

21.11.2022
Item No.10.
Court No.6.
AB

M.A.T. 1742 of 2022
With
IA CAN 1 of 2022
IA CAN 2 of 2022

Nicholas Warren Bird & Anr.
Vs
South City Apartment Owners' Association &
Others

Mr. Partha Sarathi Deb Barman,
Mr. Mrinal Das,
Mr. Raja Adhikarifor the Appellants.

Mr. Alok Kr. Ghosh,
Mr. Subhrangsu Pandafor the K.M.C.

Mr. Sanjib Kr. Mal,
Mr. Atanu Roychoudhury,
Mr. Pushan Majumdar,
Ms. Asmita Roychoudhury
.....for the Respondent No.7.

Mr. Ayan Dutta,
Mr. Bimalendu Das,
Mr. Shomrik Das....for the Respondent No.1 to 3.

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

Affidavit of Service filed in Court today be kept with the records.

In re : IA CAN 1 of 2022

This is an application for condonation of delay of 108 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2022 is, accordingly, disposed of.

In re : MAT 1742 of 2022, IA CAN 2 of 2022

This appeal is directed against a Judgment and Order dated April 7, 2022, whereby the writ petition of

the appellants was disposed of. No relief was granted to the appellants. Hence, this appeal.

The appellants say that they are residents of a flat in one of the Towers of South City Apartments located on Prince Anwar Shah Road, Kolkata. They say that the respondent no.7 herein is carrying on commercial activities from his flat, which is above the flat of the appellants. This is creating nuisance and is causing severe inconvenience and agony to the appellants. They say that they have made representations to the Kolkata Municipal Corporation (in short 'KMC') but in vain. Such representations have not yet been considered. KMC ought not to have granted Certificate of Enlistment in favour of the respondent no.7 to enable him to carry on business from a residential premises.

The submission made on behalf of the appellants is strongly disputed by learned Advocate for the respondent no.7. He says that the respondent no.7 is a Member of the Parliament and not carrying on any commercial activity from the premises in question.

The learned Judge recorded the submission made on behalf of the KMC to the effect that it is not the duty of KMC to ascertain whether the premises in question could be used for commercial activities. The other conditions for grant of trade licence having been satisfied, trade licences were issued in favour of the respondent no.7. The learned Judge observed that the

dispute between the parties is private in nature. At the highest, the respondent no.7 may have flouted Rule 40 of the Rules of the Owners' Association. The remedy of the writ petitioners/appellants would lie before a Civil Court or they may approach the Association for taking appropriate steps. Accordingly, the learned Judge disposed of the writ petition without granting any relief to the writ petitioners.

We have heard learned Counsel for the parties. In principle, we see no infirmity in the order of the learned Single Judge. Hence, we do not interfere with the same. However, since the appellants have raised a grievance in respect of grant of Certificate of Enlistment to the respondent no.7, we grant them liberty to make a comprehensive representation to the Chief Manager, Licence Department, Kolkata Municipal Corporation within a fortnight from date. If such representation is made, the same shall be disposed of by the Chief Manager, Licence Department, by passing a reasoned order, in accordance with law and the relevant Rules, within a period of eight weeks from the date of receipt of the representation, after granting an opportunity of hearing to all concerned parties including the appellants herein, the Owners' Association and the respondent no.7. The order so passed shall be communicated to the parties within a week from the date of the order.

We have not gone into the merits of the disputes between the parties. If a representation is made to the Chief Manager, Licence Department, within the time period indicated above, the same shall be disposed of in accordance with law. All points are left open.

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

M.A.T. No.1742 of 2022 is, accordingly, disposed of along with IA CAN 2 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)