

IA NO:GA/1/2022
IN
APOT/228/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

ASHOK SINGH RAJPUT & ANR.
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 20TH DECEMBER, 2022.

Appearance:

Mr. Raghunath Chakraborty, Advocate
Mr. Supratik Shyannal, Advocate
Mrs. Sonali Ghosh Basu, Advocate
Ms. Sonali Sengupta, Advocate
...for appellant

Mr. Ranajit Chatterjee, Advocate
Mr. Arijit Dey, Advocate
...for KMC

The Court : By consent of the parties, the appeal and the application are taken up for hearing.

This appeal is directed against a judgement and order dated November 21, 2022, whereby the appellants' writ petition being WPO/2916/2022 was dismissed.

The appellants claim to have purchased a flat in a multi-storied building and are in possession thereof. The appellants carry on business from the said flat.

It appears that the promoter of the building, in deviation from the sanctioned plan, converted a garage/car parking space into a flat and sold the same to the appellants herein. The appellants say that they were not aware of such deviation from the sanctioned plan.

It appears that proceedings were initiated before the Special Officer (Building) which culminated in an order against the promoter. The promoter preferred an appeal before the Municipal Building Tribunal. After pursuing the appeal for some time, for reasons best known to the promoter, the appeal was withdrawn. The appellants say that they have become aware of all these things recently.

The appellants have now received a notice of demolition from the Corporation. The appellants' only prayer is that they may be permitted to approach the Municipal Building Tribunal with an appeal against the order of the Special Officer (Building). The appellants say that unless this Court condones the delay, the Tribunal may not accept the appeal.

Mr. Chatterjee, learned advocate appearing for Kolkata Municipal Corporation, has pointed out certain provisions in the Kolkata Municipal Corporation Act, 1980 which would seem to be staring at the face of the

appellants. However, Mr. Chatterjee, in his usual fairness, leaves the matter to the Court's discretion.

We are of the view that nobody will suffer any prejudice if the appellants are granted an opportunity of approaching the Municipal Building Tribunal.

Accordingly, we permit the appellants to approach the Municipal Building Tribunal with an appeal against the order of demolition passed by the Special Officer (Building) within three weeks from date. If within such period the appellants prefer an appeal against the demolition order, the Tribunal shall consider the same on merits without going into the question of delay or limitation and shall decide the same in accordance with law and the applicable Building Rules and Regulations within a period of three months from the date of receipt of the appeal observing the principles of natural justice.

We make it clear that we have not gone into the merits of the case at all. The Tribunal, if approached by the appellants, shall decide the appeal purely on merits in accordance with law without being influenced by any observation in this order or in the order of the learned Single Judge, which is under challenge before us.

No coercive action be taken against the appellants by the Corporation authorities till the disposal of the appeal by the Tribunal. In the event the

appellants fail to approach the Tribunal within three weeks, as indicated above, the Corporation will be free to take any action in accordance with law.

The order under challenge is set aside.

The appeal and the connected application are accordingly disposed of.

Since we have not called for affidavits, allegations made in the application are deemed not to have been admitted by the appellants.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)