

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APO 11 of 2025 WITH
WPO 841 OF 2023
IA GA 1 of 2024
MD. ISSA HUSSAIN
Versus
KOLKATA MUNICIPAL CORPORATION AND ORS.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant:

Mr. Raghunath Chakraborty, Adv.
Ms. Tanusree Das, Adv.
Ms. Mohona Das, Adv.

For the KMC

: Mr. Alak Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.

For the State :

Mr. D. Mukherjee, Adv.
Ms. Kalpita Paul, Adv.

HEARD ON : 06.03.2025
DELIVERED ON : 06.03.2025

DEBANGSU BASAK, J.:-

1. The appeal is at the behest of the writ petitioner and directed against the dismissal of the writ petition by the judgment and order dated April 12, 2024 passed in WPO 841 of 2023.
2. The order of the Municipal Building Tribunal dated November 4, 2022 in BT Appeal No. 52 of 2021 is the subject matter of the writ petition at the behest of the appellant. The appellant is one of the tenants at the premises concerned. The contentions of the appellant is that there are unauthorized construction in the building.
3. Learned advocate for the appellant submits that the fact that there exists unauthorized construction stands established by reason of such finding by the Special Officer (Building) and concurred in appeal. He submits however both the Special Officer (Building) and the Building Tribunal were overindulged in considering such unauthorized construction to be minor deviation and proceeded to regularize the same. He draws the attention of the Court to the finding of the Special Officer (Building). He also draws the attention of the Court to the two orders passed in the writ petition in the earlier round of litigation and the review of such order.

- 4.** Learned advocate for the appellant relies upon Kolkata Municipal Corporation (Regularization of Building) Regulations, 2015 and submits that, the objection raised by any local inhabitant of the construction in question in terms of Regulation 4, was not taken into consideration. According to him, in view of the objection raised, regularization cannot be made for the unauthorized construction.
- 5.** Learned advocate appearing for the Kolkata Municipal Corporation (KMC) submits that, the so-called unauthorized construction is a set of corrugated sheets covering an existing Varandah. He submits that such construction can be regularized in terms of the Regulation of 2015.
- 6.** The appellant is one of the tenants in an immovable property. Appellant alleges unauthorized construction existing at such property. Appellant approached the Writ Court also by way of WP 739 of 2017 claiming that there subsists an order for demolition and that such order should be implemented. It was disposed of by an order dated May 4, 2018. Such order, directed the Special Officer (Building) of the KMC to complete the demolition proceeding in terms of the notice dated January 4, 2017 in accordance with law.

7. An application for review was filed. On review, the High Court by the order dated January 18, 2019 modified the order dated May 4, 2018. KMC Authorities were directed to hear every person responsible for the unauthorized construction in accordance with law, including the owner of the premises concerned. Authorities were permitted to arrive at such finding as the fact scenario demands.
8. Again as noted above the writ petition being WP 739 of 2017 in which the order dated May 4, 2018 was passed and the review thereafter, in RVWO 2 of 2019 in which the order dated January 18, 2019 was passed, the appellant before us was a party thereof.
9. Parties acted in terms of the order dated January 18, 2019. Special Officer (Building) upon hearing all persons concerned, found that the quantum of unauthorized construction was 4.366 sq. mts. Special Officer (Building) was of the view that such authorized construction can be treated as minor unauthorized construction of work as defined under Rule 3(1)(c) of the Regulation of 2015. Consequently, Special Officer (Building) directed such unauthorized construction to be regularized and retained under Rule 4 of the Regulation of 2015 subject to the fulfillment of the pre-conditions laid down therein.

- 10.** Special Officer (Building) in his order dated October 24, 2019 laid down three conditions such as the person responsible must furnish a certificate from a KMC empanelled structural engineer certifying that the stability and the foundation of the impugned constructions are safe and sound and the materials used in accordance with law for such construction. The other condition being that the person responsible must pay fees for retention of the regularized construction within 30 days from the receipt of the calculation sheet and the third condition being the person responsible must furnish an affidavit declaring on oath that he will not make any construction whatsoever in the impugned premises without prior sanction from the KMC Authority.
- 11.** The appellant before us being aggrieved by the order dated October 24, 2019 passed by the Special Officer (Building) filed a writ petition being WP 270 of 2020. Such writ petition was disposed of on January 19, 2021 by permitting the appellant before us to avail of the statutory alternative remedy of appeal.
- 12.** The appellant before us preferred an appeal directed against the order dated January 19, 2021 passed by the Writ Court in WP 270

of 2020. Such appeal being APOT 77 of 2021 was disposed of by the Appellate Court on November 11, 2021.

- 13.** Appellant preferred an appeal before the Building Tribunal being BT 52 of 2021. Building Tribunal after hearing the respective parties including the appellant concurred with the view of the Special Officer (Building).
- 14.** Being aggrieved by the order dated November 4, 2022 passed by the Municipal Building Tribunal, the appellant filed a writ petition being 841 of 2023 resulting in the impugned judgment and order dated April 12, 2024.
- 15.** Learned Single Judge, by the impugned judgment and order dated April 12, 2024 noted the factual matrix of the construction allowed to be retained. Learned Single Judge found that the Court is not concerned with small and trifling manner. Learned Single Judge refused to exercise jurisdiction on such ground.
- 16.** The construction of 4.366 sq. mts. of corrugated tin sheet over an existing Varandah was held to be unauthorized and permitted to be regularized subject to the compliance of the terms and conditions laid down by the Building Tribunal. Finding of the Special Officer (Building) is not established to be perverse. Such finding of the

Special Officer (Building) was assailed in appeal and concurred to by the Building Tribunal. Again the concurrence order of the Building Tribunal dated November 4, 2022 is not established to be perverse.

- 17.** Learned Single Judge therefore, correctly arrived at a finding that the unauthorized construction cannot be regularized in terms of the Regulation 2015 or that the discretion for regularization was improperly exercised.
- 18.** The contention that, objection of an inhabitant of the construction in question *ipso facto* denudes the jurisdiction for regularization, is unacceptable. Regulation 4 of 2015 notes the parameters which should be taken into consideration while considering the request for regularization. One of the parameters is objection raised by any local inhabitant of the construction in question. Appellant no doubt falls within the jurisdiction of inhabitant as contemplated under Regulation 4. It is not the case of the appellant that his objections were not taken into consideration. Mere raising of an objection *ipso facto* does not denude the jurisdiction to regularize or for the Special Officer (Building) and the Building Tribunal to deal with the objection raised by the appellant towards regularization.

- 19.** Again as noted above, such exercise of discretion is not established to be perverse.
- 20.** In such circumstances, we find no merit in the present appeal and the same is dismissed along with all connected applications, without any order as to costs.

(DEBANGSU BASAK, J.)

- 21.** I agree.

(MD. SHABBAR RASHIDI, J.)

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