
(2011) 05 CAL CK 0107

In the Calcutta High Court

Case No : F.M.A. No. 1152 of 2010 with A.S.T. No. 539 of 2010

Tapas Chandra

APPELLANT

Vs

Sarjun Prasad Show
 Unique Construction Vs K.M.C.

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Citation : (2011) 3 CHN 320

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Jiban Ratan Chatterjee and Supratim Dhar in F.M.A. No. 1152 of 2010 and Aniruddha Chatterjee and Srijib Chakraborty in A.S.T. No. 39 of 2010, for the Appellant;Biswajit Mukherjee and Sima Chakraborty for the KMC, Sudipto Moitra, Tapan Coomar Dey and Debsoumya Basak for the respondent No. 8 in A.S.T. No. 539 of 2010, Biswaroop Bhattacharyya and Sirsanya Bandopadhyay for the respondent Nos. 1 and 2 in F.M.A. No. 1152 of 2010 and respondent Nos. 7 and 9 in A.S.T. No. 539 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay and Mrinal Kanti Sinha, JJ.

Re: A.S.T.539 of 2010

1. It is submitted by the learned Counsel representing the appellant that no order of demolition has yet been passed by the competent authority of the Kolkata Municipal Corporation in accordance with law.
2. Mr. Chatterjee, learned Counsel representing the appellant in A.S.T.539 of 2010 submits that the learned Single Judge should not have passed any order of demolition in respect of any part or portion of the premises in question specially when the competent authority of the Kolkata Municipal Corporation has not taken any final decision in this regard.
3. Mr. Chatterjee further submits that an application has also been filed subsequently before the competent authority of the Kolkata Municipal

Corporation for regularisation of the structure in question and such application is still pending for final consideration.

4. The learned Counsel representing the Kolkata Municipal Corporation authorities very fairly admits that the competent authority of the said Kolkata Municipal Corporation has not yet taken any final decision in respect of the building in question. The said learned Counsel further submits that no order of demolition has yet been passed by the competent authority of the Kolkata Municipal Corporation in respect of the building in question.

5. Having heard the learned Counsel appearing for the parties and considering the facts and circumstances of the case. We are of the view that the competent authority of the Kolkata Municipal Corporation should take appropriate decision under the provisions of the Kolkata Municipal Corporation Act and Building Rules framed thereunder while dealing with the allegations of unauthorised construction in respect of any building. In the present case, specific allegation has been made to the effect that two floors of the building in question were constructed even in absence of sanctioned building plan.

6. In the aforesaid circumstances, the competent authority of the Kolkata Municipal Corporation must take appropriate decision in respect of the building in question upon complying with the provisions of the Kolkata Municipal Corporation Act and the Building Rules framed thereunder.

7. The Court cannot usurp the authority of the Kolkata Municipal Corporation in this regard. The validity and/or legality of the decision of the Kolkata Municipal Corporation authorities regarding demolition and/or retention of any unauthorised structure can be challenged before this Court but this Court under normal circumstances should not dictate the Kolkata Municipal Corporation authorities to take any specific decision regarding demolition or retention of any structure without allowing the competent authority to take appropriate decision in this regard.

8. The Kolkata Municipal Corporation authorities should take appropriate decision in respect of the fate of an illegal structure at the first instance and the Court will thereafter adjudicate the correctness of such decision. The Court under normal circumstances should not either direct retention of any illegal structure or demolition of the same before allowing the competent authority of the concerned Kolkata Municipal Corporation to take appropriate decision in accordance with law.

9. For the aforementioned reasons, we direct the competent authority of Kolkata Municipal Corporation to consider the nature and magnitude of the unauthorised construction at the premises in question and take specific decision regarding retention or demolition of the same or any part thereof.

10. Needless to mention that the competent authority of the Kolkata Municipal Corporation will take appropriate decision strictly in accordance with law and upon observing the principles of natural justice without any further delay but

positively within a period of two months from date.

11. In view of the aforesaid order, the impugned judgment and order under appeal passed by the learned Single Judge cannot be sustained and the same is accordingly set aside.

12. We also make it clear that the Kolkata Municipal Corporation authorities will not permit the appellant to drag the proceedings for an indefinite period by granting unnecessary adjournment of the hearing in relation to any proceeding.

13. With the aforesaid directions, this appeal stands disposed of.

14. Let it also be on record that we have not decided any other issue raised in this appeal and all points are left open for adjudication in future by the appropriate forum, if necessary.

15. In the facts of the present case, there will be no order as to costs.

Re: F.M.A.1152 of 2010

16. The learned Advocate representing the appellant does not want to proceed further with this appeal.

17. In the aforesaid circumstances, this appeal stands dismissed as not pressed.

18. In the facts of the present case, there will be, however, no order as to costs.

19. Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.