

Item No. 4  
04.07.2023  
Court. No. 19  
GB

C.O. 3919 of 2022

Joydip Gupta & Ors.  
Vs.

The Kolkata Municipal Corporation & Ors.

*Mr. Tanmoy Mukherjee,  
Mr. Debabrata Ray,  
Mr. Mukesh Kr. Pandey*

*...for the Petitioners*

*Mr. Gopal Chandra Das,  
Mr. Debangshu Mondal*

*...for the K.M.C.*

*Mr. Jayanta Samanta,  
Mr. Rajdeep Adhikari*

*...for the Landlord.*

The petitioners are the persons responsible for an alleged unauthorized construction. They are aggrieved by an order dated December 15, 2022 passed by the learned Municipal Building Tribunal, Kolkata in Building Tribunal Appeal No.151 of 2022.

By the order impugned, the prayer for stay of the operation of the order of demolition has been turned down by the learned tribunal. The learned tribunal found that the building was illegal and could not be regularised. That the structure was huge and without any sanction. The purchasers of the building did not have any knowledge about such unauthorized construction. The developers and the owners of the building had duped the purchasers. The safety and security of the inhabitants of the building were also not taken into consideration.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioners submits that the learned tribunal

misconstrued the facts and rejected the application for stay. According to Mr. Mukherjee, a sanction had been granted for construction of the building on October 11, 2010. The same was valid upto October 11, 2015. A copy of the said building plan has been produced before the Court.

Mr. Jayanta Samanta, learned advocate appears on behalf of the landlord and submits that there is an existing order of this Court directing implementation of the order of demolition. According to Mr. Samanta, the order passed in the writ petition would stand in the way of granting stay of the demolition order. The specific contention of the landlord is that the building was constructed without any sanction. The corporation had answered to the query made by the landlord under the RTI Act, that no such sanction had been granted.

Having considered the rival contentions of the parties, the following facts are revealed:-

- a) At the instance of the landlord, an order was passed by this Court on November 17, 2021 by which the corporation had been directed to enquire into the allegation of unauthorized construction and act and proceed in accordance with law by reaching the proceeding to its logical conclusion.
- b) An order was passed by the Special Officer, Building on July 18, 2022.
- c) An appeal was preferred.

- d) Notices of demolition were received during the pendency of the appeal which was challenged by the petitioners before this Court, under Article 226 of the Constitution of India.
- e) A learned Judge entertained the writ petition and directed the Assistant Engineer (Civil) to stay his hands and not to proceed with the notices under Sections 544 and 546 of the Calcutta Municipal Corporation Act, 1980 till the learned tribunal decides the application for stay.
- f) The application for stay was heard out and disposed of by the learned Tribunal.
- g) Landlord preferred a writ petition praying for implementation of the order of demolition and to pass necessary orders directing the police authorities as also the Kolkata Municipal Corporation to execute the order of demolition.
- h) Such order was passed by the writ court.
- i) Aggrieved by the refusal to grant stay of the demolition proceeding, the revisional application has been filed.

It appears that the revisional application, challenging the order of refusal to grant stay of demolition had been entertained by a coordinate Bench on May 17, 2023 and by a reasoned order the Court was pleased to stay the order passed by the Special Officer, Building, dated July 18, 2022 for a period of six weeks or until further orders whichever is earlier. This order was not available before the learned writ

Court on June 28, 2023. The order of the learned writ court was passed when a competent court had already stayed the demolition order.

A party who faces the order of demolition has a right to prefer a statutory appeal. Such statutory right cannot be taken away. This revisional application was entertained by a learned coordinate Bench. Reasons were supplied as to why the demolition should be stayed. An order was accordingly passed. As the learned writ Court was not aware of the order a contrary order was passed. The order of stay of demolition was passed by a competent court by invocation of the power of superintendence under Article 227 of the Constitution of India before the order was passed in the writ petition.

This Court opines that the contention of the petitioners that a sanction had been granted by the corporation should have been considered by the learned Tribunal. The corporation is not in a position to disprove such claim of having a sanction. In view of the conflicting facts which have come into light, this Court finds that the tribunal could not have rejected the application for stay by, inter alia, holding that there was no sanction available unless the records were before the tribunal and the corporation had specifically stated that no such sanction had ever been granted. Moreover, the appeal becomes infructuous if a limited stay of the demolition order is not granted, till the appeal is disposed of. Balance of convenience and inconvenience is in favour of granting stay. If the building is demolished, but the appellants are successful in the appeal,

the situation will become irreversible. Whereas, if the appeal fails, the demolition will only be delayed.

Under such circumstances, the revisional application is disposed of with the following directions:-

- A) There shall be stay of the demolition for a period of four months from date.
- B) The landlord shall file an application for addition of party in the appeal.
- C) Such application shall be allowed and the landlord shall be entitled to advance arguments in the said appeal.
- D) The appeal shall be disposed of within the aforementioned four months.
- E) The corporation shall act and proceed in accordance with law.
- F) The corporation shall transmit all the records, if not already done within ten days from date.

The orders which have been produced by Mr. Samanta and the sanction plan are taken on record.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

**(Shampa Sarkar, J.)**