

(2018) 12 CAL CK 0030

In the Calcutta High Court

Case No : Civil Application No. 8195 Of 2018, MAT 1017 Of 2018

Shaheer Ahmed

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 400(1), 401

Citation : (2018) 12 CAL CK 0030

Hon'ble Judges : Biswanath Somadder, J; Arindam Mukherjee, J

Bench : Division Bench

Advocate : Tarique Quasimuddin, Zainab Tahir, Alak Kumar Ghosh, Fazlul Haque

Final Decision : Dismissed

Judgement

By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the application for stay.

The instant appeal arises out of an order dated 3rd August, 2018, passed by a learned Single Judge in WP 12946 (W) of 2018 (Md. Shaheer Ahmed vs. Kolkata Municipal Corporation & Ors.). By the said order, the writ petition was disposed of in the following terms:-

"Report as called for by the order dated July 27, 2018 filed in Court be taken on record.

Learned advocate for the Corporation circulates a copy of the report amongst the learned advocate for the private parties in Court.

The report speaks of unauthorised construction. It states that a notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was issued.

Learned advocate appearing for the State submits that, upon receipt of the complains from the Corporation, the police have registered cases against the persons responsible.

The private respondent is represented.

In view of the fact that there subsist unauthorised construction and in view of the fact that Section 401 of the Act of 1980 has already been invoked, it would be appropriate to direct the Corporation to invoke the provisions of Section 400(1) of the Act of 1980 within a period of fortnight from date. It will endeavour to complete the entire exercise within a period of six weeks thereafter. The issue as to the nature and extent of the unauthorised construction is kept open to be decided in such proceedings. Needless to say that, the authorities will afford a reasonable opportunity of hearing to the private parties in such proceedings.

Learned advocate for the petitioner submits that, the private respondents have transferred the property despite an order of the Court. It is open to the petitioner to approach the appropriate forum, if there are violations of such order as complained of.

W.P. 12946 (W) of 2018 is disposed of without any order as to costs."

The instant appeal has been preferred by the writ petitioner.

According to the learned advocate for the appellant/writ petitioner, the private respondents need not be given an opportunity of hearing in the facts of the instant case.

We are unable to agree with this contention for the simple reason that in an Intra-Court Mandamus Appeal, interference is usually warranted unless palpable infirmities or perversities are noticed. On a plain reading of the impugned order - which has been reproduced hereinbefore - makes it clear as to why the learned Single Judge has directed the concerned authorities to afford reasonable opportunity of hearing to the private parties in the proceedings under section 400(1) of the Kolkata Municipal Corporation Act, 1980. That apart and in any event, the impugned order is supported with cogent and justifiable reasons.

For reasons stated above, the appeal and the application for stay are liable to be dismissed and stand accordingly dismissed.

Urgent photostat certified copy of this judgment, if applied for, be given to the learned advocates for the parties.