

26.04.2023
Item No.6.
Court No.6.
AB

**M.A.T. 52 of 2023
With
I A CAN 1 of 2023**

**President, Golf Towers Residents Welfare
Association
Vs
Kolkata Municipal Corporation & Ors.**

Mr. Chayan Gupta,
Mr. Saptarshi Kr. Mal,
Mr. Kausik De,
Mr. Roshan Pathak ...for the Appellant.

Mr. Subham Banerjee,
Ms. Sweta Sharma,
Mr. Chandrachur Biswas
.....for the Respondent No.6.

Mr. Alok Kr. Ghosh,
Mr. Achintya Kr. Banerjee,
Mr. Tarun Chatterjee for the KMC.

Mr. Deepan Kr. Sarkar,
Mr. Dinabandhu Dan,
Ms. Shruti Agarwalfor the Respondent No.4.

Written Instructions received by learned Advocate for the appellant from their client, be kept with the records.

The appellant had approached the learned Single Judge challenging an order dated June 29, 2005, passed by the Special Officer (Building), Kolkata Municipal Corporation holding, that no demolition order is required to be passed in respect of the construction that was impugned by the writ petitioner and that the person responsible may have the

construction regularized upon satisfying certain conditions.

The learned Judge observed that an order passed under Section 400(1) of the KMC Act, 1980 is an appealable order under Subsection (3) of Section 400. The order passed under Section 416 of the 1980 Act pertaining to change of user is also an appealable order under Section 416(6) of the KMC Act, 1980. Learned Judge disposed of the writ petition with the following observation:

“Since the order is appealable before the Municipal Building Tribunal, this Court is not inclined to exercise its powers under Article 226 of the Constitution of India and the petitioner is left free to approach the appropriate forum in accordance with law.”

We have heard learned Counsel for the parties. There is no dispute that the order of the Special Officer (Building), which was impugned before the learned Single Judge in the writ petition, is an appealable order. Statutory appeals have been provided for in Section 400(3) and 416(6) of the 1980 Act. We are of the view that given the nature of disputes between the parties, the statutory appeal will be a more efficacious remedy for the appellant herein. The Writ Court is not well equipped to decide factual disputes. We are of course conscious that existence of an alternative remedy is not a bar to the maintainability of a writ petition. It is entirely upto the discretion of a learned Judge as to whether or not to entertain a writ petition,

when an alternative remedy is available to the writ petitioner, which is an effective one. However, in the facts and circumstances of this case, we are of the view that the learned Single Judge rightly declined to exercise the high prerogative writ jurisdiction and relegated the parties to the appropriate forum.

Accordingly, we do not find any reason to interfere with the order impugned. However, if the appellant approaches the Municipal Building Tribunal within a period of four weeks from date with an application for condonation of delay, given the pendency of the writ petition and the appeal, we are sure that the Tribunal will condone the delay and decide the appeal on merits observing the principles of natural justice.

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

M.A.T. 52 of 2023 is, accordingly, disposed of along with CAN 1 of 2023.

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.)

