

S/L 18
30.03.2022
Court No.6
SD

MAT 302 of 2022
With
CAN 2 of 2022

Md. Salauddin & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Arijit Bardhan
Mr. Biswajib Ghosh
Mr. Avirup Chatterjee

...for the Appellants.

Mr. Srijan Nayak
Mr. Subhrangsu Panda

...for the K.M.C.

Sk. Md. Galib
Mr. Abu Siddique Mallik

...for the Board of Auqaf.

Mrs. Sipra Mazumdar
Mr. Tapan Kumar Roy

...for the State.

Mr. Fazlul Haque
Md. Ghalib Rizwan

...for the Respondent No.11.

This appeal is directed against an order dated January 19, 2022 whereby the learned Single Judge adjourned the writ petition *sine die*.

The writ petitioners claim to be thika tenants in respect of the property in question. They say that they obtained permission from the thika controller for making construction on the land in question. Kolkata Municipal Corporation also granted permission for such construction. However, subsequently a claim was raised that the property is Auqaf property. Upon such issue being raised, the Kolkata Municipal Corporation restrained the writ petitioners from continuing with the construction. Being aggrieved, the writ

petitioners approached the learned Single Judge by filing WPA 13950 of 2021.

It was submitted before the learned Single Judge that subsequent to filing of the writ petition, the Mutwali of the Auqaf in question had approached the Auqaf Tribunal by filing a suit against the writ petitioners and an order of injunction has been passed against the writ petitioners restraining them from making construction. The learned Judge observed that the writ petition cannot be decided unless the proceedings before the Tribunal come to a conclusion and accordingly adjourned the writ petition sine die. Being aggrieved, the writ petitioners are before us.

We have heard learned counsel for the parties.

Learned advocate for the appellants/writ petitioners has urged that the Thika Controller has passed an order confirming that the writ petitioners are thika tenants in respect of the property in question. On the face of such an order, the Auqaf Tribunal could not have passed an order restraining the writ petitioners who are the defendants in the suit filed before the Tribunal, from making construction. Mr. Arijit Bardhan, learned advocate for the appellants also says that the suit before the Auqaf Tribunal is not maintainable.

We are not inclined to go into the merits of the case. Since the Mutwali of the concerned Auqaf estate has filed a suit before the Tribunal which is in seisin of the matter, we are of the view that the defendants in the suit who are the appellants before us, should approach the Tribunal and

argue their case before the Tribunal. We are told that April 7, 2022 has been fixed as the next date for hearing of the injunction application. The present appellants will be at liberty to appear before the Tribunal on that date and urge all points that they are entitled to urge in law.

Mr. Bardhan says that his clients should be permitted to urge the point of maintainability of the suit before the Tribunal. If his clients are entitled to do so in law, they would be at liberty to do so and no specific liberty is necessary from us.

We request the Tribunal to bring the proceedings before it to an early conclusion without granting unnecessary adjournments.

We have not gone into the merits of the respective contentions of the parties. The Tribunal shall decide the matter before it without being influenced by any observation in this order.

Since we have not called for any affidavit, the allegations made in the stay petition are deemed not to have been admitted by the respondents.

The appeal and the stay application are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Kausik Chanda,J.)

(Arijit Banerjee, J.)