

(2019) 06 GAU CK 0014

In the Gauhati High Court

Case No : Revision Petition No. 68 Of 2019

Sameer Alam And 51 Ors

APPELLANT

Vs

Nesar Ahmed And 13 Ors

RESPONDENT

Date of Decision : 07-06-2019

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 400

Citation : (2019) 06 GAU CK 0014

Hon'ble Judges : N. Kotiswar Singh, J;Sanjay Kumar Medhi,J

Bench : Division Bench

Advocate : Z Kamar

Final Decision : Dismissed

Judgement

S.K. Medhi, J

- 1) The present application has been filed for review of the judgment and order dated 07.03.2019 passed in PIL No.42/2018.
- 2) The principal ground of review is that the present applicants were not parties in the original PIL and the direction passed in the said PIL vide judgment dated 07.03.2019 would adversely affect the applicants.
- 3) Heard Sri Z. Kamar, learned Senior counsel appearing for the applicants, assisted by Sri S. Chakravorty, learned counsel.
- 4) It is also contended in the grounds that the construction of the building over the plot No.48, Canal East Road, Kolkata is as per permission of the Kolkata Municipal Corporation. If the construction in question is demolished as per the direction of this Court, the applicants would suffer irreparable loss and injury.
- 5) Though while deciding an application for review, this Court is not required to re-open the case in hand and would only confine to the ground and the principles for review, the background of the case and the judgment dated 07.03.2019 is given in a gist.

6) The concerned PIL was initially filed in the Kolkata High Court alleging gross illegalities in two constructions in the Kolkata city which included the present construction in plot No.48. In accordance with the order dated 14.05.2018 passed by the Hon'ble Supreme Court, the case was transferred to this Court. In the said proceeding, all the necessary parties including the owners of the two buildings were arrayed as the respondents.

7) So far as the present construction is concerned which is a 5-storey building, "Stop work" notice was issued on 04.01.2003 and a FIR was lodged. The Kolkata High Court had also directed a demolition proceeding. It is pertinent to be mentioned that a floor of the said building had collapsed causing injuries to the public.

8) In the aforesaid writ petition, the Kolkata Municipal Corporation had submitted a status report pursuant to a direction dated 28.07.2018. In the said report dated 04.08.2018, it was categorically stated that the construction in question was absolutely unauthorized as no permission was granted by the Kolkata Municipal Corporation. The relevant extract of the report has been quoted in the judgment itself.

9) Regarding the departmental action which forms the part of the report, it has been categorically recorded that in the hearing fixed on 19.05.2019 held pursuant to the direction of the Kolkata High Court, none had appeared in spite of the fact that the building was fully occupied. Regarding the eastern portion, it has been recorded that though some portion of the roof in the 5th floor of the building was demolished, due to stiff resistance from the occupiers, the demolition could not be carried out further and in that connection a General Diary was lodged in the Narkeldanga P.S. on 12.07.2016. It was reiterated that the building was fully occupied.

10) All the aforesaid facts are part of the judgment dated 07.03.2019. The dispute started some time in the year 2013 which resulted in the present PIL filed in the Kolkata High Court in the year 2016 and the matter had reached the Supreme Court by way of a transfer petition under peculiar circumstances. It is seen that at every stage some kind of resistance was sought to be created in the justice dispensation system. In that backdrop, the present petition appears to be nothing but an abuse of the process. Though the plea has been taken that the present applicants were not parties in the PIL, it is apparent that the present proceeding (PIL) being in the public domain and concerning the rights and safety of the citizens of that area, the applicants were merely "fence-sitters" who were all along watching the proceeding.

11) The learned Senior counsel had tried to rely upon the requirement of law laid down in section 400 of the Kolkata Municipal Corporation Act, 1980 so far as it relates in giving notice.

12) In the instant case apart from the facts that such notices were earlier issued by the Corporation, the proceeding reached a stage which is far ahead and there

is a finding of the facts recorded in the judgment in para-22 that notices were served upon the builder. This Court is of the opinion that even assuming that the applicants may be entitled to a notice, it will not make any substantial difference in the judgment as it is an admitted case where the authorities itself has declared the construction to be an absolutely unauthorized one causing hazards to the citizens also. This Court is also of the view that review cannot be a means to circumvent a direction of this Court and should not be an opening for any unscrupulous parties to question a judgment by taking recourse of a review.

13) This Court is also of the opinion that none of the grounds required for review as laid down by the statute and the law laid down by the various judicial pronouncements have been made out.

14) In view of the above, we are of the view that no case of review is made out and accordingly the same is dismissed.