

D/L
Item No. 03
22.08.2023
KOLE

**MAT 1152 of 2023
With
IA CAN 1 of 2023**

**Md. Yaqub @ Md. Yaqub Ansari
-Vs.-
Abdul Kayum & Ors.**

*Mr. Suddhasatva Banerjee,
Mr. S. Panda,
Ms. I. Bhattacharyya,
Mr. A. Mitra,*

... for the appellant.

*Mr. Dipak Kumar Mookherjee,
Ms. Monalisa Dhar,*

... for the respondent no. 1.

*Mr. Suman Ghosh,
Mr. B. Dutta,*

.... For the State.

*Mr. Barin Banerjee,
Mr. F. Haque,*

... for the KMC.

Mrs. Indrani Chakraborty,

... for the respondent no. 6.

Mr. Ranajit Chatterjee,

... for the respondent no. 9.

Ms. Anindita Roy Chowdhury,

... Special Officer.

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

An order dated June 19, 2023, passed in a writ petition filed by the respondent no. 1 herein, being WPA 712 of 2023, is under challenge in this appeal.

The respondent no. 1/writ petitioner approached the learned Single Judge for a direction on Kolkata Municipal Corporation (in short 'the Corporation') to implement the demolition order issued by the Corporation on December 30,

2022, in respect of Premises No. 170/H/47, Keshab Chandra Sen Street, Kolkata.

The learned Judge called for a report from the Corporation. From the report it appeared that the Corporation had already carried out part demolition. By the impugned order, the learned Judge directed the Corporation to conclude the work of demolition as per the schedule fixed.

The present appellant is not a party to the writ petition. The appellant came up against the aforesaid order claiming to be an occupant of the building in question. An application for leave to appeal was filed since the appellant is not a party to the writ petition. We had allowed such application.

Before us, it was contended on behalf of the respondent no. 6 that nobody at all far less the appellant occupies any portion of the building in question. The building is half constructed. It is not habitable.

On the specific request made on behalf of the respondent no. 6, we had appointed a learned Advocate of this Court as the Special Officer to go and inspect the building in question and file a report before us. Such report has been filed. Presence of several persons in the said building has been noted by the Special Officer in her report. One of such persons is the present appellant.

The appellant says that he has preferred a statutory appeal before the Municipal Building Tribunal against the order of demolition dated 30 December, 2022, being BT Appeal No. 132 of 2022. An application for *interim* stay of operation of the demolition order has also been filed in that

appeal. We add the present writ petitioner and the respondent nos. 6 and 9 as parties to the said statutory appeal being BT Appeal No. 132 of 2023. The learned Advocate on record for the appellant in that statutory appeal shall carry out necessary amendment to the papers filed in that appeal and effect service of the amended appeal papers on the added respondents. All these will be carried out within two weeks from date.

The Tribunal is requested to take up the appeal and the stay application together and dispose of the same, in accordance with law, after affording an opportunity of hearing to all parties thereto including the added respondents or their authorized representatives, within a period of three months from the date of communication of this order by the Registry of this Court to the learned Presiding Officer of the Municipal Building Tribunal. The Registry shall immediately communicate this order to the Tribunal.

Till the Tribunal decides the appeal, no coercive step shall be taken in respect of the building in question. Needless to say, that if the statutory appeal is dismissed, the Corporation shall proceed to implement the demolition order in accordance with law.

We put on record that the learned Special Officer appointed by us has received her remuneration from the respondent no. 6. Learned Advocate for the writ petitioner says that the rent receipts produced and relied upon by the present appellant are manufactured documents. This is disputed by the appellant and the respondent no 9. The

respondent no. 9 says that he has issued the rent receipts. We are not inclined to go into those disputes. All points may be agitated before the Municipal Building Tribunal. We also put on record without expressing any opinion thereon, the submission made on behalf of the respondent no. 6 that neither the appellant nor the respondent no. 9 is a tenant under the respondent no. 6 in respect of the concerned building.

We have not gone into the merits of the disputes between the parties. The order of the learned Single Judge is set aside.

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

In view of this order, nothing survives in the writ petition being WPA 712 of 2023, which is disposed of treating the same as on day's list.

The appeal, the connected application and the writ petition are, 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.)