

22.09.2022
Item No.15
Court No.6.
S. De

**M.A.T. 1559 of 2022
with
I.A. No. CAN/1/2022**

**Wakil Ahmed & Anr.
Vs
The Kolkata Municipal Corporation & Ors.**

Mr. Subhrangsu Panda,
Mr. Tirthankar Mukherjee,
Ms. Madhurima Sarkar,
Mr. Munshi Asqiq Elahi,
Ms. Sucheta Pal,
...for the appellants.
Mr. Tarique Quasimuddin,
Mrs. Zainab Tahur,
...for the respondent no.8.
Mrs. Koyeli Bhattacharyya,
Ms. Iva Bhattacharyya,
...for the K.M.C.

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

Affidavit-of-service filed in Court be kept with the records.

A judgment and order dated September 16, 2022 whereby the writ petition of the appellants being W.P.A. 20954 of 2022 was dismissed, is the subject matter of challenge in this appeal.

Admittedly, the appellants have made a G+3 storied construction without obtaining any sanctioned plan from the Kolkata Municipal Corporation (K.M.C.).

We say admittedly, because before the learned Single Judge the appellants admitted this fact.

A stop work notice was issued under Section 400(1) of the Kolkata Municipal Corporation Act on the complaint made by the private respondent in this appeal. Subsequently, self demolition orders were issued to the appellants. Upon their failure to comply with such order, notice under Sections 554 and 546 of the Kolkata Municipal Corporation Act has been issued to them.

Before the learned single Judge the appellants took various pleas including that the order of the demolition was never served upon them. Hence, they could not challenge such order before the appellate forum.

The learned Single Judge considered all submissions made on behalf of the parties and deprecated the making of constructions without obtaining sanction from the Corporation. In our view, the learned Judge rightly deprecated such conduct. Persons who make constructions without obtaining necessary permission from Kolkata Municipal Corporation should be dealt with sternly.

We do not find any apparent infirmity in the order under appeal.

However, learned advocate for the appellants says that there are provisions which permit

regularization of a construction which has been made without obtaining prior sanction from the permission granting authority. He further says that there is a provision for statutory appeal. On humanitarian grounds, a little time should be granted to the appellants to approach the appellate forum with a statutory appeal for whatever it is worth.

Purely on humanitarian grounds, and this will not be treated as a precedent, we direct the Corporation to stay its hands for a period of six weeks from date. In the mean time the appellants will be at liberty to approach the appellate authority within a week from date. If so approached, the appellate authority which is the Municipal Building Tribunal shall allow the appellants to file the appeal even without certified copy of the order of demolition. The appellants will be entitled to pray for interim relief before the Tribunal and such prayer shall be decided by the Tribunal in accordance with law. The Tribunal shall decide the appeal in accordance with applicable rules as expeditiously as possible and preferably within a period of three months from the date of filing of the appeal. If the appeal is not filed within a week from date, this order shall automatically stand dismissed. The Tribunal shall give opportunity of hearing to all concerned parties including the private respondent in this appeal. We make it clear that the

Tribunal shall take a decision without being influenced by any observation made in this order. We have not gone into the merits of the appellants' case.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

M.A.T. 1559 of 2022 is, accordingly, disposed of along with the application being I.A. No. CAN 1 of 2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)