

July 4, 2023
Sl. No.13
Court No.19
s.biswas

CO 1706 of 2023

Kanon Bala Naskar and another
vs.
The Municipal Commissioner,
Kolkata Municipal Corporation and others

Mr. Dyutiman Banerjee
... for the petitioners
Mr. Swapan Kr. Debnath
Ms. Manisha Nath
... for the K.M.C.
Mr. Sabyasachi Chatterjee
... for the opposite party no.3

The revisional application is filed challenging an order dated March 30, 2023 passed by the learned Municipal Building Tribunal in Building Tribunal Appeal No.204 of 2022. By the order impugned, learned Municipal Building Tribunal rejected the application for stay filed by the petitioners.

It is submitted that the learned tribunal ought to have taken into consideration the specific contentions of the appellants therein, with regard to deposition of regularization fees in respect of the construction and also with regard to identity of the said premises. Without taking into consideration the aforesaid facts, the learned tribunal could not have rejected the application for stay of demolition.

Learned advocate for the petitioners submit that Demolition Case 02-D/XI/22-23 was initiated in respect of premises no.31, Pranabananda Road, Ward 110, Borough XI, although the premises which the authorities were actually proceeding against was

situated at 59, Brijji Road. Fees for regularization had been paid for regularization of the construction on the said premises.

These aspects do not find any consideration in the order impugned. Hence, the revisional application has been filed.

Mr. Chatterjee, learned advocate appearing for the opposite party no.3 submits that the statutory appeal cannot be availed of by a person who is suffering an order of demolition. The appellate forum cannot be misused. A person who does not have any sanction for construction, cannot take shelter of the provision of appeal. The learned technical member had already opined that the building had been constructed without sanction and should be demolished. No indulgence should be shown in respect of such illegal construction.

Mr. Chatterjee further submits that once an unauthorized construction has been detected on a land which was not assessed and in respect of which sanction had been granted, the appeal did not have any legs to stand on. The tribunal should not proceed further with the appeal after having decided the entire issue with regard to illegality in the construction while rejecting this application for stay.

Mr. Chatterjee further submits that the building which does not have any legal protection, having

been found to be unauthorized by the Special Officer (Building), cannot be protected by the appellate forum. No interference is called for.

Having considered the rival contentions of the parties, this court is of the view that right of appeal is a statutory right guaranteed to persons who had suffered orders of demolition. Such right cannot be taken away, unless the appeal is filed in contravention to the requirements of law. The person responsible for the unauthorized construction has a right to challenge the order of demolition. The Building Tribunal is constituted for hearing appeals of such nature.

Unless the demolition process is stayed, the appeal will become infructuous. The situation will become irreversible if the demolition is effected before the superior forum decides the appeal. The balance of convenience and inconvenience is in favour of granting a limited stay of the order of demolition. If the petitioners are successful in the appeal but the building is already demolished by the time the appeal is decided, the petitioner cannot be adequately compensated and the situation will become irreversible.

Whereas, in case the appeal fails, the stay will only delay the demolition, but the authority will not suffer serious prejudice on account of such delay.

Thus stay of the demolition order should be granted. The demolition order is stayed for a period of three months.

The learned tribunal shall dispose of the appeal upon hearing all the parties including the opposite party no.3. The Kolkata Municipal Corporation shall forward all the records within a period of ten days, if not already done, to the learned tribunal.

The order impugned is set aside. The appeal shall be decided independently.

This court has not gone into the merits of the findings of the Special Officer (Building).

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)