

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/84/2023
WPO/2596/2022
IA No. GA/1/2023
GA/2/2023
GA/3/2023

MD. WASIM AND ANR.
VS
MD. EHTESHAM UDDIN & ORS.

Appearance:

Mr. Suddhasatya Banerjee, Advocate
Mr. Subhrangsu Panda, Advocate
Mr. Arijit Dey, Advocate .
...for the Appellants.
Mr. Reetobroto Mitra, Advocate,
Mr. Arif Ali, Advocate,
Mr. S. Das, Advocate,
Mr. Sarban Bhattacharjee, Advocate
For Respondent No. 1
Mr. Ranajit Chatterjee, Advocate
Ms. Piyali Sengupta, Advocate
for KMC
Mr. Debjit Mukherjee, Advocate,
Mr. S. Chatterjee, Advocate
For State Respondent.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE PRASENJIT BISWAS

Date: April 05, 2023.

THE COURT: Re: **G.A. 1 of 2023:-**

The applicants pray for leave to prefer appeal against the judgment and order dated September 20, 2022, whereby WPO No. 2596 of 2022 was disposed of by a learned Single Judge. In effect, an order of

demolition has been directed to be implemented. The applicants say that they are occupants of the premises in question. They are vitally affected by the order sought to be impugned. They have challenged the demolition order passed by the Kolkata Municipal Corporation before the Municipal Building Tribunal. Since they will be vitally affected by the order of the learned Single Judge, they want to prefer an appeal against the same.

Having heard learned Counsel for the parties, we are satisfied that the applicants have locus standi to prefer an appeal from the order of the learned Single Judge. This application is allowed. Leave is granted to prefer the appeal.

G.A. No. 1 of 2023 is disposed of.

Re: **G.A No. 2 of 2023:**

This is an application for condonation of delay of 159 days in preferring appeal against the judgment and order dated September 20, 2022, whereby WPO 2596 of 2022 was disposed of.

Causes shown being sufficient, the delay is condoned.

G.A. No. 2 of 2023 is disposed of.

Re: **G.A No. 3 of 2023 and APOT No. 84 of 2023:**

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

The appellants claim to be occupants of premises No. 166/H/79, Keshab Chandra Sen Street, Kolkata – 700 009. They say that they were not made parties to the writ petition in which the order impugned has been passed by the learned Single Judge.

The learned Single Judge has in effect directed KMC to implement an order of demolition issued by it. The appellants say that they have challenged the order of demolition before the Municipal Building Tribunal. The appeal is pending. However, a contempt application has been filed by the writ petitioner before the learned Single Judge wherein the Corporation and the Police Authorities have been impleaded as respondents. The appellants apprehend that if such contempt application is pressed, the Corporation shall implement the order of demolition even before the appellants have had an opportunity to press their stay application before the Tribunal.

Mr. Mitra, learned Advocate appearing for the writ petitioner says that although the learned Single Judge directed the Officer-in-Charge, Amherst Street Police Station to keep strict vigil on the premises in question and to ensure that no construction is made at the said premises till a decision is taken by KMC, fresh construction is being made unabated. The police is not doing its duties.

It is submitted on behalf of the State that the Police will keep strict vigil in respect of the property in question as directed by the learned Single Judge.

Having heard learned Counsel for the parties we are of the opinion that the following order shall serve the ends of justice :

- (i) The Municipal Building Tribunal is directed to decide the stay application of the appellants before us which they have filed in connection with MBT

Appeal No. 82 of 2023 by the end of April, 2023, after affording opportunity of hearing to all concerned parties including the appellants herein and the writ petitioner. Sufficient notice of hearing will be given to the parties.

- (ii) Kolkata Municipal Corporation is directed to ensure that the original records of the case are available before the Municipal Building Tribunal by April 13, 2023, so that the Tribunal can issue notice of hearing at an early date and decide the stay application filed in connection with MAT 82 of 2023 by the end of April, 2023.
- (iii) Till the decision of the Municipal Building Tribunal on the stay application filed in connection with MAT No. 82 of 2023 is available, no action shall be taken for demolition of the alleged unauthorised construction in question or any portion thereof.
- (iv) The concerned Deputy Commissioner of Police shall ensure through his subordinate officers that no further construction is made at the premises in question.
- (v) Needless to say, if any party obtains sanction from the Kolkata Municipal Corporation for making construction at the premises in question, the same

may be permitted. However, in any event no construction be made till the end of April, 2023.

Since we have not called for any affidavit, the allegations made in the stay petition are deemed not to have been admitted by the respondents.

APOT No. 84 of 2023 and G.A No. 3 of 2023 are accordingly disposed of.

(ARIJIT BANERJEE, J.)

(PRASENJIT BISWAS, J.)

dg/