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15.05.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 11875 of 2023

**Avyaan Initiatives & Anr.
-versus
The Mayor, Kolkata Municipal Corporation & Ors.**

**Mr. Anindya Lahiri,
Mr. Prajnadeepta Roy,
Ms. Sohini Kundu.
...For the Petitioners.**

**Mr. Gopal Chandra Das,
Mr. Dwijadas Chakraborty.
...For KMC.**

Notice issued by the assistant engineer, building department, Borough-VII under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 dated 3rd May, 2023 is impugned in the present writ petition.

By the said notice the petitioners have been intimated that the men and agents of the Kolkata Municipal Corporation will enter the premises no. 3/1, R.K. Chatterjee Road, Ward No. 67, Borough-VII for demolition of the unauthorized construction on 15th May, 2023 as per the order of the Special Officer (Building) dated 2nd March, 2023 under Section 400(1) of the KMC Act, 1980.

Challenging the order of demolition, the petitioners preferred a writ petition before this Court being WPO 734 of 2023. The Court by order dated 30th March, 2023 was pleased to dispose of the writ petition by granting liberty to the petitioners to avail the benefit

under Section 400(3) of the Act before the appellate forum.

The Court directed that in the event the petitioners are unable to obtain any order setting aside/staying/modifying the impugned order under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 within 28th April, 2023, then it will be open for the men and agents of the Corporation to take necessary steps in the matter in accordance with law.

It appears that the petitioners preferred the appeal before the appellate forum being B.T. Appeal No. 83 of 2023 on 30th March, 2023. Date was fixed on 2nd May, 2023 for service return and A/D.

The petitioners thereafter filed a put up petition on 4th April, 2023 which was perused by the Learned Tribunal and the matter was fixed on 26th April, 2023 for S/R and A/D.

On 26th April, 2023, learned advocate for the petitioners being the appellants before the Tribunal and the learned advocate appearing for the Corporation were present.

Learned advocate appearing for the petitioners submits that as the private respondent remained unrepresented on the said date, the Tribunal was pleased to adjourn the matter till 18th May, 2023 for service returned and A/D.

The Corporation, as per direction passed by this Court on 30th March, 2023, issued the impugned notice on 3rd May, 2023 as the petitioners herein admittedly failed to obtain any order either staying or setting aside

or modifying the order of demolition passed under Section 400(1) of the Kolkata Municipal Corporation Act, 1980.

The petitioners submit that in the event the structure in question is demolished, then the appeal itself will be rendered infructuous and the petitioners will be left remediless.

It has been submitted that the petitioners, after the order was passed by this Court on 30th March, 2023, immediately preferred the appeal and thereafter took steps for hearing of the stay petition. The petitioners left no stone unturned to get the stay application heard, but the Learned Tribunal fixed the matter on 18th May, 2023.

Learned advocate appearing for the Corporation submits that the representative of the Corporation acted strictly in accordance with the direction passed by this Court.

After hearing the submissions made on behalf of both the parties and upon perusal of the materials on record it appears that, the petitioners were fairly vigilant to get the stay petition heard by the Learned Tribunal.

The Learned Tribunal, despite noticing that the High Court had granted stay of the demolition order till 28th April, 2023, ought to have taken steps for passing necessary order in connection with the demolition order. The Tribunal ought not to have fixed the matter on 26th April, 2023 just two days prior to the expiry of the interim protection given to the petitioners.

Even accepting that the Tribunal fixed the matter on 26th April, 2023, then necessary order ought to have been passed on the stay petition filed by the petitioners particularly because the stay was due to expire on 28th April, 2023.

The stay petition ought not to have been adjourned without either allowing or rejecting the prayer seeking interim protection in favour of the petitioners till 18th May, 2023 because by that time the interim protection granted by the Hon'ble High Court would have lapsed.

It goes without saying that the Tribunal ought to have appreciated the principle of the maxim *actus curiae neminem gravabit*, meaning thereby that the act of Court shall prejudice no man. Nobody should be allowed to suffer for the fault of the Court.

In the present case, though the petitioners took steps before the appellate forum in due time, but despite effort the petitioners were unable to get the stay petition heard by the Tribunal.

It was for the Tribunal to pass interim order or at least ad interim order upon consideration of the stay petition filed by the petitioners and ought not to have mechanically adjourned the matter till 18th May, 2023. It was also open for the Tribunal to reject the prayer of the petitioners so that the petitioners could have approached the higher forum. By keeping the application for stay pending the Tribunal restricted future course of action by the petitioners. In the meantime the Corporation sought to demolish the structure in question.

As the Court is, *prima facie*, convinced that there was no delay or laches on the part of the petitioners in acting in accordance with the direction passed by the Court and in spite of best effort the petitioners could not get the stay petition heard by the Learned Tribunal, accordingly, the Assistant Engineer, Building Department, Borough-VII, Kolkata Municipal Corporation who issued the impugned notice under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980 is directed to keep the said notice in abeyance till a decision is taken by the Tribunal.

The Tribunal is directed to consider the petition for stay filed by the petitioners and pass necessary order on 18th May, 2023.

In the event the private respondent remains unrepresented on 18th May, 2023, the Tribunal shall pass order after hearing the petitioners, the learned advocate appearing for the Kolkata Municipal Corporation and upon perusal of the materials already on record.

The Executive Engineer (Civil)/Building Department, Borough-VII is directed to immediately transmit all records in connection with the instant case before the Tribunal so that the stay petition can be effectively dealt with on 18th May, 2023.

The writ petition accordingly, stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)