

OD-1

APOT/400/2023
With
WPO/1679/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
Original Side

ADITYA ALMAL AND ANR.
-Versus-
KOLKATA MUNICIPAL CORPORATION AND ORS.

Before:
The Hon'ble Justice ARIJIT BANERJEE
And
The Hon'ble Justice M.V. MURALIDARAN
Date: 20th November, 2023.

Appearance:
Mr. Arijit Bardhan, Advocate
Mr. soumyajit Mishra, Advocate
Mr. Rishabh Dutta Gupta, Advocate
...for the appellant.
Mr. Debjit Mukherjee, Advocate
Ms. Kalpita Paul, Advocate
...for the respondent no.1.
Mr. Alak Kumar Ghosh, Advocate
Mr. Swapan Kumar Debnath, Advocate
...for the KMC.

The Court: Affidavit of service filed in Court today is taken on
record.

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

This appeal is directed against refusal of the writ petitioner's prayer for interim order before a learned Single Judge of this Court in WPO/1679/2023 being a writ petition filed by the appellants herein.

The appellants herein approached the learned Single Judge assailing a hearing notice dated September 4, 2023 and also a notice dated July 14, 2023 both issued on behalf of Municipal Commissioner in respect of revision of annual valuation of a portion of premises no.2, Garstin Place, Kolkata- 700 001. The writ petitioners allege that the Municipal Commissioner had no jurisdiction to issue such notices, nor the hearing officer had the jurisdiction to hear the matter.

The learned Judge directed exchange of affidavits. The learned Judge observed that it will be for the writ petitioners to participate in the hearing but the fate of the hearing shall be subject to the order passed by the Court in the writ petition.

Being aggrieved the writ petitioners have come up by way of this appeal.

Mr. Bardhan, learned Advocate appearing for the appellants/writ petitioners, says that the proceedings before the hearing officer should be deferred till disposal of the writ petition. Otherwise, in the event the hearing officer proceeds and passes an order and ultimately the writ petition succeeds, the order would become ineffective and, in the meantime, a lot of time, money and energy would have been wasted.

Mr. Ghosh, learned senior counsel representing the Kolkata Municipal Corporation (KMC) says that in effect the learned Judge has provided that any order that may be passed by the hearing officer shall abide by the result of the writ petition.

We are of the view that the proceedings before the hearing officer should continue and should be taken to its logical conclusion. The writ petitioners should participate in such proceedings without prejudice to their contention that the hearing officer has no jurisdiction to continue with such proceedings and the Municipal Commissioner had no jurisdiction to issue the notices in question. The issue of jurisdiction of the hearing officer as also the issue of jurisdiction of the Municipal Commissioner to issue the notices in question shall be decided in the writ petition. If a final order is passed by the hearing officer prior to disposal of the writ petition by the learned single Judge, such order shall not be given effect to by the KMC without the leave of the learned Single Judge.

Mr. Ghosh, learned counsel representing the KMC says that KMC has not filed affidavit-in-opposition in the writ petition in view of filing of the present appeal by the writ petitioners. Time for KMC to file affidavit-in-opposition in the writ petition is extended till December 15, 2023. Reply thereto, if any, be filed by January 10, 2024. The parties would be at liberty to mention the matter before the learned Single Judge

after exchange of affidavits or after expiry of the time for filing of affidavits as granted by us.

No useful purpose would be served by keeping the appeal pending. The appeal (apot/400/2023) and the connected application (IA No.GA/1/2023) are accordingly disposed of.

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

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)