
(1997) 04 CAL CK 0034

In the Calcutta High Court

Case No : A.P.O.T. No. 195 of 1997, G.A. No. 1401 of 1997 and W.P. No. 770 of 1997

Smt. Sanichari Devi

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 400, 400(8)
Constitution of India, 1950 — Article 226

Citation : (1997) 2 CALLT 168

Hon'ble Judges : Rabin Bhattacharyya, J;Nure Alam Chowdhury, J

Bench : Division Bench

Judgement

Rabin Bhattacharyya, J.—An application was hit upon by the writ petitioner appellant for a Mandamus, a Rule NISI, Prohibition and for other incidental reliefs which included amongst others an interim injunction restraining the respondents, their men, agents and subordinates from demolishing the structure at premises No. 3/1A, Maheswartala Road, P.S. Tangra, till the disposal of the rule.

2. The profile of the controversy between the parties gives a wide and bold publicity of a crusade about the legality or otherwise of the impugned structure of the premises No. 3/1A, Tangra Road known as 3/1A, Mahaswartala Road, P.S. Tangra, came to both possessed and owned by the writ petitioner by a Deed of Exchange that executed between her, and Smt. Gita Devi dated 12th of January, 1993.

3. While amplifying her claim in the injunction petition, she has most sedulously cultivated that she was effecting repairs of the premises which was in a state of disrepair but the respondents on being emboldened by an alleged illegal construction at the above premises activated the demolition under the pretence that there was an infraction of Section 400(8) of the Calcutta Municipal Corporation Act, 1980.

4. The respondents, according to the petitioner, dealt a blow on the livelihood of

the petitioner detrimental to the principle of the natural justice and the constitutional provisions. She has been virtually dethroned from the premises by denying to cook the food for herself and the members of her family. The dismantling of the roof of the premises by the respondents demonstrates the illegalities committed by them foreign to the provisions of the CMC Act, 1980. Section 400(8) of the said Act is marked with unconstitutionality which cannot come to the aid of the respondents to invoke the power projecting on demolition of the building in question.

5. This, according to the appellant, fosters claim for preventing relief in the shape of injunction.

6. The respondents, in refuting the claim of the petitioner, are very much vocal that the endeavour of the petitioner attributes to deleterious augmentation of illegal structure under the pretence of repair impermissible by the statute, over the existing legitimate structure. The petitioner, according to the respondents, is not entitled to any relief as the law by which the parties are governed does not encourage illegal construction in the guise of repair. The petitioner becomes a prisoner of illegalities by the admission made by herself detached from mollifying influence. The Act being a special statute cannot be read in derogation of the Indian Constitution as the law stood the test of time. The application, according to the respondents, should be dismissed at the threshold as the action bears the liable of repair which verges on construction a new, contrary to law.

7. Mr. Biyani to dislodge the claim of the respondents has argued with much vehemence and industry on the edifice of Section 400 of the CMC Act, 1980 that the act of demolition is bereft of legality, if one turns to Section 400(8) of the Act. The Mayor-in-Council, according to him, is not an individual but a body constituted under the provisions of the CMC Act, 1980, which is competent to take action for demolition of an unauthorised construction.

8. The purported order of demolition cannot acquire any legal force to whittle down the legitimate claim of the petitioner appellant. He has all along paid much emphasis which is overwhelming that repair of the premises in its essence a requirement which cannot be benumbed by the above section. The section cannot be taken aid of by the respondents as a sword to cut the right of the petitioner to repair.

9. Mr. Banerjee to sustain his claim for demolition of the unauthorised structure over the 1st Floor has made a forceful submission that there is a complete shipwreck of the petitioner's claim as there are materials of widest multitude that the order passed by the Mayor-in-Council for demolition of the unauthorised construction of the said premises is protected by the even corridors of Section 400 of the CMC Act. The lanes of that provisions may be narrow but have acquired substantial legal force as it did not overreach the constitutionality and is, therefore, beyond criticism. The contention, according to Mr. Banerjee, is therefore, illusory. He has read through chronologically the history of the dispute

in connection with the building from the file produced by him to blow off the claim of the petitioner. Another side fact has been highlighted by Mr. Banerjee that the sanctity of the construction could only knock out the stand of the respondents, if the plan of the premises would have been produced by the appellant petitioner. The controversy could only be set at rest on production of the plan by the petitioner.

10. While making our tempestuous voyage to adjudge the legality or otherwise of the contentions, it stares on our face that the action of the Mayor-in-Council is not extraneous to the provisions of Section 400 of the Act. The inaction of the petitioner to produce the plan has raised a gulf. The legality of the impugned construction is patently absent in the legal map of the Corporation. Therefore, as it is, the claim of the petitioner for repair of the impugned construction is forbidden by the statute which could be enlivened by the sanctioned plan. The petitioner appellant is caught up in the crisis for employment of the word "renovation" in the writ application. The word "renovation" cannot be equated with the word "repair". She is devoid of legal right to enforce her claim in the Writ.

11. Mr. Banerjee in his fairness has submitted, when asked, that the Corporation has no intense passion to demolish the said structure subject to submission of a sanction able plan by the appellant petitioner.

12. On consideration of the contention made by the parties, it appears to us that the petitioner appellant is placed between the two horns and a situation has been created by her to be between scylla and charybids.

13. Being persuaded by the objectives of the said argument, we dispose of the stay application on consent of the parties that the petitioner within three months shall submit a sanction able plan with the CMC in respect of the impugned construction and, thereafter, shall proceed with the construction on the basis of the plan being sanctioned by the respondents. The respondents on the basis of the consent of the parties will not be proceed with the demolition of the impugned construction until the fate of a sanction able plan submitted by the petitioner appellant is decided by the respondents nor any further construction be made on any part of the building dehors the law. The permissible repairs, if any, require by the petitioner appellant could be effected in respect of authorised structure of the building in question. We trust and believe that the Corporation will appear in the role of a good Samaritan to consider the plan of the impugned construction, if any, submitted by the petitioner appellant within the period contained in the order.

14. With the aforesaid order both the stay and the writ application is disposed of by the consent of parties. The file has been returned to the learned Counsel for the respondents in court today.

15. All parties concerned are to act on a xerox signed copy of this Judgment and order on the usual undertaking.

Nure Alam Chowdhury, J.

16. I agree