

08.05.2023
Item No. 6.
Court No.6.
AB

M.A.T. 505 of 2023
With
I A CAN 1 of 2023
I A CAN 2 of 2023

Prabir Chandra & Anr.
Vs
The State of West Bengal & Others

Mr. Raghu Nath Adhikary,
Ms. Priyanka Saha ...for the Appellants.

Mr. Kamalendu Ghose,
Mr. Raja Ghosh ...for the State.

Mr. Swapan Kr. Nandi,
Mr. Debjyoti Ghosh
Mr. Sizan Nandifor the Respondent No.6/
Writ Petitioner.

Mr. Gautam Lahiri
....for the Respondent Nos.3, 4.

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

In re : IA CAN 1 of 2023

This is an application for condonation of delay of 20 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 505 of 2023, IA CAN 2 of 2023

Read order dated April 28, 2023. The report filed on behalf of the Municipality, be kept with the records.

Pursuant to the learned Single Judge's order, it appears that a hearing was held before the Board of

Councillors and an order of demolition has been passed in respect of the construction of the appellants herein.

The appellants say that there was an original sanctioned plan when the building was constructed. However, there is no revised sanctioned plan. Learned Advocate for the respondent no.6/writ petitioner disputes the submission that there was any sanctioned plan at all.

We are not inclined to enter into any factual dispute. Section 218(3) of the West Bengal Municipal Act, 1993, provides a statutory remedy for appealing against an order made by the Board of Councillors. The appellants being affected parties naturally would be entitled to take recourse to Section 218(3) of the 1993 Act. We leave all points open for the appellants to urge before the Appellate Authority. If an appeal is preferred against the order of demolition issued by the Board of Councillors, the Appellate Authority is requested to dispose of the same expeditiously without being influenced by any observation in this order.

For a period of four weeks from date, there will be an unconditional stay of the demolition order. If, in the meantime, the appellants are successful in obtaining an interim order from the Appellate Forum, then the stay order will continue for such period as the Appellate Authority may direct. Needless to say that the Appellate Authority shall decide the appeal

observing the principles of natural justice by granting opportunity of hearing to all concerned parties including the appellants and the writ petitioner herein.

If the appellants herein prefer statutory appeal against the demolition order and apply for interim order of stay, such application for interim order should be disposed of by the Appellate Forum within two months from the date of receipt of the application.

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

The order under appeal stands modified accordingly.

MAT No.505 of 2023 stands disposed of along with IA CAN 2 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.)