

15.01.2025

Sl. No. 33

Court No.30
BM

WPA 18550 of 2007

Amal Das & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Ranajit Chatterjee

Mr. Arijit Dey

... for the petitioners

Mr. Barin Banerjee

Ms. Era Ghose

... for the KMC

Mr. Soumen Das

... for the respondent no.6

1. The present writ petition of the year 2007 has been preferred praying for direction upon the respondent KMC to show cause why demolition proceeding being D/Case No.52-D of 2002-2003 as initiated by the order of the Special Officer(B) dated 30.11.2002 as passed in the demolition case and also the order of the Municipal Building Tribunal dated 21st May, 2007 passed in BT Appeal No.8 of 2003 shall not be set aside and/or cancelled.

2. Vide the order under challenge before this court, it appears that the Special Officer(Building) on conducting a proper enquiry held as follows :-

“ 1845 Jayrampur Jala Road

Perused all records, heard and satisfied that the temple structure cannot be considered for retention as the persons responsible constructed the structure without obtaining necessary

sanction from the appropriate authority and also they have got no right of erection in the plot of land for which the temple structure shall have to be demolished.

Considering all aspects, as discussed in earlier paras showing sufficient reason and also to do the natural justice it is hereby :-

“O R D E R”

That the persons responsible shall demolish the unauthorised structure constructed at the suit premises as noted in the notice u/s 400(1) and presis already served jointly or individually at their/his risk and cost within 15 (fifteen) days from the date of communication of this order failing which the authorities of CMC shall demolish the unauthorised structure without any information whatsoever at the entire risk and cost of the persons responsible.

The department is also at liberty to file a suit in the appropriate court of law as per provisions u/s 392 of CMC Act, 1980.

The order is passed on the strength of power delegated by the Municipal Commissioner as per provisions u/s 48(3) (b) of CMC Act, 1980.”

3. In appeal the appellate authority dismissed the appeal on the finding-

“ Apart from the above respondents also submits that respondent no.3 is the sole owner of the property and the local people have no right to raise any construction whatsoever in the land of others and any construction even if

be is liable to be demolished. Respondent no.3 referred the order of the Civil Judge, Alipore Court and also the order of the Hon'ble Court in this regard. Respondents thus pray for dismissal of the appeal.

Over the circumstances above, we are constrained to say that admittedly 5 appellants did not disclose their status and connection with the Temple. They have not also mentioned in the cause title of anywhere of the appeal as to what capacity/status they are coming before this Tribunal to get an order of retention and in whose favour such order of retention is to be effected. This appeal thus prima facie suffers with illegalities and irregularities. Question of adverse possession so raised by the appellants is in no way concern and/or is the subject matter of the Municipal Tribunal. Besides, it is also not the jurisdiction of the Tribunal to look into the matter as to whether the present owner (respondent no.3) was one of the organiser for raising such Temple previously. In fact all these points duly considered and discussed by SO(B) very carefully in his judgement dated 30.11.2002. We thus find no other sufficient ground to reconsider and alter the same. Grounds under the appeal are not at all convincing. Judgement referred by the appellants has no bearing in the present case. In fact appeal fails.

Memorandum of appeal duly stamped.

Hence, it is ordered-

That the B.T Appeal No.8 of 2003 be and the same is thus hereby dismissed on contest.”

4. On hearing the learned counsel for the parties and considering the materials on record, it appears that admittedly the petitioners are praying for restraining order on certain construction made by them (unauthorised) on private respondent's property.

5. The Corporation on conducting a proper enquiry found the said construction to be unauthorised and as such ordered its demolition.

6. The petitioner by way of a counter argument has also claimed adverse possession.

7. It appears from the order under appeal that civil suit is pending before the Alipore Court.

8. It is further case of the petitioner that in case he does not claim adverse possession then his possession by way of placing idol's on another's land may be protected(two idols placed).

9. It appears that admittedly the construction has been made on the property which does not belongs to the private respondent and as such this court finds that the order passed by the Special Officer(Building) and affirmed by the Appellate

Authority are well reasoned orders and as such require no interference by this court.

10. The writ petition thus having no merit stands dismissed.

11. Pending applications stand disposed of.

12. Interim order, if any, stands vacated.

13. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)