

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
(Via Video Conference)

FMA 938 of 2020
(MAT 794 of 2020)
with
IA No: CAN 1 of 2020

Md. Arshad Wakil & Anr.
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Siddhartha Banerjee
Mr. Subhankar Chakraborty
... For the appellants

Mr. Ranajit Chatterjee
Mr. Subhrangsu Panda
... For Kolkata Municipal Corporation

Mr. Syed Nurul Arafin
... For the respondent no.7/writ petitioner

The appellants complain of the writ court not allowing the appellants' right to prefer an appeal being exhausted before passing an order for demolition of the appellants' property or a part thereof.

Both the writ petitioner and the Kolkata Municipal Corporation are represented. It appears that the writ petitioner complained of the appellants illegally constructing one floor or more atop a building at which the writ petitioner enjoys part possession. Thus, the writ petitioner, had sufficient locus to approach the Court. The grievance in the writ petition was that despite the KMC authorities requiring the illegal construction at the

appellants' building to be demolished, no steps had been taken for such demolition despite the passage of several months.

The appellants say that it has been erroneously recorded in the order impugned dated November 24, 2020 that the appellants had submitted that no appeal had been filed against the relevant demolition order. It is the appellants' submission that the appellants had indicated that since the appellants had not been favoured with a certified copy of the demolition order, the appellants could not carry a statutory appeal to the appellate forum. The appellants say that such submission was taken by the Single Bench to imply that no appeal had been preferred, though the would-be appellant did not have any opportunity to prefer the appeal.

The KMC admits that a certified copy of the order of demolition has not been made over to the appellants yet. The KMC assures the Court that a certified copy of the order would be made over to the appellants in course of this week.

The KMC is permitted time till December 18, 2020 to make over a certified copy of the order of demolition to the appellants. The appellants will have liberty to prefer an appeal upon receiving a certified copy thereof and, the appeal, if filed, should be disposed of on a priority basis and as expeditiously as the business of the appellate

forum would permit. Since an allegation of illegal construction was accepted by the authorities before passing the order of demolition, the appellate authority should allow no latitude to the appellants if the appellate forum finds the construction complained of to be illegal. Every endeavour should be made to dispose of the appeal within four weeks of its filing.

Since the order impugned dated November 24, 2020 fails to take into account the relevant consideration that the appellants' right to prefer an appeal had not been exhausted on account of a certified copy of the order of demolition not being made available, such order cannot be sustained and the same is set aside.

In the event the appellate forum in receipt of the appeal from the order of demolition, finds no merit in the appeal, the KMC authorities should immediately proceed to demolish the illegal construction at the relevant premises. The appellants should not seek any adjournment of the matter before the appellate forum.

If the appeal is not disposed of within four weeks after it is lodged, it will be open to the parties to approach this Court under Article 226 of the Constitution of India.

FMA 938 of 2020 (MAT 794 of 2020) and IA No: CAN 1 of 2020 stand disposed of.

There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)