

27.02.2026
Ct. No. 06
Item 33
Cp

C.O. 247 of 2026

Live & Let Live Society
Vs.
The Municipal Commissioner,
Kolkata Municipal Corporation & Ors.

Mr. Sounak Bhattacharya
Mr. Sumitava Chakraborty
Ms. Bratati Pramanick
Mr. Sounak Mondal
Mr. Shantanu Chakraborty

.....for the petitioner.

Mr. Srijan Nayek
Mr. A. K. Biswas

.....for the K.M.C.

Mr. Satyajit Talukdar
Mr. Arindom Chatterjee

.....for the K.M.D.A.

The petitioner is aggrieved by the judgment and order dated January 17, 2026, passed by the learned Additional District Judge, Fast Track, 1st Court, Alipore in Misc. Appeal No.324 of 2024.

By the order impugned, the learned appeal court refused to interfere with the order dated August 8, 2024, passed by the learned Civil Judge (Junior Division) 4th Court at Alipore in Title Suit No.1343 of 2024.

By the order dated August 24, 2024, the learned trial judge refused to pass an ad interim order without hearing the respective parties. The petitioner prayed for an ad interim order of injunction, restraining the defendants

from disturbing the petitioners in operating and maintaining the public toilets. The work of maintenance of the pay and use toilets had been allotted to the petitioner by the Kolkata Metropolitan Development Authority (KMDA) in the year 1994, for a period of 30 years. The tenure allegedly expired sometime in 2024. In the meantime, the state government came up with the policy, directing the KMDA to hand over some of the toilets to the control of the Kolkata Municipal Corporation (KMC).

Mr. Talukdar, learned advocate for the KMDA, submits that in terms of the said policy, KMDA was in the process of handing over the subject toilets to the KMC. At that juncture, the suit was filed.

The petitioner's contention was that, in view of the pendency of their application for extension, neither KMC nor KMDA could disturb the petitioner. The KMDA had forwarded such prayer for consideration by KMC.

The learned trial judge held that as the period of lease had expired and a public authority had a right to issue the work to any other agency or to any other party through a tender process, no ad interim order should be passed.

Mr. Nayek, learned advocate for the KMC, submits that, once the KMDA hands over the toilets, the KMC will proceed with revamping of all these toilets. The KMC also proposes to follow a Central Government policy in this regard. The KMC has already adopted such scheme and an

e-tender has already been called for in respect of many of such units.

The trial Judge held that the justification or legality on the part of the KMC in floating a tender in this regard could only be decided in the presence of the defendants. Relying on Section 41 (h) of the Specific Relief Act, 1963, the learned trial judge was of the view that interim stay could not be granted.

The appeal court disposed of the appeal from an order of refusal of ad interim injunction agreeing with the order of the learned trial judge, without giving any further reasons.

I have considered the affidavit filed by the KMDA before the learned appeal court, wherein the following averments have been made:-

“These answering respondents/defendants submit that the said tenure of 30 years have already been expired in the year 2022 with the completion of the said agreement satisfactorily. Before completion of the said specified tenure no prayer of extension was ever made from the appellant/plaintiff / society regarding any extension of time or renewal of the said agreement for any further period containing any new proposal. If any such proposal or prayer would have been made by the plaintiff before the authority then it must be considered with lawful terms for further continuation of occupation or run the pay and use toilet in a convenient way by the appellant/plaintiff. The said agreement ended on in the year 2022.

The plaintiff society vide their letters for the year 2023 only requested the Kolkata Metropolitan Development Authority and Kolkata Municipal Corporation to withhold any tender and allow them to continue, maintain and operation of the said public convenience subject to new terms and conditions as will be agreed by both the parties. These answering respondents/defendants further

submit that the prayer of the plaintiff society was forwarded to the Chief Municipal Engineer (SWM) of Kolkata Municipal Corporation vide Memo No.191 E & AM/KMDA/W-8-dated 21.09.2023 for their appraisal. The agreement between the appellant/plaintiff society and these respondents/defendants is over and at this present time these respondents/defendants has not taken any decision to invite any fresh tender or to extend the agreement period as it was lapsed long before.”

The affidavit of the KMC though indicates that e-tender has been called, but whether the e-tender was in respect of the concerned toilets or not, is still not available. The stand of the KMDA is otherwise. However, these are matters to be considered by the learned trial judge while deciding the application for injunction. Under such circumstances, the order impugned is set aside.

The contradiction in the affidavits filed by the KMDA and the KMC gives rise to a, prima facie, presumption that the tender with regard to the toilets being operated and maintained by the petitioner even if had been floated, had not reached a final conclusion.

However, this court does not dispute the fact that the KMC has a right to call for an e-tender in accordance with law and the proper course would be for the petitioner to participate in the same. The issue is with regard to the interregnum period, as to how these toilets are going to be cleaned and operated. Public interest is involved. I do not find any answer to this situation. Thus, status quo with regard to the possession shall be maintained in respect of all these toilets which are operated, maintained and run by

the petitioner, for a period of three months or till the disposal of the application for injunction whichever is earlier. This order will not prevent the authorities from initiating a tender process and the petitioner can participate without prejudice, or continue with the process if already initiated in respect of the subject toilets, even if the petitioner had not participated.

The learned trial judge is directed to dispose of the application for injunction within three month, upon allowing the respective objections to be filed by the KMDA and KMC. While considering the said issue, the learned trial judge will also consider the submissions of the respective defendants, i.e., whether the e-tender for operation and maintenance to prospective bidders in respect of the subject toilets had been called for, what was stage of those tenders and the timeframe within which the tender process shall be finalized or whether the same had been finalized.

This order is subject to deposit of a sum of Rs.1,00,000/- before the KMC, within two weeks from date.

In case of default, the interim order will stand vacated.

This deposit shall be subject to enhancement by the learned trial Judge, if the situation so demands.

The revisional application is accordingly disposed of.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)