

(2013) 05 CAL CK 0055
In the Calcutta High Court
Case No : A.S.T. No. 107 of 2013

Paharimata Industrial Development Limited and Another	APPELLANT
Vs	
The Kolkata Municipal Corporation and Others	RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 400, 400(8), 401
Constitution of India, 1950 — Article 226

Citation : (2013) 05 CAL CK 0055

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Arindam Banerjee, Mr. Debangshu Patra, Mr. Bharat Bhushan, for the Appellant; Barin Banerjee, Biswajit Mukherjee and Mr. Subhrangshu Panda for KMC, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The Court: The petitioners in this AST under art. 226 of the Constitution of India dated May 16, 2013 are questioning the steps taken by the authorities of Kolkata Municipal Corporation (in short KMC) for demolition of the building in question in exercise of power conferred on the Mayor-in-Council by sub-s.(8) of s. 400 of the Kolkata Municipal Corporation Act, 1980. Case stated in para. 19 of the AST is as follows:-

19. This apart, as your petitioners have subsequently come to learn that the respondent no. 1 has neither formed any opinion that any building or work is being carried out in contravention of the provisions of the Act or that immediate action is called for in relation to such building or work. Accordingly, the exercise of power u/s 400(8) of the said Act is ultra vires the said provisions.

2. Considering the case stated in para. 19, I passed an order yesterday directing Mr. Mukherjee appearing for KMC to produce the records to show that the Mayor-in-Council recorded the requisite opinion under sub-s.(8) of s. 400. Mr. Mukherjee has produced the records, which have been made available for inspection by Mr. Banerjee appearing for the petitioners.

3. The records reveal that the Mayor-in-Council took the following resolution:-

Considering the facts & circumstances as stated above in the departmental report and upon due consideration of other relevant issues, it is resolved that since the Person Responsible continued with un-authorized construction as indicated in the precis of the agenda item in spite of departmental action for stoppage of such unauthorized construction and since such unauthorized construction is unsafe and may lead to accident resulting in loss of Human Life and property, appropriate action towards demolition of such unauthorized construction be taken forthwith u/s 400(8) of K.M.C. Act 1980 with the help of local administration.

4. Mr. Banerjee has argued as follows. The document produced describing it as the resolution of the Mayor-in-Council is a doubtful document. There are reasons to say that the document has been prepared for the AST. The agenda item number was over-written. The petitioners purchased a 50-year old building. No steps were taken for enforcing the s. 401 notice. Ingredients of sub-s.(8) of s. 400 are totally absent. It was not a case to dispense with the requirement of observance of the principles of natural justice.

5. No case has been stated anywhere in the AST that the building or any part thereof is lawful. Records produced by KMC reveal that the three-storied building was erected unauthorizedly, and that the petitioners were continuing with the erection works disobeying a s. 401 stop work notice. The police and the KMC officials found reasons to refer the matter to the Mayor-in-Council for examining the question of exercising the power under sub-s.(8) of s. 400.

6. The Municipal Commissioner and two other KMC officials gave the following opinion:-

This is a case of un-authorized construction of a three storeyed building at the captioned premises.

Notice u/s. 401 was served on 26/12/2012 and police intimation slip was also issued. Guard posting was done on and from 26/12/2012. Round the clock Police posting done on 01/01/2013. FIR lodged on 02/04/2013.

The construction has been done in a haphazard manner with out following the norms and practice of civil Engineering. The Structural stability of the impugned construction is doubtful. Moreover the construction if allowed to stand will create several hazards like Fire hazards and environmental hazards.

Considering the gravity of the situation and safety of the adjoining structure as well as safety of Public in general, department recommends demolition of unauthorized structure forthwith u/s 400(8) of K.M.C. ACT 1980. The matter is placed before M.I.C. Meeting for approval.

7. In view of the above-noted situation, I do not find any reason to entertain the AST. An unauthorized construction is inherently dangerous and it is bound to

endanger human lives. It is worth repeating that the petitioners have nowhere stated that the building or any part thereof is lawful. In my opinion, action under sub-s.(8) of s. 400 has been rightly taken. For these reasons, I dismiss the AST. No costs. Certified xerox.