

14.12.2020
07
RP Ct.04

WPA No.4852 of 2020

**Indus Towers Ltd. & Anr.
Versus
Kolkata Municipal Corporation & Ors.**

Mr. Sakya Sen	
Mr. Rajesh Upadhyay	 For petitioners
Mr. Alok Kumar Ghosh	
Mr. Dwijadas Chakraborty	 For KMC
Mr. Santanu Chatterjee	 For respondent no.4

Mr. Sen, learned advocate appears on behalf of petitioners and submits, his clients are engaged, inter alia, in business of erecting and setting up mobile towers, by which telephony service providers reach out to their customers. Impugned in the writ petition is order dated 22nd January, 2020 made under section 400(1) of Kolkata Municipal Corporation Act, 1980 read with Kolkata Municipal Corporation (Regularization of Building) Regulations, 2015. He submits, his clients have not been given opportunity of hearing. The order was made in violation of principles of natural justice. It should be set aside and quashed. His clients have contention arising out of circular dated 27th September, 2010, which allows post-facto regularization of such towers, on same principles for grant of permission for new-installations. Regularization, because his clients' structure was pursuant to agreement made with owner of the building (private respondent no.4), erected and existing at the time of issuance of said circular. Mr. Sen relies on **order dated 29th June, 2012** made by a Division Bench of this Court in **MAT 519 of 2012 (Priyesh**

Bagchi vs. The Howrah Municipal Corporation & Ors.) to submit, said circular received consideration of the Bench.

Mr. Ghosh, learned advocate appears on behalf of the Corporation and submits, respondent no.4 has preferred appeal against impugned order before Municipal Building Tribunal. Petitioners can agitate their cause by getting themselves added in the appeal but not by moving this Court. On query from Court he submits, this writ petition was last heard on 16th March, 2010. Since then and till now the Corporation has not proceeded against petitioners simply because the appeal is pending. In such a situation, the Corporation, if decides to move will move with notice to petitioners. Petitioners can immediately apply before the Tribunal. Mr. Sen, submits, there is pending his clients' no objection application before the Corporation. The Corporation should be directed to deal with that application in the meantime. Mr. Ghosh submits, the application cannot be dealt with, again because of pendency of the appeal.

Mr. Chatterjee, learned advocate appears on behalf of respondent no.4.

Mr. Ghosh's submission on statutory remedy available to petitioners, is accepted. Petitioners will, within three weeks from date, apply before the Municipal Building Tribunal, for being added as parties in the appeal, any other interim order and final order they want as relief. It is expected that in event the Corporation decides to change prevailing situation it will do so after three weeks.

WPA 4852 of 2020 is disposed of.

(Arindam Sinha, J.)

