

01.02.2023
Item No. 01
Court No.6.
S. De

M.A.T. 146 of 2023
with
I.A. No. CAN 1 of 2023

Abdul Nadeem.
Vs
The Kolkata Municipal Corporation & Ors.

Mr. Raghunath Chakraborty,
...for the appellant.
Mr. Gurudas Mitra,
Ms. Suranjana De Sarkar,
...for the K.M.C.

This appeal is directed against a judgment and order dated January 30, 2023, whereby the appellant's writ petition was dismissed by the learned Single Judge.

It appears that the Executive Engineer (C)/Building/Borough-VI passed an order dated February 2, 2022, directing the appellant/writ petition to demolish certain unauthorized structure failing which, the Corporation would demolish the same and recover costs from the appellant.

The appellant preferred an appeal against such demolition order before the Municipal Building Tribunal some time in February 2022. The appeal was dismissed by the Tribunal on January 16, 2023. Thereupon a notice was issued by the Executive Engineer under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980, on January 17,

2023. By the said notice, the appellant was informed that the Assistant Engineer (Civil) of the Corporation shall enter into the concerned premises with necessary assistants and workmen on January 31, 2023, for demolition of the unauthorized structure.

Challenging the notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980, the appellant approached the learned Single Judge.

The learned Single Judge noticed that the appellant often absented himself from the hearing before the Executive Engineer as also from the hearing before the Tribunal. The learned Judge noted that the appellant as the person responsible, by order dated February 16, 2022, was directed by the Tribunal to issue notice with copy of the Memorandum of Appeal to the respondents by registered post with A/D as well as by process. The appeal was fixed on March 21, 2022 for admission.

The learned Judge went through the orders passed by the learned Tribunal on March 21, 2022, April 28, 2022, June 13, 2022, July 13, 2022, August 17, 2022, September 13, 2022, November 2, 2022, December 6, 2022, January 2, 2023 and the order dismissing the appeal on January 16, 2023.

The learned Judge was of the view that the appellant did not prosecute the appeal with any degree of diligence or seriousness. Accordingly, the appeal

was dismissed for non-compliance of the Tribunal's order for service of notice on the respondents in the appeal. The learned Judge observed that the Corporation, after dismissal of the appeal, took steps for issuance of notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980, so that the demolition order which was passed way back on February 2, 2022, may be implemented. The learned Judge was of the opinion that there was nothing wrong on the part of the Corporation. Accordingly, the writ petition was dismissed. Hence, this appeal.

We have heard learned counsel for the parties. We understand that a building plan was sanctioned in favour of the appellant for construction of a G+4 storied building along with open space. The appellant has constructed one full extra floor and also has made construction on the open space.

Be that as it may, we are not concerned with the merits of the case. The appellant preferred an appeal against the demolition order passed by the Executive Engineer. The appellant took practically no steps for hearing of the appeal. Notice also was not served on the respondents. It appears that the appellant was interested in keeping the appeal pending so that the demolition order may not be given effect to. He did not even file a stay petition. We do not find any unreasonableness on the part of the Tribunal in

dismissing the appeal on January 16, 2023. Although the Tribunal may have recorded in the dismissal order that the appeal was pending for more than one year, the same is an obvious error. The appeal was pending for about eleven months, which is bad enough. Recalcitrant or indolent litigants who file legal proceedings for oblique purpose and not with any real intent of prosecuting the same do not deserve any sympathy from a Court of equity.

We find absolutely no infirmity in the order of the learned Single Judge impugned before us. It is a well-reasoned, well-informed, perfectly logical and justifiable order. The order warrants no interfere.

Accordingly, the appeal being MAT 146 of 2023 is dismissed along with the application being I.A. No.CAN 1 of 2023.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)