

ORDER SHEET

**APOT/77/2021
WITH
WPO/270/2020
I.A./GA 1 OF 2021, GA 2 OF 2021, GA 3 OF 2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

MD.ISSA HUSSAIN
VS
KOLKATA MUNICIPAL CORPORATION & ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE SUBHASIS DASGUPTA

Date : 11th November, 2021.

Appearance:

Mr.Raghunath Chakraborty, Advocate
...for appellant/petitioner.

Mr.Ranajit Chatterjee, Advocate
Mr. G.C.Das, Advocate
...for KMC.

THE COURT: - Taking up the application for condonation of delay in filing the appeal, we find that the causes shown for the delay of 29 days in filing the appeal, are sufficient and accordingly, the delay is condoned.

By consent of the parties, the appeal and the application are taken up for hearing.

This appeal has been preferred against an order dated January 19, 2021 disposing of WPO 270 of 2020.

The writ petitioner/appellant was aggrieved by an order dated October 24, 2019 passed by the Special Officer (Building), Kolkata Municipal Corporation after hearing the parties concerned.

The crux of the appellant's grievance is that a co-tenant of the premises where the appellant resides was hand in glove with the KMC officials and made illegal construction in the premises. The appellant has been running from pillar to post for the last five years to get redressal from the Corporation but in vain.

The writ petition was filed at a time when the pandemic had set in and the concerned Tribunal was not functioning. However, by the time when the writ petition came to be disposed of, the Tribunal had started functioning. On that ground, the learned single Judge dismissed the writ petition by permitting the writ petitioner to approach the Tribunal in accordance with law.

We have heard learned counsel for the parties. We are of the view that assuming that the writ petitioner has a legitimate grievance, we make no comment on that, the adjudication of such grievance would involve factual aspects which will be better addressed by the Tribunal rather than the writ forum.

We are conscious that availability of an alternative remedy is no absolute bar to the maintainability of a writ petition. However, generally

when an efficacious alternative remedy is available, the writ court does not interfere.

The writ petitioner/appellant will be at liberty to approach the concerned Tribunal with his grievance within seven days from date. If so approached, the Tribunal shall hear out the appellant's grievance on merits without going into the issue of time bar. The Tribunal is directed to dispose of the appellant's application within a period of four months from the date of receipt of the application, in accordance with law, after giving full opportunity of hearing to all the concerned parties.

We make it clear that we have not entered into the merits of the appellant's case. All points are left open for the Tribunal to decide.

In case the appellant requests for production of the lower court records before the Tribunal, the Tribunal shall call for such records and the Municipal Commissioner shall ensure that such records are produced before the Tribunal.

Since no affidavit has been invited, the allegations made in the stay petition shall be deemed not to be admitted by the respondents.

The appeal and connected applications are accordingly disposed of.

(ARIJIT BANERJEE, J)

(SUBHASIS DASGUPTA, J.)