

(2018) 08 CAL CK 0066
In the Calcutta High Court
Case No : Writ Petition No. 419 of 2018

Md. Iftakar Alam & Ors.

APPELLANT

Vs

Kolkata Municipal Corporation & Ors.

RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 400

Citation : (2018) 08 CAL CK 0066

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Subhasish Sengupta, Avirup Chatterjee, Biswajit Mukherjee

Judgement

The decision dated July 13, 2018 passed by the respondent nos. 1 to 5 and a letter dated July 18, 2018 are under challenge in the present writ petition.

By the impugned writings, the Corporation has intimated the petitioners about the demolition proceedings. The Corporation authorities are also

implementing its order of demolition. Learned Advocate appearing for the petitioners submits that, the petitioners are the purchasers for value without

notice of the illegalities.

The petitioners are entitled to protection. No order under Section 400 of the Kolkata Municipal Corporation Act, 1980 was served upon the petitioners.

The petitioners have a statutory right of appeal. The petitioners seek to exhaust such statutory right of appeal. The Appeal Court had permitted the

petitioners to apply for reliefs. On a query from the Court, learned Advocate for the petitioners submits that, the petitioners have already filed a suit

for damages against the vendor. Corporation authorities are represented.

The property involved in the present writ petition has a chequered history. The

original owners constructed a G+4 building after obtaining permission to repair a G+1 structure. Initially, a writ petition was filed by the original owners. Such writ petition was disposed of by directing the Corporation authorities to demolish the unauthorized construction after returning a finding that, proceedings under Section 400 of the Kolkata Municipal Corporation Act, 1980 were taken. The appeal carried therefrom was initially admitted. In the appeal, the original owners were allowed to retain two floors of the building with the liberty to the owners to demolish the balance portions. The owners did not do so. During the pendency of the appeal, the owners did not press the writ petition. The writ petition was dismissed. Ultimately, the appeal was disposed of.

In such factual background, the Corporation authorities took no further steps for demolition. A public interest litigation was filed, wherein the Division Bench directed the Corporation authorities to take steps, in accordance with law, after returning a finding that, the original owners of the building were dishonest. The Corporation authorities, thereafter, started taking steps for demolition. At this stage, the original owners approached the Writ Court by a writ petition seeking stay of the demolition proceedings. The interim order was refused. Costs were imposed against the original owners. Subsequent thereto, the original owners are not appearing in such writ petition. The present petitioners claim right, title and interest in respect of the portions occupied by the petitioners which are unauthorised.

In the second writ petition at the behest of the original petitioners, two tenants approached the Court along with original owners challenging the process of demolition. This is another pathetic attempt on the part of the original owners to stall the demolition proceedings. The present petitioners are set up by original owners. There are subsisting orders of the Court directing the Corporation authorities to demolish the building concerned. The petitioners claiming themselves to be the purchasers for value without notice from the original owners, have a right to get themselves reimbursed with the sale price, if there be any, in accordance with law. To that extent, the petitioners have already filed a civil suit. They cannot have a better or higher right so far as the demolition proceedings are concerned.

In such circumstances, interim order at the stage is refused. The Corporation will inform the Court as to the progress of the demolition in respect of

the premises concerned. The Court is informed by the Corporation that, the petitioners are guilty of obstructing the demolition work. The petitioners are restrained from doing so. In the event, the petitioners or any of their men or agents or servants create any obstruction in the demolition proceedings, the Corporation authorities are at liberty to lodge appropriate complaints with the Police. The Police, on receipt of such complaints, will take appropriate steps to remove all obstructions. List the writ petition on August 31, 2018 when the Corporation will inform the Court as to the progress of the demolition.