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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT 245 of 2024 with
WPO 402 of 2024
IA GA 1 of 2024
GA 2 of 2024
RASHED PARVEZ AND ANR.
Versus
SATYAM PANDEY AND ORS.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK
AND

The Hon'ble JUSTICE PARTHA SARATHI SEN
Date : 2nd July, 2024.

Appearance :
Mr. Anjan Bhattacharya, Adv.
Ms. Anita Shaw, Adv.
Mr. Subhrangsu Maiti, Adv.
...for the appellants

Mr. Sandipan Banerjee, Adv.
Ms. Manisha Nath, Adv.
...for KMC

The Court: In this appeal, the order dated May 22, 2024 as passed by the learned Single Judge in WPO 402 of 2024 has been impugned.

By the impugned order the learned Single Judge while disposing the said writ petition directed the Kolkata Municipal Corporation (hereinafter referred to as the Corporation) to fix up dates of demolition in such a manner so that the

demolition process can be continued day-to-day basis till the unauthorized construction is brought down completely with a further direction to the Officer-in-Charge, Narkeldanga Police Station to take steps for vacating the subject structure in aid of demolition.

It is pertinent to note that while passing the order impugned the learned Single Bench has also noticed that the alleged construction has been done without obtaining any sanction plan from the Corporation and on the contrary the person responsible constructed several numbers of RCC Column along with tie beam and shuttering work for stair and beam etc. on the ground floor.

The appellant who claims himself to be legal heir of the thika tenants of the property intends to assail such order with a prayer for leave to appeal since it is the version of the learned advocate for the appellants before us that the order of demolition as has been passed by the learned Single Judge has been passed in absence of his client and his client has got no opportunity to contest the said writ petition since no copies of the writ petition have been served upon the present appellants in the said writ proceeding.

While opposing such contention learned advocate for the respondent at the very outset draws our attention to Section 400 of the Kolkata Municipal Act, 1980, hereinafter referred to as Corporation. It is submitted that Section 400 sub-section (1) of the said Act clearly postulates that the Municipal Commissioner is empowered to make an order for demolition of an illegal construction which has been constructed without obtaining any permission

from the Corporation. However, no order shall be passed by the said Municipal Commissioner without giving a reasonable opportunity of showing cause by the person responsible. Attention of this Court is also drawn to last explanation of sub-section (1) of Section 400 of the said Act. It is submitted that explanation to Section 400(1) clearly defines 'the person at whose instance' as has been used in Section 400. It is thus submitted that since the present appellants before us could not substantiate that the said appellants come within the purview of 'the person at whose instance' or 'the person responsible' and thus no leave may be granted to the present appellant to prefer this appeal.

On perusal of the provisions of Section 400 of the said Act, it appears to this Court that admittedly sub-section (1) of Section 400 empowers the Municipal Commissioner to pass an order for demolition of an illegal construction but after giving an opportunity of hearing to a person who is responsible for such construction which is why the legislatures on their own wisdom used the words "such person" in the first proviso of Section 400(1) of the said Act. On perusal of the entire provisions of Section 400 it reveals further that if such person, that is the person responsible for the alleged illegal construction, finds himself aggrieved, he has also a right to prefer an appeal before the Municipal Tribunal.

As has been held by this Court on a number of occasions even by a Division Bench of this Court very recently that the word "such person" as has been used in the proviso of Section 400 of the said Act includes only the person

responsible, we have no hesitation to hold that no other person that is to say who is not at all responsible for the alleged illegal construction is entitled to approach any Court of Law to ventilate his grievance with regard to the order of demolition as has been passed by the Municipal Commissioner under the said Act.

Coming to the factual aspect of this case, we are constrained to hold that the appellant who has sought for leave to prefer the instant appeal has miserably failed to establish as to how he comes under the purview of 'such person' or 'the person responsible' and therefore he cannot agitate and/or ventilate that the statutory principle of law with regard to *audi alteram partem* has been denied to him.

Since the appellants before us has failed to establish that they come under the purview of 'the person at whose instance' within the meaning of Explanation of Section 400(1) of the said Act, the present appellants are not entitled to notice as wrongly claimed.

Learned advocate appearing for the private respondent submits that an independent appeal being APOT 224 of 2024 is pending and that, there is an order of interim protection dated June 6, 2024.

In response to enquiry of the Court, learned advocate for the private respondent submits that his client did not prefer any appeal before the Building Tribunal in terms of the order dated June 6, 2024 passed by the co-ordinate Bench.

In any event, APOT 224 of 2024 is not before us. Moreover, private respondent did not comply with the order dated June 6, 2024. Protection of such order cannot be exceptional either to the private respondent or the petitioners who are seeking to prefer the appeal.

In view of the discussion made hereinabove, we thus find no merit in the petition for leave to appeal. Accordingly, the leave as sought for is refused. Consequently, the appeal and the connected applications are also dismissed.

(DEBANGSU BASAK, J.)

(PARTHA SARATHI SEN, J.)

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