

17.12.2020
Item No.1 & 2
Ct. No.7
CHC

**C.O. 1171 of 2018
With
C.O.2899 of 2017
(Via Video Conference)**

**Tapan Roy
Vs.
Kolkata Municipal Corporation & ors.**

Mr. Arindam Banerjee,
Mr. Srijib Chakraborty,
Ms. Surabhi Banerjee,
Ms. Arpita Saha
...for the petitioner

Mr. Alok Kumar Ghosh,
Mr. Swapan Kr. Debnath
...for the KMC

Mr. Saptangsu Basu, Sr. Advocate
Mr. Avinash Kankani,
Mr. Suman Majumder
...for the opposite party no.7

Both the revisional applications are heard together on the prayer of the parties for a common law points being involved.

The petitioner in both the revisional applications preferred an appeal before the learned Municipal Building Tribunal, Kolkata Municipal Corporation being appeal no.15 of 2016. Feeling aggrieved with the order impugned dated 06.01.2011 the petitioner preferred an appeal without being party to demolition

case no.9-D/2010-11/Br-IX registered against M/s. M. B. Commercial Private Limited at the instance of Kolkata Municipal Corporation, for the interest of the petitioner having been largely affected thereby. The demolition proceeding under Section 400(1) of the K.M.C. Act, 1980 in respect of premises no.7, Munshi Prem Chand Sarani, Kolkata was registered against M/s. M. B. Commercial Private Limited (opposite party no.7), since there was violation of building rules coupled with K.M.C. Rules in the alleged construction, and for which the prayer of retention of the unauthorized construction was made. Special Officer (Building), Kolkata Municipal Corporation by the impugned order dated 6th January, 2011 declined to record any demolition order subject to making compliance of three conditions stipulated therein. Admittedly, petitioner in both the revisional cases was not made party to the original demolition proceeding registered against M/s. M. B. Commercial Private Limited, wherein, retention of the unauthorized was prayed for.

The petitioner, Mr. Tapan Roy preferred appeal before the appellate authority, being Assistant Registrar, Municipal Building Tribunal, Kolkata Municipal Corporation on 18th August, 2017 in the absence of the certified copy of the order impugned. The appeal was registered and opportunity was given

to the petitioner for production of certified copy of the order impugned. Ultimately, a show-cause was issued against the petitioner/appellant. Finally, the causes shown by the appellant could not be considered. Consequently, the appeal was dismissed for default.

The petitioner in order to produce certified copy of order impugned earlier sought for a direction upon the authority of the Building Tribunal requiring it to make the certified copy available to petitioner. The competent authority of Building Tribunal could not hand over the certified copy to the petitioner responding to his prayer for the custodian of the original demolition case being the Kolkata Municipal Corporation, over which the Building Tribunal has got no control. The direction sought for obtaining the certified copy from the Building Tribunal thus could not be considered and accordingly, rejected by order dated 04.07.2017 by the Assistant Registrar, Municipal Building Tribunal, K.M.C. The proposed direction to make the certified copy available to petitioner thus finally being rejected, the petitioner challenged the same preferring another revisional application being C.O.2899 of 2017.

Thus, the C.O.2899 of 2017 is relatable against the impugned order dated 4th July, 2017 passed in connection with B.T. Appeal No.15 of 2016 rejecting the petitioner's application for direction upon the

Municipal Corporation to comply the certified copy of the impugned order dated 6th July, 2011, while the impugned order dated 20.02.2018 passed by Assistant Registrar, Municipal Building Tribunal, K.M.C. in connection with Kolkata Municipal Corporation B.T. Appeal No.15 of 2016 dismissing the appeal for default is referable to C.O.1171 of 2018.

Learned advocate, Mr. Arindam Banerjee for the petitioner strenuously submits that when appeal was admitted by the appellate authority, preferred by the petitioner claiming his interest involved therein, against the impugned order, dated 06.01.2011 and opportunity was given for production of the certified copy, the appellate authority has erroneously exercised its authority, while dismissing the appeal for default, even without considering the show-cause containing reasons assigned by the petitioner including the circumstances as to why the certified copy of the impugned order could not be produced by the petitioner in terms of the direction, passed by the appellate authority, recorded earlier in appeal giving rise to revisional applications.

It is further submitted that the petitioner made his best effort to procure the certified copy, and to furnish the same before the appellate authority in connection with the appeal preferred. But the harassive attitude of the K.M.C. resisted the petitioner

from producing the certified copy on this and that grounds. The discretion thus exercised by the appellate authority of Municipal Building Tribunal, according to Mr. Banerjee, appears to have not been properly exercised and as such it requires intervention under Article 227 of the Constitution of India.

Mr. Basu, learned Senior Advocate for the opposite party no.7 in reply submits that the instant revisional applications are not maintainable. Adverting to the prayer of C.O.1171 of 2018, Mr. Basu, learned Senior Advocate for the opposite party no.7 submits that when there is specific provision in the Code of Civil Procedure, like Order IX Rule 9 C.P.C. the revisional application should not have been straightway filed before the Hon'ble High Court, and on that score, both the two revisional applications will face the mischief of technicalities of law, as incorporated in the Civil Procedure Code.

Learned advocate appearing for the K.M.C. submits that the certified copy of the impugned order has already been made ready, and a notice has already been issued requiring the petitioner to collect the same, but till date the certified copy of the impugned order appealed against, though made ready, could not be collected.

Upon hearing all the parties to this case, it is thus clear that no reasoned order could be passed by the appellate authority of Municipal Building Tribunal, while dismissing the appeal for default by impugned order dated 20.02.2018. The reasons assigned by the petitioner even could not be mentioned so as to justified dismissal.

The revealing fact is that the petitioner preferring the appeal before the Building Tribunal was not a party to the concerned demolition proceeding, wherein retention of the unauthorized construction was prayed for. True it is that there is provisions in the Code of Civil Procedure for restoration of the appeal, as found in Order IX Rule 9 or Order XLI Rule 19 C.P.C. The significant fact is that petitioner assailing the impugned order was not a party to the original demolition proceeding. The petitioner claims to be having some specific interest for the decision having reached by the Building Tribunal in connection with the order impugned, and thus having felt aggrieved with the decision, an appeal was preferred by the petitioner, and when the appeal was registered, after it was preferred by the petitioner in absence of the certified copy of the impugned order, it was incumbent upon the appellate authority to provide the petitioner sufficient scope for producing the certified copy of the order appealed, and the

reasons of failure in producing the impugned order should also be made subject of consideration by the appellate authority.

The dismissal of the appeal by the Building Tribunal presupposes termination of the proposed action or claim preferred by the petitioner/appellant without further hearing before deciding the appeal with reference to issues involved therein.

Thus, a grave injustice has been perpetrated requiring intervention by Article 227 of the Constitution of India.

Both the revisional applications are accordingly, disposed of upon setting aside the impugned order No.16 dated 20th February, 2018 passed by learned Municipal Building Tribunal, Kolkata Municipal Corporation in BT Appeal No.15 of 2016 dismissing the appeal for default.

Kolkata Municipal Corporation is directed to supply the certified copy of the impugned order appealed against to the representative of the petitioner subject to making compliance of the formalities, if not already complied in the meantime within 10 days from the date of this order, and upon receipt of the same, petitioner is directed to approach the appellate body of Building Tribunal, K.M.C. forthwith for production of the same in connection with the appeal referred hereinabove.

The Building Tribunal is directed to restore the appeal within a fortnight from this date and proceed with the appeal upon securing presence of all parties involved in the appeal.

The opposite party no.7 is given liberty to file an application before the Building Tribunal to challenge the maintainability of this appeal preferred by the petitioner including his appearance for his alleged interest, as submitted.

Learned Building Tribunal, K.M.C is further directed to dispose of the point as to the maintainability of the appeal including the presence of the appellant for his alleged interest in the appeal in accordance with the provisions of the law providing sufficient opportunity of hearing to the parties involved in the appeal.

This order is passed without touching the merits of the appeal, which is left to decided by the appellate authority.

With this directions/observations the revisional applications and the pending connected application, if any, stand disposed of.

The petitioner is directed to make communication of this order to the learned advocate appearing for the appellate authority of the K.M.C.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)