

D/L
Item No. 05
20.09.2023
KOLE

**MAT 980 of 2023
With
IA CAN 1 of 2023**

**Abid Ali Hussain Tundawala
-Vs.-
The Kolkata Municipal Corporation & Ors.**

Mr. Payel Shome,

...for the appellant.

Mr. Atis Kumar Biswas,

...for the KMC.

In Re: CAN 1 of 2023 in MAT 980 of 2023:

This is an application for condonation of delay of 229 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2023 is, thus, allowed.

In Re: MAT 980 of 2023

By consent of the appearing parties, the appeal and the connected application are taken up for hearing together.

Although it appears that all the parties including the private respondents may not have received notice of this appeal, and only learned Advocate for the Kolkata Municipal Corporation (in short 'the KMC') appears, in view of the nature of the order that we propose to pass, we do not deem it necessary to defer the disposal of this application.

The appellant had approached the learned Single Judge alleging that the private respondent nos. 9 and 10 have made unauthorized construction.

The KMC submitted that pursuant to complaint lodged by the writ petitioner/appellant, the Department

lodged an FIR. Proceedings were initiated under Section 400 of the KMC Act, 1980. Hearing was conducted by the Special Officer (Building) and in compliance with the order passed by the Special Officer (Building), the persons responsible deposited the retention fees and the Department regularized the D-Sketch plan vide No. 01/Br-V/2021-22 dated May 11, 2021.

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

“An application was made for reconstruction of the old and the damaged staircase and two separate stair-head rooms over the existing staircase and lift well, lift lobby, lift machine rooms under Rule 3(2)(e) of the Kolkata Municipal Corporation Building Rules 2009 and under Section 410 of the Kolkata Municipal Corporation Act, 1980. After inspection, the department sanctioned reconstruction plan on January 10, 2022.

On further inspection it was found that the reconstruction work is going on as per the reconstruction sanctioned plan.

It appears from the report filed by the Kolkata Municipal Corporation that the alleged unauthorized construction has already been permitted to be retained upon payment of retention fees.

In the event, the petitioner is aggrieved by the said order of retention passed by the Special Officer (Building), it will be open for the petitioner to approach the appropriate forum for remedy.”

Being aggrieved, the writ petitioner has come before us by way of this appeal.

Learned Advocate for the appellant/writ petitioner says that the building is more than a hundred years old. Under the garb of making reconstruction, fresh construction

of two floors have been made. Such construction could not have been permitted to be retained. Any order of retention that KMC may have passed is not sustainable in law.

We find that the Competent Authority being the KMC has passed an order allowing retention of the impugned construction. The Court is not in a position to decide whether or not the KMC should have permitted retention of the impugned construction. If the appellant is aggrieved by the retention order, he has a remedy by way of statutory appeal under the relevant provisions of the KMC Act, 1980.

Learned Advocate for the appellant says that the appellant does not have a copy of the retention order. We direct KMC to supply a copy of the retention order to the appellant within a fortnight of receipt of such a request by the concerned officer in KMC from the appellant or his Advocate on record. Needless to say, the appellant would be free to take such legal steps as he may be advised, before the appropriate forum, in accordance with law.

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

The appeal is, accordingly, disposed of.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)