

OD-3

RVWO/39/2024

IA NO. GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

CHANDRA UDYOG AND ANR.
Vs.
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY
Date : 27th September, 2024.

Appearance:
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Arindam Banerjee, Adv.
Mr. Chayan Gupta, Adv.
Mr. Souradeep Banerjee, Adv.
Mr. Dwip Raj Basu, Adv.
...for the petitioners

Mr. Ashok Kr. Banerjee, Sr. Adv.
Mr. Arijit Dey, Adv.
...for the respondents

The Court : Affidavit-of-service be taken on record.

This application has been taken out by the appellants for review of a judgment and order dated August 29, 2024, whereby APO/86/2023 was disposed of by us.

Mr. Mitra, learned senior counsel appearing for the review applicants, candidly says that this is really an application for clarification of a certain point. He refers to paragraphs 39 and 40 of the judgment which read as follows:

“39. Having said all of the above, we are not oblivious of the importance of a citizens’ right to property. Such a right may not be a fundamental right any more. However, it is still a valuable Constitutional right enshrined in Article 300A of the Constitution of India and has come to be recognised as a human right. Once the heritage tag is put on a property, the right of the owner of the property to deal with it becomes severely restricted. For example, a Grade – I Heritage property cannot be touched at all. The owner cannot reconstruct the property or do anything which will alter the external appearance of the property. We are of the view that before a property is declared as heritage, the owner thereof should be afforded an opportunity of showing cause as to why such course of action should not be adopted. Preferably, an opportunity of hearing should be granted to the owner. Since, marking a property as heritage has adverse civil consequences for its owner by curtailment of his right and/or freedom to deal with the property in the manner he wishes, the salutary principles of natural justice require that the owner be granted an opportunity to raise his objection to KMC’s proposal to declare his property as heritage.

40. This is exactly what the learned Single Judge has directed, in effect and substance. The competent authority in KMC has been directed to consider the appellants’ representation made on May 12, 2023 and decide the issue of whether or not demolition and reconstruction of the concerned building may be permitted upon removing the same from the heritage list or appropriately downgrading the same. As recorded above, local inspection has already

been held by the KMC Authorities with the participation of the appellants. The inspection report has been circulated amongst the concerned parties. The competent authority may take a final decision after affording an opportunity of hearing to the appellants in terms of the learned Single Judge's order. This exercise must be concluded within 8 weeks from the date of the instant judgment and order. We clarify that at the hearing, the appellants will be entitled to urge all point as may be open to them in law and in the facts of the case, including the point that the property in question should not have been declared as heritage, in the first place.

Mr. Mitra says that it should only be clarified that the competent authority in KMC at the time of giving hearing to the appellants in terms of the judgment and order under review and deciding the issue that has been sent back to that authority, shall not be influenced by any observation in the judgment and order under review.

We think this a fair suggestion.

Mr. Ashok Kr. Banerjee, learned senior counsel representing KMC, in his usual fairness, also says that it would be appropriate to clarify the judgment and order in the manner sought for by the review applicants.

Accordingly, we clarify that while granting hearing to the review applicants and deciding the issue of heritage, the competent authority in KMC shall not be influenced by any observation in the judgment and order dated August 29, 2024 and shall come to an independent conclusion in accordance with law.

If the appellants are of the opinion that the authority is proposing to rely on documents which are in the exclusive custody of the KMC authorities, the appellants would be at liberty to write a letter to the competent authority for copies thereof and we are sure that the competent authority shall supply copies thereof in observance of the principles of natural justice.

RVWO/39/2024 along with IA No.GA/1/2024 are disposed of.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

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