

15.12.2022
Item No.02
Court No.6.
S. De

**M.A.T. 1982 of 2022
with
I.A. No. CAN/1/2022**

**Amrit Kumar Mondal @ Amrita Kr. Mondal.
Vs
The Kolkata Municipal Corporation & Ors.**

Mr. Sanjib Kr. Mukherjee,
Mr. Prasenjit Mukherjee,
Md. Shakir,
...for the appellant.
Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya,
...for the K.M.C.

This appeal is preferred against a judgment and order dated December 9, 2022 whereby the appellant's writ petition being WPA 27327 of 2022 was dismissed.

It appears that the appellant has constructed a three-storied structure at premises no. B/IB/H/15, Umakanta Sen Lane, Ward No.4, Borough-1. It further appears that no sanctioned plan was obtained by the appellant for making such construction.

The Executive Engineer of Kolkata Municipal Corporation passed an order for demolition of the building on August 10, 2022. The appellant challenged such order before a learned Single Judge of this Court by filing W.P.A. 20480 of 2022. The learned Single Judge disposed of the said writ petition by passing the following directions :-

“It appears from records that the order impugned is an appealable one. The petitioner intends to prefer an appeal against the same. Time period for preferring appeal is 30 days from the date of the order.

Though it appears that the time within which the appeal ought to have been preferred before the appellate forum is over, but for ends of justice a fortnight’s time is granted for preferring the appeal.

The order impugned dated 10th August, 2022 is accordingly, stayed till 30th September, 2022.

In the event the petitioner is unable to obtain an order of stay within 30th September, 2022, it will be open for the Kolkata Municipal Corporation to take steps in accordance with law for implementation of the impugned order.

The appellate forum is requested to consider the application for stay, on merits, if filed by the petitioner within a period of two weeks from date and pass necessary orders therein without insisting upon filing of the certified copy of the impugned order.

The petitioner is directed to file the certified copy of the impugned order as soon as the same made is available by the department.”

Pursuant to such leave, the appellant filed B.T.

Appeal No.189 of 2022 before the Municipal Building

Tribunal. By an order dated December 7, 2022, the Tribunal dismissed the appeal.

Notice under Sections 544 and 546 of Kolkata Municipal Corporation Act 1980 was affixed on the outer wall of the premises in question on December 8, 2022, fixing December 9, 2022 as the date for demolition of the unauthorized construction.

The appellant immediately approached the learned Single Judge in the present round of litigation by filing W.P.A. 27327 of 2022 challenging the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act. It was submitted before the learned Judge that some breathing time ought to have been given to the writ petitioner to challenge the order passed by the Municipal Building Tribunal.

The learned Judge dismissed the writ petition by observing inter alia, as follows :-

“The submission of the petitioner that a breathing time ought to have been given to challenge the order passed by the Tribunal cannot be accepted by the Court. It was not open for the petitioner to raise construction without obtaining a prior sanction. The petitioner took the risk of making construction and presently intends to defend the said unauthorized construction.

The men and agents of the Corporation have promptly acted upon

the order passed by the learned Tribunal. Trying to stop the ball which has already been set in motion will demoralise the officers who act with promptitude. It will neither be proper nor legal to hold on to a structure constructed unauthorizedly without obtaining sanction from the Corporation.

The Court ought not to interfere with the same to maintain the rule of law.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned advocate for the appellant/writ petitioner submits that the Corporation has acted with undue haste. The Tribunal dismissed the appeal on December 7, 2022. The Corporation issued the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act on the very next date. There was no reason for the Corporation to act with such break-neck speed. An opportunity ought to have been given to the appellant to challenge the order of the Municipal Building Tribunal before the appropriate forum.

We have not called upon Mr. Panda, learned advocate representing the Corporation to make submission.

We see absolutely no infirmity in the order under appeal. Indeed, reckless people who do not obey the law, deserve no sympathy. Unauthorized

constructions have become the bane of our city. Such illegal constructions must be discouraged at all costs. If a person makes a construction without obtaining proper sanction from the concerned authority, he must be ready to suffer the consequences thereof. We are amazed to find that the appellant constructed a three-storied building having an area of more than eleven thousand square feet without obtaining permission from the sanctioning authority. We are happy to see that the Corporation has acted promptly. We see no reason to interfere with the order of the learned Single Judge.

The appeal being MAT 1982 of 2022 accordingly fails and is dismissed along with the connected application being I.A. No. CAN/1/2022.

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.)