

28.11.2023
Sl. No. 63
Suman
Ct.No.24.

WPA 17601 of 2023

**Umar Badgujar and Ors.
Vs.
The Kolkata Municipal Corporation
and Ors.**

Md. Salahuddin
..for the petitioners

Mr. Sanjoy Bose
Mr. Priyankar Basu Mallik
..for the private respondent nos. 7 & 8

Mr. Biswajit Mukherjee
Mr. A. K. Biswas
..for the KMC

Supplementary affidavit filed on behalf of the petitioner in Court today is taken on record. Copy of the same has been circulated to the parties in Court.

The petitioners are aggrieved by the order passed by the learned Tribunal rejecting their application for stay. The appeal is, however, pending final disposal before the Tribunal.

The Corporation has filed a report before this Court clearly mentioning that the structure in question is unauthorized.

The petitioners contend that if the learned Tribunal does not pass an order of stay for a limited period, the appeal itself will be rendered infructuous.

It appears that the Tribunal has observed that, as per the law of the land under no circumstances, can the Tribunal stay the order of demolition of the structure because, admittedly, the appellants do not have title and interest in the property in dispute. The structure requires sanction from the Corporation and also permission from the Corporation for erection.

The aforesaid observation implies that the Tribunal applied its mind and rejected the application for stay filed by the petitioners herein.

As the issue is with regard to a structure which has allegedly been constructed without any sanction /permission from the Corporation, accordingly the entire issue is required to be decided by the Tribunal.

If the cause of action for filing the matter before the Tribunal gets extinguished during the pendency of the appeal, then no purpose will be served by keeping the appeal pending.

In view of the above, the Tribunal is requested to proceed with the hearing of the pending appeal and decide the same as expeditiously as possible, preferably, within a period of three months from the date of communication of this order.

The impugned order rejecting the application for stay of the petitioner dated 30th June, 2023 is directed

to be kept in abeyance till the appeal is finally decided by the Tribunal.

It is made clear that this Court has not entered into the merits of the case and it will be open for the Tribunal to decide the appeal on merits.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)