judge directed the Corporation authorities to proceed with the demolition on a day to day basis with the assistance of the Officer-in-Charge, Narkeldanga Police Station.

It is argued the appellant was not heard by the Hon'ble Single Judge. No notice was served upon owners/occupiers of the building. Initiation of the

demolition proceedings under the emergency provision which is Section 400(8) of the Kolkata Municipal Corporation Act was unwarranted.

On the other hand, learned Counsel for the respondent authorities and the respondent no.1/writ petitioner contends that the prayers in the present writ petition are substantially similar to WPO No.1585 of 2023, which was dismissed on October 12, 2023.

We have considered the materials on record. As the order impugned had been passed ex parte, ordinarily this Court would have remanded the matter for fresh hearing before the First Court. But the peculiar facts of the case would disclose a clear abuse of the judicial process which prompts us to take a different course. In an earlier writ petition (WPO 1585 of 2023) the appellant had challenged the demolition proceeding initiated by the Corporation with regard to a five storied unauthorized building. The writ petition was dismissed on merits vide order dated 12th October, 2023. It was recorded in the said order that stop work notice had been issued with regard to the unauthorized construction and FIR under Section 401A of the Kolkata Municipal Corporation Act was also registered. Thereafter, Mayor-in-Council in its meeting dated 18th August, 2023 invoked Section 400(8) of the Kolkata Municipal Corporation Act by holding that construction, if allowed to stand, may collapse at any point of time leading to loss of human life and property and would create several hazards like fire hazards and environmental hazard. In view of these facts, the Hon'ble Single Judge directed implementation of the demolition order passed under Section 400(8) of the Kolkata Municipal Corporation Act.

Notwithstanding the aforesaid dismissal, the appellant had again approached this Court in the present writ petition. Referring to the earlier order passed in WPO No.1585 of 2023 the Hon'ble Single Judge dismissed the writ petition and directed demolition on a day to day basis.

Any further delay and dilation is uncalled for and we do not find any reason to interfere with the order impugned. The appeal is dismissed.

The report filed be placed on record.

(GAURANG KANTH, J.)

(JOYMALYA BAGCHI, J.)