

19.10.2020

Court No. 8
Item No.10
Subha

In The High Court At Calcutta

**Civil appellate jurisdiction
Appellate Side**

M. A. T No.614 of 2020

M/s. Metaco India

-vs-

**Kolkata Municipal Corporation and ors.
with**

**IA No. CAN No.1 of 2020
(Via video conference)**

Mr. Siddhartha Mitra, sr. adv
Mr. Suman Sengupta
Mr. Sounak Bhattacharya
Mr. Sumitava Chakraborty
Mr. Barnomay Basak ...for the appellant.

Mr. Saptansu Basu, Sr. Adv.
Mr. Gopal Pahari
Ms. Mrinalilni Majumdar
Ms. Mandeep Kaur
 ..for the private respondents.

Mr. Achintya Kumar Banerjee
Mr. Subhrangshu Panda
Mr. Debabrata Chatterjee
 for the K. M. C.

As the point involved in this appeal is very short, we do not propose to keep it pending. With the consent of learned appearing counsel, we treat this appeal as on the day's list dispensing with all formalities and dispose of the same by this order.

This appeal is against the order dated 16th

September, 2020 passed by a learned single judge in a writ application refusing to pass an interim order.

The appellant claims to be a tenant under the private respondents. The dispute is that the private respondents have obtained sanction of a building plan, without the respondent Corporation hearing their objections.

At the interim stage, the learned single judge has made the following observations.

- a) The original plan was sanctioned in 2014.
- b) This was not challenged by the appellant and the construction is substantially completed.
- c) Under the existing rules and circulars the tenant does not have a right of hearing.
- d) It only requires a declaration by the applicant for sanction that the rights of a tenant shall be protected.

Mr. Basu, learned senior advocate appearing for the private respondents makes submissions to justify these prima facie observations of the learned single judge.

Mr. Mitra, learned senior advocate appearing for the appellant principally contends that the original building sanction plan had lapsed. His client had no knowledge of this plan but acquired information after its renewal in 2019.

Secondly, the appellant has a right of hearing

before the Corporation as building activity may affect the rights of a tenant.

Thirdly, he says that his client is only praying for consideration of then representation dated 20th January, 2020.

We find that it is an admitted position that the construction has been substantially done. Therefore, in the circumstances, we do not think that there is grave urgency in passing an interim order.

We feel that the representation which has been made on 20th January, 2020 by the appellant to the respondent Corporation needs consideration. It has either to entertain or refuse to entertain it on the maintainability point. If it is maintainable, it has to decide the same in accordance with law, on hearing the parties and by a reasoned order at the preliminary and final hearing stages, within five weeks from date.

Such decision shall be made without prejudice to the right and contentions of the parties in the writ application. We order accordingly. It shall be placed as an annexure to a supplementary affidavit before the learned single judge, at the time of hearing of the writ application.

Mr. Basu submits that his clients have filed their affidavit-in-opposition.

Let affidavits be exchanged before the learned

single judge as per the following direction.

Affidavit-in-opposition, if not already filed be filed by 27th November, 2020. Affidavit-in-reply may be filed by 7th December, 2020.

The learned single judge may be requested to dispose of the writ application as early as possible.

All points are kept open before the learned single judge.

Accordingly, the appeal (MAT 614 of 2020 and the connected application(CAN 1 of 2020) are disposed of.

[I.P. Mukerji, J]

[Md. Nizamuddin, J]