

06.06.2023
Item No.07
Court No.6.
S. De

M.A.T. 349 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Prasanta Kumar Basu.
Vs
The State of West Bengal & Ors.

Mr. Soumitra Mukherjee,
Mr. Sayantan Banerjee,
...for the appellant.
Mrs. Rupsha Chakraborty,
...for the State respondents.
Mr. Ujjal Ray,
...for the respondent no.13.
Ms. Sreyanshi Majumdar,
...for the respondent nos. 10,
11 & 12.
Mr. Tapas Kr. Adhikari,
Mr. Abhijit Ghosh,
...for the added parties.

By consent of the parties the appeal and the connected applications are taken up together for hearing.

In re : I.A. No. CAN/1/2023

This is an application for condonation of delay of one day in filing the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN/1/2023 is, accordingly, disposed of.

In re : MAT 349 of 2023 & I.A. No. CAN/2/2023

This appeal is directed against a judgment and order dated December 13, 2022, whereby the

appellant's writ petition being WPA 21316 of 2022 was disposed of.

The appellant approached the learned Single Judge with the grievance that the private respondent in the writ petition had made unauthorized construction. The Kolkata Municipal Corporation had passed an order for demolition of such construction. However, such demolition order was not being implemented.

The learned Judge noticed that the order of demolition was under challenge before the Municipal Building Tribunal in B.T. Appeal No. 110 of 2022 at the instance of the private respondent in the writ petition. An application for addition of party was also made before the learned Judge by the subsequent purchaser of the structure in question which had been found to be constructed unauthorizedly.

The learned Judge disposed of the writ petition with the following observations :-

“As it appears that a statutory appeal is pending consideration before the Municipal Building Tribunal being the appellate forum, accordingly, the parties are given liberty to ventilate their grievances before the said forum.

The Municipal Building Tribunal is requested to make an endeavour to conclude the appeal within June 30, 2023.

An application for addition of party has been filed by the subsequent purchaser of the structure which has been found to be constructed unauthorizedly.

The applicant will be at liberty to approach the Municipal Building Tribunal in the pending appeal along with appropriate application(s) highlighting their grievances. The Municipality Building Tribunal shall consider the application for addition of party and pass necessary order.”

Being aggrieved, the writ petitioner has come up by way of the instant appeal.

Learned advocate for the appellant/writ petitioner has produced before us a copy of an order dated March 13, 2023, passed by the Municipal Building Tribunal in B.T. Appeal No.110 of 2022. The operative portion of the said order reads as follows :

“That the B.T. Appeal No.110 of 2022 be and the same is dismissed for non-filing of the certified copy of the impugned order with a liberty to the Appellant to refilled this appeal on receiving the certified copy of the impugned order.”

We, therefore, see that the order of the learned Single Judge which is sought to be assailed before us, has worked itself out. The Tribunal has passed an

order dismissing the appeal, albeit for non-filing of the certified copy of the impugned order. The Tribunal had reserved liberty to the appellant in the Municipal Appeal to apply for restoration of the appeal upon obtaining certified copy of the impugned order. Mr. Mukherjee, learned advocate for the appellant, on instruction, says that no such restoration application has been filed till now.

In view of the above, today there is no impediment in implementing the demolition order. The Corporation is directed to implement its own order of demolition at the earliest and positively within four weeks from date since it has been found by the Corporation that the concerned structure is unauthorized. In the event, the Corporation Officers approach the jurisdictional Police Station for assistance in implementing the demolition order, the Officer-in-Charge of such Police Station shall extend all co-operations in that regard.

However, if the subsequent purchaser who desired to be added as a party before the learned Single Judge, has a right in law to approach the Municipal Building Tribunal, or any other forum, he would be at liberty to do so upon notice to the present appellant.

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

Accordingly, MAT 349 of 2023 is disposed of along with the application being I.A. No. CAN 2 of 2023.

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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)