

HIGH COURT AT CALCUTTA**Bench: M. V. Muralidaran, J. And Arijit Banerjee, J.****Date of Decision: December 1, 2023**

FMAT 528 of 2023

IA NO:CAN/1/2023

Smt. Chandana Saha & Anr.**Vs.****Sri Ashok Kumar Roy & Ors.****Legislation:**

Kolkata Municipal Corporation Act

Writ Jurisdiction

Executive Engineer (Civil)/Building Department, Borough-IV & V

Article 226 of the Constitution of India

Subject: Civil appeal challenging an injunction order in Title Suit No. 697 of 2023. It involves disputes related to unauthorized construction and deviations from sanctioned plans in a property located at Premises No.35, Acharya Prafulla Chandra Road, Kolkata-9.

Headnotes:

Civil Appeal – Challenge to the order allowing an injunction application in Title Suit No. 697 of 2023 – Plaintiffs seeking to make structural changes in their property – Defendants objecting to changes not in accordance with the sanctioned plan – Ex parte injunction initially granted and later made absolute – No direction for police help in the final order – Issue of whether plaintiffs deviating from sanctioned plan.

Writ Jurisdiction – Complaint of unauthorized construction by respondents – Order directing a spot inspection by the Executive Engineer (Civil)/Building Department, Borough-IV & V, Kolkata Municipal Corporation – Opportunity of hearing to be provided to parties – Final reasoned order expected by December 16, 2023 – Further construction subject to the result of this appeal – Any deviation from the sanctioned plan to be removed.

Directions to the Executive Engineer – Immediate necessary steps, including spot inspection, to be taken – Final order by December 16, 2023 – Consequences of deviation from sanctioned plan – Matter listed again on December 18, 2023 – Registry to serve a copy of the order on the Executive Engineer – Parties and advocates to act on the order – Urgent photostat certified copies to be provided on request.

Referred Cases: None.

Representing Advocates:

For the Appellants: Mr. Biswaroop Bhattacharya, Mr. Varun Kothari

Mr. Arya Bhattacharyya

For Respondents: Mr. Partha Pratim Roy, Mr. Srinjoy Das, Mr. Barnamoy Basak, Mr. Sumit Kumar Dey

A judgment and order dated October 12, 2023, whereby an injunction application of the respondents herein filed in their suit being Title Suit No.697 of 2023, pending before learned Judge, Bench-XIII, City Civil Court, Calcutta, was allowed, is the subject matter of challenge in this appeal at the instance of the defendants in the suit. The plaintiffs in the suit are admittedly the owners of a portion of the second floor of a multi-storied building called “Hiralal Commercial Complex” at Premises No.35, Acharya Prafulla Chandra Road, Kolkata-9. They purchased that property from the erstwhile owners thereof being Narendra Saha and others.

With the intention of using the suit property as a tourist lodge, the plaintiffs started making certain structural changes in the said unit. The defendants objected on the ground that the changes that the plaintiffs were seeking to make were not permitted by any sanctioned plan of Kolkata Municipal Corporation.

Complaining of resistance and complaining of disconnection of water supply at the instance of the defendants, the plaintiffs approached the City Civil Court by filing the said suit. The plaintiffs

applied for an injunction to restrain the defendants from interfering with their peaceful possession of the said unit and also from obstructing the reconstruction work.

Initially, an ex parte order of injunction was passed. The defendants came up before this Court by way of appeal. The matter was remanded back to the learned trial Court. The order of injunction was continued. The defendants came up to this Court for a second time. Finally an order was passed which is the subject matter of challenge in this appeal. The learned trial Court has made absolute the interim order of injunction. However, on an earlier occasion, police help had been granted to the plaintiffs, which was set aside by this Court on appeal. In the final order, there is no direction for police help.

The sole issue is whether or not the plaintiffs are making any addition or alteration in the concerned unit in deviation from any sanctioned plan that the plaintiffs may hold in their favour.

It appears that the present appellants had approached a learned Judge in the writ jurisdiction complaining that the respondents in this appeal were making unauthorized construction, in deviation from the sanctioned plan. That writ petition being WPO No.1614 of 2023 was disposed of by a learned Single Judge of this Court by a judgment and order dated September 26, 2023, with the following observations and directions:-

“ Without entering into the merit of the allegation of the petitioner, as it appears that an objection alleging unauthorized construction is pending consideration at the end of the Corporation, accordingly, the Executive Engineer (Civil)/Building Department, Borough-IV & V is directed to cause a spot inspection to ascertain as to whether any unauthorized construction is going on and whether the construction that is being made is in accordance with the plan sanctioned by the Corporation. Inspection shall be conducted upon prior notice to all the parties. An opportunity of hearing shall be provided to the parties to produce documents in support of their claim.

A reasoned order shall be passed at the earliest, but positively within a period of twelve weeks from the date of communication of this order and the reasoned order shall be communicated to the parties immediately thereafter. ”

We are told that the concerned Executive Engineer has not taken any steps till now pursuant to the aforesaid order of the learned Single Judge. This is very surprising.

We expect a final reasoned order from the Executive Engineer to be filed before us on the next date of hearing. For that purpose, the concerned Engineer shall take immediate necessary steps including conducting a spot inspection in the presence of the parties with prior notice to them. Let the final order of the Executive Engineer be passed after granting opportunity of hearing to the parties, by December 16, 2023, so that the same can be placed before us when this matter is next listed on December 18, 2023.

It is made clear that any further construction or re-construction or addition or alteration made by the present respondents, who are the plaintiffs in the suit, shall abide by the result of this appeal. To clarify, in the event, at the time of disposal of the appeal, it is found that addition or alteration or any part thereof made by the plaintiffs are in deviation from the sanctioned plan, the same shall have to be removed.

List the matter once again on December 18, 2023.

The Registry is directed to immediately serve a copy of this order on the Executive Engineer (Civil), Building Department, Borough-IV & V, Kolkata Municipal Corporation, whose address is 22, Surya Sen Street, College Square, Kolkata-700 012. Learned advocates for the parties are also granted liberty to communicate this order to the said Executive Engineer.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

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