

11.01.2021
Sl. No. 3
srm

C.O. No. 1625 of 2020

Sk. Alimullah @ Sk. Salilullah

Vs.

Kolkata Municipal Corporation & Ors.

Mr. Sanjib Mukhopadhyay,
Md. Shakir

...for the Petitioner.

Mr. Alok Ghosh,
Mr. Subhrangshu Panda

...for the KMC.

This revisional application has been filed by the appellant in BT Appeal No.20 of 2016 pending before the learned Municipal Building Tribunal, Kolkata. The petitioner is aggrieved by the order dated December 7, 2020 by which the learned Tribunal rejected an application praying for relaxation of payment of security deposit of Rs.1,50,000/- and also revival of the order of stay.

Records reveal that by an order dated December 24, 2016 passed by the Deputy Chief Engineer (Building)/North in Demolition Case No.12-D/1/16-17, the petitioner's premises was directed to be demolished having been found unauthorised. Thereafter, the petitioner preferred the instant appeal. The said appeal was admitted and a conditional stay was granted directing the petitioner to pay Rs.1,50,000/-. The petitioner did not pay the said amount and the learned Tribunal refused to grant any further order of stay. The

application for stay was heard on May 17, 2017, which was allowed for a limited period by the learned Tribunal with a direction, that the petitioner should deposit Rs.1,50,000/- as security. The petitioner did not deposit the said amount. The petitioner thereafter prayed for reduction of the amount. The learned Tribunal rejected the application and also vacated the order of stay. The petitioner challenged the said order by filing C.O. No.2203 of 2017. The High Court disposed of C.O. No.2203 of 2017 holding that the learned Tribunal was not in error and the prayer for reduction of the security deposit as directed in the order dated May 17, 2017 was rightly rejected. Then the petitioner again prayed for an ad interim order for stay of all further proceedings arising out of the Demolition Case No.12-D/1/16-17 till the disposal of the instant appeal. The said application was filed on December 3, 2020. By the order impugned, the said application dated December 3, 2020 was rejected. The learned Tribunal has not erred in law in passing the order impugned, inasmuch as, once the High Court has rejected an application filed by the petitioner with regard to extension of time to pay the security deposit as also with regard to revival of the order of stay, the petitioner cannot pray for reopening of the entire issue and revival of the order dated May 17, 2017 in this roundabout fashion.

The petitioner now prays before this Court that a chance may be given to the petitioner to deposit the amount of Rs.1,50,000/- and pray for further stay of the order of demolition.

The facts of the case narrated hereinabove does not warrant interference with the order impugned, inasmuch as, the petitioner cannot pray for an order which was earlier refused by a Co-ordinate Bench of this Court. The petitioner has handed up copies of two notices dated November 23, 2020 and January 2, 2021 from which it appears that during the pendency of the appeal the Kolkata Municipal Corporation have issued notices to the petitioner to vacate the premises in order to demolish the premises.

The petitioner prays that some protection may be given to the petitioner. This Court is not the court of the first instance and cannot pass any such order as prayed for. This Court can only look into the correctness of the order impugned, which is an order rejecting a prayer for revival of a stay order, which was passed in 2017. The same cannot be allowed and the revisional application is thus, dismissed.

However, rejection of the revisional application will not prevent the petitioner from making an appropriate application before the learned Tribunal with regard to the notice dated January 2, 2021 if so advised which will be considered in

accordance with law and the learned Tribunal shall dispose of the same independently and on its own merits within a period of two weeks from its filing.

It is made clear that this Court has not made any observation with regard to the merits of the case.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)