

(2016) 09 CAL CK 0082
In the Calcutta High Court
Case No : W.P. No. 793 of 2016

Sachindra Nath Karmakar		APPELLANT
	Vs	
Kolkata Municipal Corporation		RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 48
Constitution of India, 1950 — Article 226

Citation : (2017) 2 WBLR 168

Hon'ble Judges : Indra Prasanna Mukherji, J.

Bench : Single Bench

Advocate : Mr. R.N. Chakraborty, Advocate, for the Petitioner; Mr. B. Banerjee, Mr. J.C. Porel and Mr. D. Mondal, Advocates, for the KMC

Final Decision : Allowed

Judgement

Indra Prasanna Mukherji, J.—A complaint was made by the petitioner against the owner of premises no.14C, Bechu Chatterjee Street, Kolkata-700 009, Smt. Gayatri Chowdhury, the respondent no.4 that she was making an illegal construction.

2. The matter was referred to the Special Officer [Building]. By a decision dated 12th April, 2012 the unauthorised part shown in a sketch was directed by her to be demolished.

3. The respondent no.4 preferred an appeal from the said order before the Municipal Building Tribunal. On 4th February, 2016 this Tribunal allowed the appeal, on a very technical point. It said that the Special Officer had no jurisdiction to pass the demolition order. The jurisdiction to pass the demolition order was with the Commissioner. He could not have delegated his authority.

4. Hence, this writ.

5. An affidavit of service is on record. Mr. Chakraborty submits that all the respondents have been served. The respondent Corporation is represented by

learned counsel. None appears for the respondent no.4.

6. The only question to be decided by this court is whether the Special Officer was properly appointed by the Commissioner to hear the demolition case.

7. Let us take a look at Section 48 of the Kolkata Municipal Corporation Act, 1980.

"S.48. Delegation of Powers and functions.- [1] The Corporation may by resolution delegate, subject to such conditions as may be specified in the resolution, any of its powers or functions to the Mayor-in-Council.

[2] The Mayor-in-Council may by order delegate, subject to such conditions as may be specified in the order, any of its powers or functions to the Mayor or to the Municipal Commissioner.

[3] Subject to such standing orders as may be made by the Mayor-in-Council in this behalf, -

[a] the Mayor may by order delegate, subject to such conditions as may be specified in the order, any of his powers or functions to the Deputy Mayor or the Municipal Commissioner;

[b] the Municipal Commissioner may by order delegate, subject to such conditions as may be specified in the order, any of his powers or functions, [including the powers or functions under section 397, sub-section [1] of section 400 and sub-section [1] of section 411,] to any other officer or any employee of the Corporation; and

[c] any officer of the Corporation other than the Municipal Commissioner may by order delegate, subject to such conditions as may be specified in the order, any of his powers or functions to any other officer subordinate to him.

[4] Notwithstanding anything contained in this section, the Mayor-in-Council, the Mayor, the Municipal Commissioner, or the other officer referred to in clause [c] of sub-section [3], shall not delegate -

[a] any of its or his powers or functions delegated to it or him under this section, or

[b] such of its or his powers or functions as may be prescribed."

8. On an interpretation of sub-section [4] of Section 48 Mr. Justice Samir Kumar Mookherjee delivering the judgment of a Division Bench of this court held that since no rules had been prescribed the Commissioner could delegate any of his powers. Hence, the Commissioner had validly delegated his power to hear the demolition case to the Special Officer. This view has been subsequently followed by another Division Bench of this court in a judgment delivered on 14th January, 2016 in APOT no.8 of 2016 with WP no.824 of 2014 [Amallesh Adak & Anr. v. The Kolkata Municipal Corporation & Ors.]. Both these decisions were considered by Mr. Justice Soumen Sen in another unreported decision of this court in CO no.3722 of 2015 [Md. Ayub & Anr. v. The Municipal Commissioner, KMC & Ors.]

decided on 2nd March, 2016.

9. Therefore, the Commissioner of Kolkata Municipal Corporation can delegate his power to hear demolition cases. The Special Officer, to whom he had delegated this power, had the jurisdiction to hear the instant demolition case.

10. Thus, it is clear that the impugned order of the Municipal Building Tribunal dated 4th February, 2016 was erroneous for the reasons above. It is accordingly set aside. The case is remanded to the Tribunal to decide it on merits within six weeks of communication of this order.

11. All the papers are before this court. Allegations, if any, contained in this petition are deemed not to have been admitted.

12. This writ application is, accordingly, disposed of.