

Sl. No.334
22.09.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 2978 of 2020

+

IA No.: CAN 1 of 2022

Sk. Mansur Ali

vs.

The Kolkata Municipal Corporation & Ors.

Mr. Tapas Dutta

Mr. M. Halder

... for the petitioner.

Mr. Achintya Kumar Banerjee

Mr. Debabrata Chatterjee

Ms. Indumouli Banerjee

... for KMC.

Mr. Arindam Banerjee

Ms. Arpita Saha

... for the applicant in CAN 1 of 2022

The petitioner has filed an application praying for recalling the order dated 21st June, 2022 passed by this Court directing implementation of the order passed by the Municipal Building Tribunal.

The order passed by this Court was carried in appeal.

The Hon'ble Division Bench by an order dated 25th August, 2022 passed in MAT 1342 of 2022 was pleased to grant leave to the appellant i.e. the applicant herein, to approach the learned Single Judge with appropriate explanation explaining her absence on the day the impugned order was passed.

The Division Bench was pleased to direct the learned Judge to decide the same in accordance with law.

The applicant has been heard both with regard to the application for recalling as well as on merits of the writ application.

The entire writ petition is heard on merits once again.

Learned advocate appearing for the applicant tries to impress upon the Court that the applicant engaged learned advocate to defend her case but the said advocate did not turn up at the time of consideration of the writ petition.

The writ petitioner has prayed for implementation of the order dated 9th December, 2019 passed by the Municipal Building Tribunal. The Municipal Building Tribunal has recorded in the order wherefrom it reveals that Kajol Majumder, the private respondent in the appeal, did not turn up to contest the appeal though she was served with Summons by the Tribunal.

Smt. Kajol Majumder last appeared before the Tribunal on 5th November, 2014 by filing fresh Vakalatnama through her learned advocate. Later she did not turn up to contest the appeal.

The appeal before the Tribunal was filed in the year 2014. The order under appeal was passed on 20th July, 2013.

The learned advocate representing the applicant/private respondent Smt. Kajol Majumder has raised several objections with regard to the maintainability of the writ petition.

It has been submitted that the writ petition is not in proper form. The respondent no.2 has not been described properly. The proper description of the respondent no.2 ought to have been the Municipal Commissioner of the Kolkata Municipal Corporation and not the Commissioner, Kolkata Municipal Corporation.

It has been submitted that the respondent no.3, the Executive Engineer (Civil), does not have a role to play in the matter and accordingly, there was no requirement of impleading the respondent no.3 as party in the writ petition.

The Special Officer (Building) whose order was carried in appeal has not been made a party.

The heirs of Satish Chandra Majumder, person responsible for making construction has neither been impleaded in the appeal before the Tribunal nor in the present writ petition.

It has been submitted that the prayer of the writ petition is also not in proper form.

The order passed by the Tribunal is a nullity as all the heirs of the person responsible for making construction were not parties in the appeal before the Municipal Building Tribunal.

The Court has considered the submissions made on behalf of the parties.

It appears from the order passed by the Municipal Building Tribunal that the private respondent Kajol Majumder was served with the summons. She initially appeared but thereafter chose not to contest the proceeding. The Tribunal passed order on 21st December, 2019.

The petitioner in the present writ petition sought for implementation of the same. The Court merely directed the Corporation to implement the said order.

The Court is of the opinion that the Special Officer (Building) whose order was carried in appeal is not a necessary party required for adjudication of the dispute in the present writ petition. The order passed by the Special Officer (Building) had already been examined and scrutinised by the Tribunal and necessary order has been passed.

If any person aggrieved by the order passed by the Tribunal chooses not to prefer any appeal or to challenge the same before a superior forum then the said order is liable to be implemented. The conduct of the applicant/private respondent in entering appearance before the Tribunal at the initial stage and thereafter not proceeding with the same implies that the private respondent took the matter very casually and failed to appreciate the consequence of her non-appearance.

The technical objection raised by the private respondent with regard to the manner in which the respondent no.2 has been described is also not accepted by the Court.

The order passed the Tribunal not being challenged before any competent forum has attained finality and ought to be implemented by the respondent authority.

As regards the prayer made in the writ petition, it is for the ends of justice, that the same may be modified.

The Court has passed order for implementation of the order passed by the Tribunal. The order passed by this Court on 21st June, 2022 is accordingly not required to be interfered with.

After hearing all parties on merits, the application for recalling stands dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)