

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE

APOT/161/2023  
WITH  
WPO/395/2023  
IA NO:GA/1/2023

SYED IMTEYAZ HUSAIN  
VS  
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE M.V. MURALIDARAN

Date : APRIL 2, 2024.

Appearance:

*Mr. Syed E. Huda, Advocate*

*Md. R. Alam, Advocate*

*Sk. Aptabuddin, Advocate*

*....for Appellant*

*Mr. Gopal Chandra Das, Advocate*

*Mr. Debangshu Mondal, Advocate*

*....for KMC.*

*Mr. Rahul Karmakar, Advocate*

*Mr. Debabrat Upadhyay, Advocate*

*...for private-respondents 7 & 8*

*Mr. Debjit Mukherjee, Advocate*

*Ms. Kalpita Paul, Advocate*

*....for State*

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

A judgement and order dated April 10, 2023, whereby the appellant's writ petition being WPO/395/2023, was dismissed by a learned Judge of this Court, is assailed in this appeal filed by the writ petitioner.

It appears that the appellant is the owner of a flat in a building situated at 119A, Mozaffar Ahmed Street, Kolkata. He says that he resides there. He says that originally there was a showroom on the ground floor of the building. Subsequently, Arsalan purchased the showroom and converted it into a restaurant. It appears that other constructions were also made by Arsalan, which according to the appellant, are unauthorized.

Being aggrieved, the appellant herein made a representation to the competent authority in Kolkata Municipal Corporation (in short, 'KMC'), complaining of unauthorized construction and change of user of the concerned premises.

With the grievance that such representation was not receiving the attention of KMC, the appellant approached a learned Judge of this Court, in an earlier round of litigation, by filing WP/645/2018. The learned Judge directed KMC to hold local inspection and file a report. Such report was filed. The learned Judge found that the concerned department of KMC had initiated criminal proceedings under Section 401A of the Kolkata Municipal Corporation Act, 1980 (in short, '1980 Act') in respect of the impugned construction and that steps had been taken under Section 400(1) of the 1980 Act. Accordingly, the learned Judge disposed of the writ petition with the following observations:

*“In view thereof, I am of the opinion that no useful purpose will be served by keeping the writ petition pending and the issue needs to be relegated to the competent authority.*

*Accordingly, this Court directs the KMC authorities to initiate proceeding under Section 400 of the KMC Act, 1980 and to conclude the same, in accordance with law and upon granting an opportunity of hearing to the petitioner and the private respondents, within a period of eight weeks from the date of communication of this order”.*

The proceedings under Section 400(1) of the 1980 Act read with the 2015 Building Regulations, culminated in an order of the Special Officer (Building), dated June 17, 2019. The operative portion of the said order reads as follows:

*“It is ordered that-*

- 1) The conversion of a show room into restaurant is allowed under the provisions of KMC (Regularisation of the building) Regulation, 2015 as the show room belongs to M/s. RAA Arsalan Enterprise Pvt.Ltd. and no NOC is required from all residents of the premises for such conversion, as the particular area of the premises where the restaurant is operating belongs to the private respondents i.e. M/s. RAA Arsalan Enterprise Pvt. Ltd.*
- 2) The basement parking space, although belongs to the M/s. RAA Arsalan Enterprise Pvt. Ltd, can not be used by them except for parking purposes. They should remove the D.G set from the basement within 30 days of receipt of this order failing which the KMC authority is at liberty to remove*

*the same at the cost and at the risk of the person responsible.*

- 3) *The construction of iron bar platform for storage of gas cylinder encroaching south-eastern gate of the building is also to be demolished by the person responsible within thirty days of receipt of this order for smooth ingress and egress of the residents of the building.*
- 4) *The bath room at the south eastern gate is also to be dismantled by the person responsible to clear the drive way for the residents of the building within thirty days of receipt of this order failing which the KMC authority is at liberty to dismantle it at the cost and at the risk of the person responsible.*
- 5) *The remaining unauthorized constructions in the premises can be treated as "minor unauthorized erection or work" as defined in Rule 3(1) (C) of the KMC (Regularisation of Building) Regulation 2015 and these unauthorized constructions are regularized and retained under Rule 4 of the Rules 2015 of the KMC Act 1980 subject to the following preconditions:"*

In the present round of litigation, the appellant approached the learned Single Judge with the grievance that the Special Officer's order was not being implemented.

Submission was made before the learned Judge that the writ petitioner had challenged the order of the Special Officer (Building) before the Municipal Building Tribunal by filing BT No.7 of 2021. The learned Judge observed that on one hand the writ petitioner had assailed the

order of the Special Officer (Building) and on the other hand, he was seeking implementation of the order by filing the writ petition. This is impermissible. The learned Judge dismissed the writ petition.

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned advocate for the appellant says that perhaps the learned Judge could not be properly assisted. It is true that the appellant/writ petitioner has filed BT No.7 of 2021, which is pending. However, the appeal is directed only against that portion of the order, which allows Arsalan to retain the restaurant. In other words, only para No.1 of the operative portion of the Special Officer's order is under challenge in the statutory appeal filed by the appellant herein before the Municipal Building Tribunal. The writ petition was filed for implementation of the other portions of the order.

We have gone through the order of the Special Officer (Building). We enquired of Mr. Karmakar, learned advocate representing Arsalan, as to whether or not the directions in paragraphs 2 to 4 of the operative portion of the order of the Special Officer (Building) have been carried out by Arsalan. In his usual fairness, he says that such directions have not been carried out. To our further query, he says that such directions have also not been challenged before any competent forum.

In view of the aforesaid, we direct Arsalan to carry out the directions contained in paragraphs 2 to 4 of the operative portion of the

order of the Special Officer (Building), KMC, dated June 17, 2019, within a month from date and file a report before the competent authority in KMC indicating compliance of the order.

In any event, after a month from date, the concerned officers of KMC shall inspect the property in question to ascertain whether the aforesaid directions have been carried out by Arsalan. If they find that the directions have been given effect to, the matter would end there. If KMC finds that such directions have not been carried out by Arsalan, KMC shall carry out such directions at the cost of Arsalan.

We further clarify that the directions (a), (b), (c) and (d) on the last page of the Special Officer's order shall also be carried out by Arsalan within a month from date, failing which appropriate steps should be taken by KMC against Arsalan, in accordance with law.

The appeal and the connected application are disposed of accordingly.

Since we have not called for affidavits, the allegations in the application are deemed not to be admitted by the respondents.

(ARIJIT BANERJEE, J.)

(M.V. MURALIDARAN, J.)