

20-02-2023
Item No.7
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.4178 of 2023
Md. Dasnish @ Mohammad Danish
-vs-
The Kolkata Municipal Corporation & Ors.

Mr. Saurabh Guha Thakurata	
Mr. P. Bharara	
Ms. Tapati Das Gupta	
Ms. Nilanjana Sarkar	
Mr. Bikash Kumar Roy	...for the petitioner
Mr. Gopal Chandra Das	
Ms. Sabnam De	...for the Corporation

The petitioner in this writ petition praying for setting aside an order dated February 10, 2023 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation in B.T. Appeal No.208 of 2022 rejecting the appeal on the grounds of limitation.

The appeal was preferred before the tribunal challenging the order dated December 10, 2021 passed by the Special Officer (Bldg), KMC directing demolition of the unauthorised construction above G+3 storied building within fifteen days from the date of communication of this order failing which action of demolition would be taken by department and cost would be recovered from person responsible.

The learned tribunal has observed in its order dated February 10, 2023 that the appellant claimed to be under medical treatment from January 15, 2022 to October 21, 2022. The medical prescription relied upon by the appellant does not bear the signature of the appellant. The certificate was issued on October 22, 2022 but the appeal was filed on

December 5, 2022. The reason why the appellant waited for further one month to file the appeal is unknown. There has been delay of 359 days in preferring the appeal.

The learned tribunal has perused in details the medical prescription relied upon by the appellant, the petitioner herein, and opined that the application under section 5 of the Limitation Act was liable to be rejected and was accordingly rejected.

According to the provision of the Kolkata Municipal Act, 1980, any person aggrieved by an order of demolition may prefer an appeal before the appellate forum within thirty days of the order. In the present case, there has been delay of 359 days. The period of delay not being satisfactorily explained, the tribunal rejected the same.

Learned advocate representing the petitioner has fairly submitted before this court that there is no sanctioned plan for construction of the 4th and 5th floors of the building in question.

As per law, construction can be made only after obtaining the sanctioned plan and not prior thereto. In absence of a proper sanctioned plan, it was not permissible for the person(s) responsible to make construction of additional floors.

The report of the Corporation mentions that the area of unauthorised construction is 1311.486 sq. metres.

The court does not find any infirmity in the order passed by the learned tribunal and hence refrains from exercising its jurisdiction in the matter.

The writ petition fails and is hereby dismissed.

No order as to costs.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J.]