

06.10.2023  
Court No. 19  
Item no.05  
CP

C.O. No. 2948 of 2023  
With  
CAN No. 1 of 2023  
(not in the file)

Sailesh Bardhan  
Vs.  
North Dumdum Municipality & ors.

Mr. Partha Pratim Roy  
Mr. Shahzad Noor Thander

... for the Petitioner.

Mr. Sandip Ghosh  
Mr. Sudarsan Roy

... for the opposite party nos. 1 & 2.

This revisional application arises out of an order dated August 18, 2023, passed by the learned Civil Judge, Bidhannagar in Municipal Appeal No. 7 of 2023.

By the order impugned, the learned court below rejected an application for extension of the order of stay. A limited stay had been granted by the learned court, restraining the Chairman, North Dum Dum Municipality from executing the order of demolition. The petitioner prayed for extension. The learned court observed that there was an order of this court passed in WPA No. 8773 of 2023 directing the municipal authorities to demolish the property if the petitioner failed to demolish the same. The petitioner had admitted in the proceeding before the High Court

that there was construction of a brick built room measuring 15 ft. x 15.5 ft. = 232.5 sq. ft area covering the roof with GI sheet. The learned lower court was of the view that the order passed in the writ petition had been suppressed. The ad-interim order of stay was not extended.

According to Mr. Roy, learned advocate for the petitioner, the construction of the GI sheet was within the permissible limit.

The order of this court in the writ petition was passed considering the demolition order and the submissions of the parties. Yet, there is a provision of a statutory appeal against an order of demolition. Such right cannot be taken away by order of court. The petitioner has the right to prefer an appeal. Whether he will be successful in the appeal or not will be decided by the appellate forum, i.e, the learned Civil Judge (Junior Division), Bidhannagar.

This court is of the view that unless the municipal authorities are stopped from taking coercive steps, the situation will become irreversible by the time the appeal is disposed of. If the demolition takes place during the pendency of the appeal or before the appeal is heard, but the petitioner succeeds in the appeal, the petitioner cannot be put back in the original position.

Under such circumstances, in order to avoid multiplicity of proceedings and taking care of the balance of convenience and inconvenience, this court directs that no coercive steps shall be taken by the municipality till the appeal is disposed of.

However, it is made clear that the municipal appeal must be disposed of within a month from the reopening of the court after the puja vacation mandatorily, without granting any unnecessary adjournments.

With regard to the pendency of an application under Section 5 of the Limitation Act, this court is of the view that the same was inadvertently filed. A statutory appeal under the relevant law, does not prescribe any limitation. The order of demolition was passed on April 28, 2023 and the appeal was filed on July 28, 2023, which was within a reasonable period. There cannot be any question of condonation of delay in filing the appeal.

The application under Section 5 is, thus, disposed of without any orders. The appeal shall be heard on its own merits.

The revisional application is disposed of. Accordingly, the connected application, if any, is also disposed of.

Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**