

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/217/2023
with
WPO/1370/2023
IA NO.GA/1/2023

SK. AHSAN @ SK. EHSAN
VERSUS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 16th August, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Anindya Bose, Adv.
Mr. Amit Gupta, Adv.
... for the appellant.
Mr. Alok Kr. Ghosh, Sr. Adv.
Mr. Gopal Ch. Das, Adv.
Ms. Piyali Sengupta, Adv.
Mr. Santanu Chatterjee, Adv.
...for KMC.
Mr. Arif Ali, Adv.
Ms. N.S. Alam, Adv.
Mr. Sarban Bhattacharjee, Adv.
..for respondent no.7
Mr. Debangshu Dinda, Adv.
..for State/respondent.

The Court : Supplementary affidavit of the appellant, filed in Court today, be kept with the records.

This appeal is directed against a judgment and order dated July 13, 2023, whereby the appellant's writ petition was dismissed.

This matter has a chequered history. The respondent no.7 in this appeal had approached the learned Single Judge earlier by filing WPO No.2211/2022, with the grievance that the present appellant has raised unauthorised construction but in spite of complaints being lodged, Kolkata Municipal Corporation has not taken any step. The learned Judge noted that the

Corporation had already issued a demolition order in respect of the impugned construction and directed implementation of such order.

The present appellant was not a party respondent in that writ petition. Accordingly, he came up before a co-ordinate Bench by way of APOT/103/2022. By a judgment and order dated June 15, 2022, the coordinate Bench added the present appellant as a party respondent to the writ petition and the matter was remanded to the learned single Judge having determination to hear the writ petition for fresh consideration. That order was passed solely on the ground that the present appellant had not been impleaded as a party respondent in the writ petition although the order that was passed would have adverse civil consequences for him.

Upon remand, the matter was considered afresh by the learned Single Judge and an order dated June 20, 2022, was passed. It was noted that the present appellant had filed BT Appeal No.87 of 2022 before the Municipal Building Tribunal against the concerned demolition order. Noting the pendency of such statutory appeal, the learned single Judge disposed of WPO No.2211/2022 reserving liberty to the parties to approach the Tribunal for necessary orders.

Against that order of the learned Single Judge, the writ petitioner in that proceeding who is the respondent no.7 in this appeal, preferred an appeal being APOT/119/2022. The appeal was disposed of by a co-ordinate Bench directing the Municipal Building Tribunal to dispose of BT Appeal No.87 of 2022 as expeditiously as possible, without granting unnecessary adjournments and definitely within three months from the date of communication of the order to the Tribunal.

The appellant herein again approached the learned single Judge in the present round of litigation by filing WPO/1370/2023 assailing a notice issued by the Corporation under Sections 544 and 546 of the Kolkata Municipal Corporation Act, 1980, fixing 30.6.2023 as the date of demolition. It appears that in the meantime, on January 30, 2023 the present appellant's statutory appeal against the demolition order was dismissed for default by the Municipal Building Tribunal.

Before the learned Single Judge it was submitted on behalf of the appellant/writ petitioner that steps were being taken for recall of the order of dismissal of the appeal. A restoration application had been filed which was scheduled to be taken up for consideration by the Tribunal on July 31, 2023. The learned Judge dismissed the writ petition with the following observations:

“In the facts and circumstances of the present case, I am not inclined to exercise jurisdiction because of the reason that the Hon’ble Division Bench of this Court in an appeal being IA No. GA/1/2022 in APOT/119/2022 (Md. Ehtesham Uddin Vs. The Kolkata Municipal Corporation & Ors.) passed order on 19.07.2022 directing the Municipal Building Tribunal to dispose of the B. T. Appeal No.87/2022 as expeditiously as possible, without granting unnecessary adjournment and definitely within three months from the date of communication of this order to the Tribunal.

The time period within which the appeal was directed to be disposed of is long over. The appellant ought to have been cautious and careful in proceeding with the statutory appeal. The appellant instead of proceeding with the appeal left the matter

uncared for and the same stood dismissed for default on 30.01.2023.

Till today, no order has been passed in the application seeking recalling the order of dismissal. As on date, there is no order which stands in the way of the Corporation to proceed to execute the order of demolition.

On an earlier occasion, on 30.06.2023, the demolition programme could not be implemented for want of adequate security from the police. Today the police is ready to provide the necessary security to the Corporation for implementing the demolition order.

At this stage, it will be highly improper to pass any order restraining the Corporation from implementing the order of demolition which was passed way back on 19.04.2022.

In view of the above, no relief can be granted to the petitioner in the instant writ petition. The writ petition fails and is hereby dismissed.”

Being aggrieved, the writ petitioner has come up before us by way of this appeal.

Mr. Chakraborty, learned advocate representing the appellant/writ petitioner, strenuously argued that the Calcutta Corporation Tribunal (Conduct of Business) Rules, 1965 provide that in any matter not provided for in the said Rules, the President may, if any occasion requires, adopt for the time being such procedure, not repugnant to the Code of Civil Procedure, 1908, as to him seems fit and proper. Learned advocate submitted that there was sufficient cause for the appellant not being represented before the Tribunal on January 30, 2023, when his statutory appeal was dismissed for default. It was submitted that August 29, 2023, is the next date fixed for

consideration of the restoration application. Till the Tribunal considers the restoration application, the operation of the demolition order should be stayed.

Learned advocate for the Corporation says that on July 13, 2023, the part demolition of the unauthorised construction has already been effected. Tomorrow (August 17, 2023) is fixed for further demolition.

Learned advocate for the respondent no.7 submits that on one plea or the other the present appellant has been successful in ensuring that the concerned demolition order is not implemented. The impugned construction is completely unauthorised. No further indulgence should be shown to the appellant.

We have considered the respective contentions of the parties. On an earlier occasion, on June 20, 2022, noting the pendency of the statutory appeal at the instance of the present appellant, we had directed the Tribunal to conclude the proceedings in the appeal as expeditiously as possible and definitely within three months from the date of communication of that order. Not only the appeal was not disposed of within three months and nothing has been placed before us by the appellant to show that he made any effort to that end, the appellant permitted the statutory appeal to be dismissed for default on January 30, 2023. Learned advocate for the appellant says that it is the fault of the learned advocate who was then in charge. We are not impressed with such submission. It has become a trend to put the blame on the learned lawyer and promptly obtain a change from him.

In any event, we are highly dissatisfied with the conduct of the appellant. The restoration application was not filed till June 27, 2023 i.e., almost after five months from the date of

dismissal. A court of equity would not come to the rescue of an indolent litigant. We are further told that in spite of pendency of the appeal from June 20, 2022, till it was dismissed for default on January 30, 2023, the appellant herein could not obtain any interim protective order in the appeal.

In the aforesaid facts and circumstances of this case, we are not inclined to show any leniency to the appellant. We find no infirmity in the order under appeal. The conduct of the appellant does not entitle him to any indulgence.

The appeal and the connected application are, accordingly, dismissed.

[ARIJIT BANERJEE, J.]

[APURBA SINHA RAY, J.]

dg/sm