
(2014) 11 CAL CK 0039

In the Calcutta High Court

Case No : M.A.T. No. 1736 of 2014 and C.A.N. 9682 of 2014

Shyamal Sarkar

APPELLANT

Vs

Kolkata Municipal Corporation

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2015) 1 CHN 733

Hon'ble Judges : Manjula Chellur, C.J.;Arijit Banerjee, J.

Bench : Division Bench

Advocate : Subhabrata Das, D.N. Pal and Yudhajit Guha, for the Appellant; Alok Ghosh, Biswajit Mukherjee and Ina Bhattacharyas, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties. We have gone through the impugned order.

2. The party respondent was the writ petitioner, who approached the learned Judge complaining inaction on the part of the Kolkata Municipal Corporation, in not demolishing or stopping unauthorised construction of the building attempted by the appellant at premises No. 10, Dino Rakshit Lane, P.S. Jorabagan, Kolkata - 700 005. During course of submissions what we notice is, contention of writ petitioner, who is none other than the neighbour of the appellants herein, a complaint came to be lodged before the Special Officer (Building) of the Municipal Corporation, who said to have passed certain orders directing compliance of certain formalities. According to the appellant, those formalities are complied with and therefore, so called complaint at the instance of the private respondent has come to an end and therefore there was no justification for the direction of the learned Single Judge in the writ petition filed by the third party respondent.

3. As we notice from records and the submissions according to the appellant, they intended to put up pillars to strengthen the building undertaken which is in

accordance with the procedure contemplated and the same was done after intimation to the Municipal Corporation.

4. The learned Judge has directed Competent Authority of the respondent Kolkata Municipal Corporation to look into the alleged unauthorised construction and proceed in accordance with law only after hearing the appellants herein.

5. The Municipal Corporation can act on the complaint of public, including neighbour of the proposed construction as well as suo moto if they notice any unauthorised construction in violation of the Building Rules or in violation of the plan sanctioned. It may be a fact that the complaint of the neighbour of the appellants, the writ petitioner, was looked into by the Special Officer. This cannot be an embargo for taking action forever on behalf of either the Municipal Corporation or the third parties, if they come across any violation as stated above.

6. Admittedly, a stop memo was issued but according to the appellants, they never received such stop memo. Probably learned Judge granted further opportunity only to see that unilateral decision will not be taken by Municipal Corporation without hearing the appellants, whose interest is under jeopardy. If the construction undertaken by the appellants is in accordance with the sanctioned plan or it is within the permitted parameters of Building Rules, it is of course open to them to convince the concerned Officer and take the decision on merits. In the light of the observation of the learned Single Judge, we are of the opinion the interest of the appellants is not at all prejudiced as they have ample opportunity to put-forth their case before the Authority concerned.

7. In the light of above observations, the appeal is dismissed along with the application for stay. Certified copy of this order, if applied for, be given to the parties, on priority basis.