

OD - 19

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APO/125/2024
WPO/949/2023
M/S. ELITE ESTATES
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE :
THE HON'BLE JUSTICE DEBANGSU BASAK
And
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
Date : 6th February, 2025

Appearance :
Mr. Arindam Banerjee, Sr. Adv.
Mr. Sumitava Chakraborty, Adv.
Ms. Bratati Pramanick, Adv.
..for the appellant.

Mr. Alak Kumar Ghosh, Adv.
Mr. Subhrangsu Panda, Adv.
..for the respondent.

The Court : This appeal is at the behest of the writ petitioner and directed against the order dated July 3, 2024 passed in WPO/949/2023 and IA No.GA/3/2024.

During the pendency of the appeal, on the prayer made by the appellant, leave was granted to the appellant to assail the vires of the regulation. Co-ordinate Bench by an order dated September 23, 2024 granted leave to the appellant to challenge the vires of the regulation and also directed amendment of the memo of appeal.

Co-ordinate Bench by such order granted an order of status quo with regard to the demolition proceedings.

Such interim order is subsisting till date by virtue of the order dated December 3, 2024 as corrected on December 12, 2024.

Corporation authorities are represented.

None appears for the State authorities despite notice of the present appeal being served on the State.

Presence of the State is material in view of the challenge to the vires of a regulation made under the Kolkata Municipal Corporation Act, 1980.

Since the challenge to the vires to a regulation framed under the Act of 1980 is being contended on behalf of the appellant at the appeal stage, it would be appropriate to remand the writ petition before the learned Single Judge for a fresh hearing on the issues involved including the issue of challenge to the vires of the subject regulations. Such a course of action is adopted, since the parties would lose one forum in the event the challenge to the vires is heard at the appeal stage.

Subsisting interim order passed in the appeal with regard to status quo regarding the demolition will continue till May 31, 2025 or until further orders as may be directed by the learned Single Judge.

The appellant may file necessary application before the learned Single Judge to make the writ petition conform to the

appropriate formalities relating to the challenge to the vires of the regulation and add the necessary and proper parties to the writ petition.

Since we are remanding the writ petition for fresh hearing, the impugned order dated July 3, 2024 is set aside. We clarify that we did not enter into the merits of the rival contentions and keep the same open to be decided by the learned Single Judge.

Court is informed that the paper book was filed in Court beyond time. Let such paper book be taken on record.

APO/125/2024 is disposed of accordingly without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

