
(2019) 08 CAL CK 0252

In the Calcutta High Court

Case No : C. Appeal From Order (FMA) No. 2162 Of 2018, Civil Application (CAN) No. 10166 Of 2018 In Tender Of Mand Appl (MAT) No. 1283 Of 2018

Sambhu Das

APPELLANT

Vs

Goutam Dey & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 400(8)

Citation : (2019) 08 CAL CK 0252

Hon'ble Judges : Saugata Bhattacharyya, J; Dipankar Datta, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya, Arabinda Chatterjee, Prasun Dutta, Anirban Majumder, Somnath Dey, Shamit Sanyal, Debasish Karmakar, Alak Kr. Ghosh, Swapan Kr. Debnath, Himadri Sekhar Chakraborty, Sanatan Panja, Subhabrata Datta, Debasish Sarkar

Final Decision : Dismissed

Judgement

1. W.P. 14033 (W) of 2017, a writ petition at the instance of Goutam Dey (hereafter Goutam) seeking an order on the official respondents to demolish a G+4 structure, constructed by the respondent no.11 without having a building plan sanctioned by the Kolkata Municipal Corporation (hereafter the corporation), was considered by a learned Judge of this court on 15th February, 2018.

2. Having heard learned advocates for the writ petitioner, the corporation, the State, the respondent no.11 as well the owners of flats comprised in such unauthorised structure, a learned Judge of this Court directed the corporation to proceed in the matter pursuant to its notice under section 400(8) of the Kolkata Municipal Corporation Act, 1980 (hereafter the Act) and to file an action taken report on the next date. The writ petition was made returnable in the month of March, 2018.

3. While so directing, the learned Judge refused permission to the flat owners to

intervene holding that they had no legal right for such intervention.

4. The said writ petition of Goutam was next considered on 3rd October, 2018 by another learned Judge of this Court. By an order of even date, His Lordship held that the unauthorised structure cannot be permitted to remain and that in the interest of justice the same ought to be demolished, in accordance with law. His Lordship, accordingly, directed the corporation to paste a notice on the outer wall of the unauthorised structure informing the occupants that they are to remove themselves and their belongings within 72 hours from the following day and on expiry thereof, the corporation shall commence demolition of such unauthorised construction and continue with the same on day to day basis until completion. The writ petition was directed to be listed on 13th November, 2018 for the corporation to inform the Court the result of such demolition process.

5. While the order dated 15th February, 2018 is the subject-matter of challenge in FMA 2162 of 2018, the subsequent order dated 3rd October, 2018 is the subject-matter of challenge in MAT 1283 of 2018.

6. In course of hearing an application for stay filed in FMA 2162 of 2018, a coordinate Bench of this Court by an order dated 1st August, 2018 had called for a report to be filed in the form of an affidavit from the corporation "as to how an entire G+4 structure could have been constructed within the jurisdiction of Borough III, Ward No.35 at premises no.B/7C/H/2, Kabi Sukanta Sarani, Kolkata - 700 085, without the knowledge of anyone belonging to or connected with Kolkata Municipal Corporation, since it is obviously apparent that the same is not an overnight construction." The appeal was directed to be listed on 13th August, 2018.

7. In compliance with such order, the Assistant Engineer (Civil) of the corporation has filed an affidavit dated 10th August, 2018. Such affidavit contains the decision taken in the meeting of the Mayor-in-Council of the corporation for demolition of the G+4 structure in terms of section 400(8) of the Act.

8. We are inclined to believe that this order had been taken into consideration by the learned Judge while passing the order dated 3rd October, 2018.

9. Be that as it may, another coordinate Bench by its order dated 10th October, 2018 stayed the process of demolition and directed that the appeal (FMA 2162 of 2018) should be heard. The appellant has since then been enjoying the order of stay.

10. Today, the appeals have been listed for final hearing. At the outset, we enquired of Mr. Chatterjee, learned senior advocate for the appellant as to whether the appellant had obtained a building plan sanctioned by the corporation for raising a G+4 structure or not. He answered in the negative. In view of such answer, we do not see any reason to hear any further argument on behalf of the appellant. A G+4 structure having been constructed by the appellant, without there being a building plan sanctioned by the corporation, and the same having

brought to the notice of the writ Court and the writ Court having passed directions to secure compliance of the resolution taken by the Mayor-in-Council of the corporation, we find no legal infirmity in such direction and hold that the appellant cannot claim equity to have such structure retained. It is indeed true that the unauthorised structure may be occupied by individuals who would be put to immense difficulty and inconvenience if they were to remove themselves in terms of the order dated 3rd October, 2018 passed by the learned Judge under appeal; but it is equally true that such individuals ought to have been vigilant and taken entry in their respective flats only after a thorough search that the structure raised is authorised. No amount of persuasion citing difficulty and inconvenience can weigh in the mind of the Court to retain such structure, when the construction has been carried on with scant regard for the municipal laws. We do not see reason to hold that the learned Judge, who declined intervention by the occupants, acted illegally or that the other learned Judge was in error in seeking to secure demolition of the structure having regard to the decision taken by the Mayor-in-Council.

11. There is absolutely no merit in these appeals and, accordingly, the same stand dismissed, without order for costs.

12. The corporation shall file compliance report in regard to the demolition process before the learned Judge having determination to hear the writ petition. The compliance report shall be filed on ACO 5th November, 2019, when the writ petition shall be listed before the learned Judge subject to His Lordship's convenience.

Photostat certified copy of this order, if applied for, be furnished expeditiously.