

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/396/2023
WITH
WPO 1283 OF 2023
IA NO:GA/1/2023
IA NO: GA/2/2023

AKBAR HUSSAIN AND ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY

Date : November 17, 2023.

Appearance:

Mr. S. T. Mina, Advocate

Mr. Priyankar Das, Advocate,

...for appellants.

Mr. Alak Kumar Ghose, Advocate,

Mr. Swapan Kr. Debnath, Advocate,

...for KMC

Mr. Anand Farmania, Advocate,

Mr. Manoj Kr. Mondal, Advocate,

For State Respondent,

Mr. Sumitava Chakraborty, Advocate,

For respondent no. 8

THE COURT: GA No. 1 of 2023 is an application for
condonation of delay of 87 days in presenting the appeal. Causes

shown being sufficient, the delay is condoned and GA 1 of 2023 is allowed.

This appeal is directed against a judgment and order dated June 21, 2023, whereby the writ petition of the respondent no. 8 herein being WPO/1283/2023 was disposed of by a learned Judge of this Court.

The respondent no. 8/writ petitioner approached the learned single Judge praying for implementation of a demolition order dated May 15, 2023, passed by the Executive Engineer (Civil)/Building Department, Borough – VIII in respect of alleged unauthorized construction made by the appellants herein, who were private respondents in the writ petition. It was submitted before the learned Judge that the appellants herein have constructed three additional floors over and above two sanctioned floors.

The appellants submitted before the learned Judge that an appeal has been filed on June 16, 2023, against the concerned demolition order, before the Municipal Building Tribunal being B. T. Appeal No. 131 of 2023.

The learned Judge disposed of the writ petition with the following observations and directions:

“As it appears that the order seeking implementation has been carried in appeal by the person responsible, accordingly, the Municipal Building Tribunal, Kolkata Municipal Corporation is requested to decide the appeal on application filed under Section 5 of the Limitation Act seeking condonation of delay in preferring the appeal.

It will be open for the petitioner to follow up the matter before the appellate forum.

In the event the person responsible i.e. the private respondents herein fail to obtain stay of the order of demolition by 13.10.2023, then it will be open for the Corporation to take steps for implementation of the order of demolition in accordance with law.”

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

Learned Advocate for the appellants says that the learned single Judge ought not to have directed that in the event the appellants fail to obtain stay of operation of the demolition order by October 13, 2023, then the Corporation would be at liberty to take steps for implementation of the demolition order. He says that no

step should be taken to give effect to the demolition order till the statutory appeal is decided on merits by the Tribunal.

Learned Advocate for the respondent no. 8/writ petitioner says that at least seven hearings have been held before the Tribunal. Each time the appellants have obtained adjournment. Nothing has progressed on merits. Even the application for condonation of delay is yet to be disposed of. In the eye of law there is no appeal today since the delay has not yet been condoned and the appeal has not yet been admitted.

Mr. Ghosh, learned Advocate for the Kolkata Municipal Corporation says that after October 13, 2023, the festive season started and accordingly KMC could not take further steps for implementation of the demolition order. However, KMC will abide by whatever direction this Court passes.

In principle, we see no infirmity in the order under appeal. The learned Judge, having noted that an appeal has been carried to the Municipal Building Tribunal challenging the demolition order, granted about four months' time to the appellants herein to obtain interim order of stay of operation of the demolition order. We find the impugned order to be a perfectly fair, well-balanced and just order. We, therefore, do not interfere with the said order.

However, on humanitarian grounds, we extend the time for the appellants to obtain, if possible, interim order of stay of operation of the demolition order in question till the end of this year i.e., December 31, 2023. We clarify that in the event the appellants are unable to obtain such interim order or have the order of demolition set aside upon hearing of the appeal within the time period indicated by us, KMC shall implement the demolition order in accordance with law. In view of this order, the appellants will be at liberty to approach the Tribunal for pre-poning the next date of hearing, which we are told is January 8, 2024.

Learned Advocate for respondent no.8/writ petitioner says that since the demolition order was not implemented even after October 13, 2023, as was directed by the learned Single Judge in the present proceeding, the writ petitioner herein has filed a second writ petition which is pending before the learned Single Judge. In view of the order that we have passed today, learned Advocate for respondent no.8 says that nothing survives in the second writ petition being WPO/1769/2023. He is right. Accordingly, WPO/1769/2023 is treated as on the day's list and is disposed of.

We clarify that we have not gone into the merits of the case and the Tribunal shall consider the matter without being

influenced by any observation made in this order or in the order of the learned Single Judge which is impugned before us.

Both the appeal and the application stand disposed of.

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

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/