

01. 04.12.2023
Court No.6
Tanmoy Ghosh

MAT 2245 of 2023

**Abu Soud Molla
-Versus-
The Kolkata Municipal Corporation & Ors.**

**With
IA No: CAN/1/2023**

Mr. Indrajit Bhattacharjee, Adv.

...for the appellant.

Mr. Alok Kr. Ghosh, Adv.,
Mr. Subhrangsu Panda, Adv.

...for the Kolkata Municipal
Corporation.

Mr. Anirban Ray, Ld. GP,
Mr. Biswabrata Basu Mallick, Ld. AGP,
Ms. Mrinalini Majumdar, Adv.

...for the State.

Mr. Sanjib Kr. Mukhopadhyay, Adv.,
Ms. Prama Roy, Adv.,
Ms. Nargish Parveen, Adv.

...for the private respondent/
writ petitioner.

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

This appeal is directed against an order dated October 13, 2023, passed by a learned Judge in a writ petition filed by the private respondent no.13 herein being WPA 11773 of 2023. The order is *interim* in nature in the sense that the writ petition is pending before the learned Single Judge.

The writ petitioner approached the learned Single Judge alleging that illegal construction has been raised by the private respondents in the writ petition, without

obtaining any sanctioned plan for the building in question. The learned Judge directed the private respondents in the writ petition not to make any further construction until further orders of Court.

It was submitted on behalf of the Kolkata Municipal Corporation (KMC) that a demolition order has already been issued. No order has as yet been passed in the statutory appeal filed by the private respondents before the Municipal Building Tribunal.

The learned Judge directed implementation of the demolition order and stayed further proceedings in the appeal preferred by the private respondents in the writ petition, pending before the Municipal Building Tribunal, against the demolition order.

Being aggrieved, one of the private respondents in the writ petition has come up by way of this appeal.

The short point urged by learned Advocate for the appellant is that the order staying the proceedings in the municipal appeal should not have been passed. Hearing in the statutory appeal is complete. Because of the stay order, the Tribunal is unable to pronounce its order.

Learned Advocate for the respondent/writ petitioner says that the building in question has been raised without obtaining any sanctioned plan. It is a 4-storeyed building. The building has to be demolished.

We quite agree with learned Advocate for the respondent/writ petitioner that an unauthorized building cannot be allowed to stand. However, the persons responsible had a statutory right to prefer appeal against the demolition order, which they have done by filing appeal before the Municipal Building Tribunal. The appeal must be allowed to reach its logical conclusion. The present appellant, who is one of the appellants before the Municipal Building Tribunal, may well fail in that statutory appeal. However, there can be no reason to stifle that statutory appeal and not permit the same to reach its conclusion.

Accordingly, we modify the order under appeal to the extent that the Municipal Building Tribunal will be at liberty to pronounce its order in the statutory appeal that is pending before it at the instance of the private respondents in the writ petition. Let such order be pronounced within ten days from the date of communication of this order to the Tribunal.

Since the statutory appeal is pending and we have directed the same to be disposed of within ten days from the date of communication of this order, let no further coercive step be taken in respect of the building in question till the disposal of the statutory appeal.

We make it clear that this time period for the Tribunal to dispose of the appeal is peremptory. If the appeal is dismissed, the Corporation shall forthwith

proceed to demolish the unauthorized building in accordance with law.

No useful purpose will be served by keeping the writ petition pending, as is submitted by learned Counsel for the parties. We agree.

Accordingly, WPA 11773 of 2023 is treated as on day's list and is disposed of.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 2245 of 2023 and the connected application being IA No: CAN/1/2023 are also disposed of.

Let urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)