

1.
15-09-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 1812 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023**

**Sher Ali & Anr.
Vs.
Maqsood Alam & Ors.**

Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra

... For the Appellants.

Mr. Alak Kumar Ghosh,
Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya

... For K.M.C.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag

... For the State.

Re : CAN/1/2023

The applicants pray for leave to appeal against an order dated September 05, 2023 passed in WPA 8476 of 2022, filed by the respondent no.1 herein. By the said order, which is interim in nature in the sense that the writ petition is still pending before the learned Single Judge and has been directed to be listed on September 21, 2023, the learned Judge has called for an explanation from Kolkata Municipal Corporation authorities as to why demolition of the concerned unauthorized structure has not been carried out within the time limit specified by the Court.

The applicants are not parties to the writ petition. They say that they are interested in the concerned construction and were in occupation

thereof. They have been shifted to another place by the owners/developers with a promise to rehabilitate them in the newly constructed building. They are parties interested and aggrieved by the demolition of the concerned structure. They should be allowed to challenge the learned Single Judge's order.

We take a lenient view and permit the applicants to present the appeal. CAN 1 of 2023 is, thus, disposed of.

Re : MAT/1812/2023 & CAN/2/2023

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

The appellants say that they were not aware of the demolition order passed by Kolkata Municipal Corporation. Only when the demolition activities started, they came to know of the order. They reside elsewhere and not in the building which is now being demolished by the Corporation. They have a right to prefer an appeal against the demolition order before the Municipal Building Tribunal under Section 400(3) of the Kolkata Municipal Corporation Act, 1980. The demolition activities are being carried-on on a day-to-day basis. The demolition should be stayed and they should be allowed to challenge the demolition order before the Tribunal.

We have not called upon the respondents to make submission.

We see that the demolition order was passed by the Corporation on November 23, 2022. From a report filed by the concerned Assistant Engineer and Executive Engineer before the learned Single Judge, it

appears that first demolition of the impugned structure took place on November 30, 2022 and December 01, 2022.

The learned Single Judge, by an order dated July 04, 2023, had directed the Corporation to conclude the demolition work by August 31, 2023.

On September 05, 2023, i.e., the date on which the impugned order was passed, a report was filed before the learned Single Judge indicating that the next date of demolition is September 12, 2023. No reason was furnished as to why the demolition was not completed by August 31, 2023. Accordingly, the learned Judge called for an explanation from the Corporation.

We are told that demolition activity is going-on on day-to-day basis. We make no observation as to whether or not the appellants have a right to prefer statutory appeal under Section 400(3) of the KMC Act. Mr. Ghosh, learned counsel, representing the Corporation, says that the appellants do not have such right as they are not “persons responsible” for the impugned construction and/or not connected with the impugned construction directly or indirectly in any manner. At best, the appellants are claiming tenancy right in respect of the impugned construction. Tenants do not have any right of hearing or right of appeal against demolition order. Mr. Ghosh relied on a Division Bench judgment of this Court in the case of **Ram Awatar Agarwal & Ors. Vs. Corporation of Calcutta & Ors.**, reported at **AIR 1982 Calcutta 314**.

We do not go into the above questions. We are not satisfied that the appellants have any lawful right,

title or interest in respect of the concerned building or any portion thereof. The appellants sought to rely on copies of their Aadhaar Cards and copies of rent receipts. The Aadhaar Cards must have been issued sometime in the year 2012 or thereabout. Although the Aadhaar Cards show the address as that of the present building in question, they do not establish that the appellants have been residing in the concerned building in recent times or they have any lawful interest in respect of the building or any portion thereof. The so-called rent receipts are highly suspect documents and in any event, pertain to the years 2018-2019. Nothing contemporaneous has been produced to try and demonstrate that they have any manner of lawful right or interest in respect of the concerned building.

Learned advocate for the appellants places reliance on an order dated June 28, 2023 passed by this Court in MAT 1152 of 2023 to buttress his submission that a breathing space should be granted to the appellants enabling them to approach the Municipal Building Tribunal with an appeal against the demolition order. The facts of that case were completely different from the facts of the present case. In that case, a Special Officer appointed by us, visited the premises in question and found persons in occupation thereof. Accordingly, we had granted breathing space to such occupants to approach the appropriate forum challenging the demolition order. However, in the present case, as we have indicated above, the appellants have not been able to show that they were in occupation of the building in question in the recent past.

For the reasons aforestated, we are not inclined to entertain this appeal, which, accordingly, is dismissed along with the connected application.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)