

(2017) 09 CAL CK 0020
In the Calcutta High Court
Case No : 467 of 2017

SIDE SAUKAT ALI

APPELLANT

Vs

THE KOLKATA MUNICIPAL CORPORATION & ORS

RESPONDENT

Date of Decision : 07-09-2017

Acts Referred:

[Kolkata Municipal Corporation Act, 1980](#), [Section 392](#), [Section 392](#), [Section 400](#), [Section 400](#)

Citation : (2017) 09 CAL CK 0020

Hon'ble Judges : Harish Tandon

Bench : SINGLE BENCH

Advocate : Ramij Munsj, Alok Kr.Ghosh, Debangshu Mondal, Debasish Karmakar, Manoj Malhotra, Suman Dey

Judgement

1. It is stated in the writ petition that the respondent Nos.7 to 9 with the help of their associates started demolishing the old structure with the intent to construct a multistoried building without obtaining any sanction of building plan from the Kolkata Municipal Corporation.
2. It is further stated that the said premises is a thika tenanted property and in view of the provisions contained under West Bengal Thika Tenancy (Acquisition & Regularisation) Act, 2001, a prior permission of the Thika Controller is required before an application for sanction of the building plan is filed with the Corporation authorities.
3. It is stated that neither the permission from the Thika Controller nor any application for sanction of the building plan had been filed by the aforesaid respondents, but they merrily continue to construct the G+4 storied building in blatant violation of the provisions of the Kolkata Municipal Act, 1980.
4. Learned Advocate appearing for the aforesaid respondents, on being asked whether any permission and/or sanction has been obtained by his clients, submits on instruction from his clients, who are personally present in Court

today, that no permission and/or sanction was obtained for construction of the said building.

5. Section 392 of the said Act prohibits any building to be constructed or any work to be executed except with the previous sanction of the Municipal Commissioner and upon payment of such requisite fees as may be determined.

6. The aforesaid Section starts with the negative words which makes it imperative and mandatory that unless a permission/sanction of the building plan is obtained from the Municipal Commissioner, no erection or re-erection of a building or execution of any work is permissible.

7. A recent trend has developed in the society where the multi-storied or high-rise buildings are coming up without obtaining any sanction or permission from the Municipal Corporation authorities and there is least respect which is shown to the aforesaid provisions by such unscrupulous persons.

8. The aforesaid constructions are not only in blatant violation of Section 392 of the said Act, but sometimes the Corporation is treated as instrumental behind the encouragement percolated in the aforesaid persons because of their lethargic, dormant and apathy shown in taking the prompt action against them.

9. The power under Section 400 of the Act is vested with the Municipal Commissioner to pass an order for demolition yet the aforesaid provision is scarcely resorted to or sometimes its purpose gets frustrated by immense delay in disposal of the said proceedings.

10. Because of the rapid growth in the urban city, the areas which were earlier included in the municipality, have been brought within the urban agglomeration and the provisions of the Municipal Corporation Act is extended.

11. The steep rise in the price of the property because of the rapid migration of the people from rural to urban areas for shelter is rapidly increasing and such unscrupulous persons deceive and/or dupe those persons in selling the whole or a part of the said property and flying away and/or eloped from the scene exposing them to the greatest risk of being thrown out of possession as the construction of the said building is absolutely illegal being in violation of the mandatory provisions of the Act.

12. On an identical factual matrix, the Supreme Court in the case of Dipak Kumar Mukherjee versus Kolkata Municipal Corporation & Ors., reported in (2013) 5 SCC336 indicates the role of the Corporation and their delayed approach in taking prompt action against the wrong-doers and the sufferance of the bona fide purchasers for value in the said property.

13. It would be profitable and relevant to quote the said paragraph which runs thus In the last four decades, the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country has acquired monstrous proportion.

14. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions.

15. This Court had an occasion to consider in the identical situation in the case of Rabindra Singh versus The Kolkata Municipal Corporation & ORS.(W.P.No.133 of 2017 decided on 17.03.2017) where the judgement of the Apex Court rendered in the case of Dipak Kumar Mukherjee (Supra) was noticed and observed as follows The Apex Court was conscious about the resources and the connection of the powerful persons and observed in paragraph 24 therein as in the prevailing scenario the representative of the respondent no.7 might have thought that he will be able to pull strings in the power corridors and get an order for regularization of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

16. Rolling the ball to the court of the Municipal Authorities where sometimes delay is made to avoid any stringent action or the orders to be passed would encourage such wrong doer and the person who utilises and uses their powers derived from the statute and, therefore, this Court should not wait for the vetting of the Mayor-in- Council to take immediate steps under sub-Section 8 of Section 400 of the said Act.

17. In view of the categorical stand of the Kolkata Municipal Corporation that no building plan is sanctioned at the said premises nor the private respondents could produce a single scrap paper to controvert the stand of the Corporation, this Court has no hesitation in mind that such construction is palpably illegal and unauthorized and, therefore, required to be demolished in view of the observations made by the Supreme Court in the above-noted position. In view of the findings recorded hereinabove, there is no hesitation in my mind that the direction passed in the said unreported judgement needs to be passed in the instant case as well.

18. The Municipal Commissioner is directed to demolish the construction made at the said premises no.B/17A/H/2, Mominpur Road, Kolkata 700 023 by the private respondents within two weeks from date.

19. If necessary, the local police station shall be approached by the corporation people and the officer-in-charge of the concerned police station is directed to render all assistance and adequate police protection to the officers of the Kolkata Municipal Corporation in execution of the demolition work as directed above.

20. With these observations, the writ petition stands disposed of.

21. There will be no order as to costs.