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C.O. 3242 of 2022

**Shri Prasanta Mukherjee
Vs
The Municipal Commissioner, K.M.C. & Ors**

Mr. Mainak Bose,
Mr. Ramesh Chandra Prusti,
Mr. Binay Kumar Upadhyay,
Ms. Mahuya Ghosh,
Mrs. Soumi Gupta,

... For the petitioner.

Mr. Alok Kumar Ghosh,
Mr. Swapan Kumar Debnath,

... For the opposite party No. 1/K.M.C.

Mr. Biswajit Sau,

... For the opposite party Nos. 3 and 6.

While assailing the impugned orders dated 12.11.2021 and 8.7.2022 passed by learned Chairperson, Municipal Building Tribunal, Kolkata Municipal Corporation in B. T. Appeal No. 37 of 2019, Mr. Mainak Bose, learned advocate appearing for the petitioner, submits that there has been no adequate consideration given by the Municipal Building Tribunal, with regard to Section 5 application filed by the petitioner, at the time of filing application for restoration.

Mr. Bose further submits that during the pandemic, the appeal got dismissed on 12.11.2021 for default. The instant appeal, which got dismissed, was basically to challenge the demolition order, for the alleged unauthorised construction. Because of the surge

of the Covid-19, Mr. Bose clarifies that no effective steps could be taken, and ultimately upon gathering knowledge of such dismissal of appeal, filed an application for restoration on 3.2.2022, supported by an application under Section 5 of the Limitation Act.

There has been sufficient explanation offered as to why delay was caused in preferring the appeal within the period of limitation, Mr. Bose argues.

Incidentally, it is disclosed by Mr. Bose that as per order of this Court in reiteration of the order of the Apex Court, the limitation prescribed in any act was extended upto 28.02.2022.

The grounds offered in Section 5 application, according to Mr. Bose, have not been adequately considered leading to erroneous decision reached by this Tribunal, while making rejection of a prayer for restoration application.

Mr. Biswajit Sau, learned advocate appearing for the opposite party Nos. 5 and 6/complainant, disputes with the submission raised by the petitioner, alleging that technicalities should not be given precedence in the process of execution of demolition order, issued in the year 2019.

There has been an order passed by the Writ Court in WPA 17714 (W) of 2022, wherein Municipal Corporation has been directed to take steps for execution of the order of demolition dated 1.3.2019,

provided the same is not set aside/varied/stayed/modified by any Court of competent jurisdiction, Mr. Sau argues.

Mr. Alok Kumar Ghosh, learned advocate appearing for the K.M.C. supporting the order of the Building Tribunal submits that since there has been aspersion levelled against the regular functioning of the Building Tribunal even during Covid surge period, which is palpably lie, the Building Tribunal is not obliged to consider the application under Section 5 of the Limitation Act so as to condone the delay. It is thus further submitted by the learned advocate appearing for the K.M.C. that the grounds in Section 5 application are not at all convincing to condone the delay.

Upon perusal of the impugned order, it appears that during the pandemic, the appeal was dismissed for default. The restoration application was filed on 3.2.2022, being accompanied by an application under Section 5 of the Limitation Act.

Upon perusal of the impugned order, it appears that there has been no sufficient consideration of the grounds disclosed in Section 5 application, and as such non-consideration of the grounds by the Building Tribunal would itself make the impugned order not sustainable.

The impugned orders are thus set aside with a direction upon the Building Tribunal to hear out the

restoration application along with Section 5 application within eight weeks from the date of communication of this order to the Building Tribunal, providing sufficient opportunities of hearing to either of the parties to this case.

While ensuring hearing afresh, there should be hearing given to both the parties, including the complainant at whose instance the alleged violation came to light and pursuant to which there has been subsequent order of demolition passed in the year 2019.

Till decision of such application, there may not be any exercise undertaken for demolition as per order dated 1.3.2019 passed by the Special Officer (Building), Kolkata Municipal Corporation, without giving any hearing upon notice to the petitioner.

Parties are directed to make communication of this order to the Court below.

With this observation and direction, the revisional application stands disposed of.

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

(Subhasis Dasgupta, J)