

APO/101/2024
with
WPO/163/2024
IA No.GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

DR. SANJAY GUPTA.

-Versus-

KOLKATA MUNICIPAL CORPORATION
AND ORS.

BEFORE :
THE HON'BLE JUSTICE DEBANGSU BASAK
And
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
Date : 17th December, 2024.

Appearance :
Mr. Sujit Banerjee, Adv.
..for the appellant.

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

The Court : Appeal is at the behest of the writ petitioner and is directed against the order dated June 24, 2024 passed in WPO/163/2024.

By the impugned order, the learned Single Judge did not entertain the writ petition. Learned Single Judge noted the earlier order of the coordinate Bench dated October 10, 2023 passed in an earlier writ petition being WPO/1685/2023 and held that such order was passed 'in terrorem'. Learned Single Judge allowed the private respondents herein to pursue their remedy of appeal. Learned Single Judge also held that the remedy of appeal should not be

rendered nugatory when the private respondents filed a stay application in due time.

Learned advocate appearing for the appellant submits that, there is an order of demolition passed in the respect of the premises concerned. An appeal was preferred by the private respondents against such order of demolition. He refers to the order passed by the Building Tribunal from time to time. In particular, he refers to order no.2 dated October 11, 2023, order No.3 dated November 17, 2023, Order No.4 dated January 3, 2024 and Order Nos.4 and 6 dated January 4, 2024 and January 5, 2024 respectively. He submits, on all occasions the Building Tribunal was available. Private respondent never pressed its application for stay before the Building Tribunal. He submits that there does not exist any sanction of any building plan in respect of the premises concerned. The structure standing in the building concerned is wholly unauthorized and is required to be demolished in terms of the order of demolition dated August 31, 2023.

Learned advocate appearing for the private respondents submits that, private respondents are diligently pursuing their remedy on appeal. Private respondents applied for stay of the order of demolition dated August 31, 2023 in the pending appeal. The appeal filed was within time. On the last date of hearing, the Building Tribunal was not available and, therefore, the private respondents were prevented by sufficient cause from pressing on with the application for grant of stay.

In response to the query of the Court as to whether there is a sanctioned building plan he submits, his client is a purchaser and at present his client does

not possess the sanctioned building plan. He refers to the recording in the order of the Building Tribunal and submits that, the Building Tribunal wanted the records to be produced to see whether there exist any sanctioned building plan or not.

In view of such stand being taken on behalf of the private respondents, we called upon the learned advocate appearing for the Kolkata Municipal Corporation to apprise the Court as to whether there exist any sanctioned building plan in respect of the premises or not. On instruction, he submits that, the records of the Corporation does not show that there was any sanctioned building plan in respect of the property concerned. He refers to a letter dated August 22, 2023 addressed to the private respondent and submits that the Executive Engineer informed such private respondent that there was no sanctioned building plan in respect of the property concerned.

There subsists an order of demolition dated August 31, 2023 in respect of the premises No.170(P), Ahiritola Street, Kolkata. There is also an appeal directed against the order of demolition which is pending before the Building Tribunal. The appeal before the Building Tribunal is pending since September, 2023. There are orders of the Building Tribunal dated October 11, 2023, November 17, 2023, January 3, 2024, January 4, 2024 and January 5, 2024. Private respondents apparently did not press on its application for grant of stay. At least, there is no stay of the order of demolition passed by the Building Tribunal.

Petitioner approached the writ Court on an earlier occasion being WPO/1685/2023 in which an order dated October 10, 2023 was passed in presence

of the private respondents. Such order directed the Corporation to take steps to implement the order of demolition if the private respondents failed to obtain stay of the order of demolition by December 22, 2023.

Private respondents were aware of the order dated October 10, 2023 passed in WPO/1685/2023. It did not apprise the Building Tribunal of such order on October 11, 2023. The same position continued on November 17, 2023 when the Tribunal was constrained to note on November 17, 2023 in its order that the private respondents did not mention about the order dated October 10, 2023 to it. The Tribunal came to know of such order independent of the private respondents. On coming to know of such order, the Tribunal placed the stay application for hearing on January 5, 2024.

The stay application was taken up by the Tribunal on January 3, 2024. It was considered on January 5, 2024 also.

On January 5, 2024, Building Tribunal noted that there was a mention of a sanctioned building plan in the case records of the Special Officer (Building).

The appeal was also taken up on November 12, 2024. On such date the appellant was not represented before the Building Tribunal. Noticing such facts, we afforded one more opportunity to the private respondents to obtain the order of stay from the Building Tribunal. The private respondents apparently did not move the Building Tribunal nor obtained an order of stay.

One of the defences is that the Building Tribunal was not available for a considerable period of time.

We are unable to accept such contention as the Building Tribunal was available for a considerable period of time subsequent to order dated October 10,

2023 passed in WPO/1685/2023. The private respondents did not obtain the order of stay before the Building Tribunal.

In order to avoid further controversy, we called upon the parties appearing before us to produce the sanctioned building plan. The contention of the private respondents is that as he is a purchaser, sanctioned building plan is not within him.

With respect, we are unable to accept such stand of the private respondents. Even if he is a subsequent purchaser, the necessity to obtain a sanctioned building plan continued to remain. It was his duty to obtain the sanctioned building plan at the time of his purchase. This defence that the sanctioned building plan is not available to him is of no assistance to him.

We note with concern the conduct of the private respondents with regard to the building concerned. Corporation authorities found unauthorised construction being carried on. It issued a notice for 'stop work'. Steps were taken by the private respondents despite the stop work notice to make further construction when the Corporation authorities intervened again resulting in the order of demolition being passed by the Special Officer (Building). Corporation's categorical stand is that its records do not contain any sanction in respect of the premises concerned.

In such view, there is hardly any scope of taking a view than what was taken by the Special Officer (Building) in the order of demolition dated August 31, 2023.

We are unable to agree with the learned Single Judge that the order of the Single Bench dated October 10, 2023 passed in WPO/1685/2023 was 'in

terrorem'. Learned Single Judge then allowed sufficient time to the private respondents herein to obtain an order of stay from the Building Tribunal.

We note the conduct of the private respondents before the Building Tribunal.

Private respondents are seeking to enjoy an unauthorized construction citing pendency of appeal before the Building Tribunal without taking requisite steps to obtain either an order of stay from the Building Tribunal or disposing of the appeal before the Building Tribunal.

In response to the query of the Court, learned advocate for the private respondent submits that the premises was purchased by its client in August, 2022. The stop work notice was issued on August 22, 2023 to the private respondents. Therefore, a construction was being made by the private respondents without any sanction.

In such circumstances, we set aside the impugned order dated June 24, 2024 passed in WPO/163/2024.

APO/101/2024 along with the connected application being IA No.GA/1/2024 are allowed without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)