

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/219/2023
with
WPO/2176/2022
IA NO.GA/1/2023

MD. ILYAS
VERSUS
MD.EHTESHAM UDDIN AND ORS.

APOT/221/2023
CC/51/2023
WPO/2176/2022
IA GA/1/2023
MD. ILYAS
-VS
MD. EHTESHAM UDDIN & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
AND

The Hon'ble JUSTICE APURBA SINHA RAY
Date : 12th September, 2023.

Appearance:
Mr. Suddhasattaya Banerjee, Adv.
Mr. Subhrangsu Panda, Adv.
...for appellant.
Mr. Arif Ali, Adv.
Mr. Sarban Bhattacharya, Adv.
Mrs. N. S. Alam, Adv.
Mr. Ranajit Chatterjee, Adv.
Ms. Piyali Sengupta, Adv.
For KMC.
Mr. Debjit Mukherjee, Adv.
Ms. Kalpita Paul, Adv.
For the State.

The Court : By consent of parties, the appeals and the applications are taken up together for hearing and disposal.

Report dated September 11, 2023 filed by the Executive Engineer (C)/BLDG/BR-IV & V on behalf of Kolkata Municipal Corporation, in terms of our order dated August 22, 2023, be kept with the records.

The report is to the effect that the building in question is two storied. The ground floor of the building is used for commercial purpose and the first floor for residential purpose. The entire building is unauthorized. The present appellant has been found to be occupying a portion of the first floor of the building.

Mr. Ali, learned Advocate for the writ petitioner disputes that it is a two storied building and says that it is a four storied building.

We are told by Mr. Chatterjee, learned Advocate appearing for the Corporation, that proceedings under Section 400(1) of the Kolkata Municipal Corporation Act, 1980 were initiated in respect of the unauthorized structure. Such proceedings culminated in a demolition order being passed by the concerned Executive Engineer (Building). The present appellant has filed a statutory appeal against the demolition order before the Municipal Building Tribunal being BT Appeal No.154/2023 and has also filed an application for interim protection.

Having heard learned Counsel for the parties, we are of the view that the application for interim order that has been filed by the present appellant in the statutory appeal should be disposed of expeditiously and till such time, no coercive steps should be taken against the impugned construction.

Accordingly, we direct the Municipal Building Tribunal to dispose of the application for interim relief filed by the present appellant in BT Appeal No.154/2023 within a period of three months from the date of a copy of this order being placed before the Tribunal.

The present writ petitioner is added as a party respondent in the statutory appeal pending before the Municipal Building Tribunal. The present appellant shall take all necessary steps for amending the appeal papers to bring on record the present writ petitioner, who will be given full opportunity of participating in the appeal.

Till the application for interim relief that has been filed in the statutory appeal is disposed of, no coercive steps shall be taken in respect of the impugned construction. The time period of three months granted hereby is peremptory and is to be strictly adhered to by all concerned. Parties including the present appellant and the writ petitioner shall not obtain unnecessary adjournments and shall cooperate in all possible manner to enable the Tribunal to dispose of the application for interim relief within three months from the date of communication of this order as indicated above.

We make it clear that we have not gone into the merits of the case. The Tribunal shall decide the application for interim relief as well as the appeal in accordance with law, uninfluenced by any observation made either in this order or in the order of the learned Single Judge, which is impugned in the present appeal.

The impugned order is set aside.

Both the appeal and the application are disposed of accordingly.

Since we have not called for affidavits, the allegations made in the application are deemed not to have been admitted by the respondents.

[ARIJIT BANERJEE, J.]

[APURBA SINHA RAY, J.]