

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/432/2023
[WITH WPO/1235/2023]
IA No.GA/2/2023

SK. AHSAN
VS
MD. EHTESHAM UDDIN AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE PRASENJIT BISWAS

Date : 5TH December, 2023.

Appearance:

Mr. Biswajit Mukherjee, Adv.

Mr. Sumitava Chakraborty, Adv.

Mr. Subhrangsu Panda, Adv.

Ms. Ina Bhattacharyya, Adv.

.....for Appellant.

Mr. Arif Ali, Adv.

Mr. Sarban Bhattacharyee, Adv.

For Res. No. 1/writ petitioner

Mr. Debangshu Dinda, Adv.

...for the State.

Ms. Piyali Sengupta, Adv.

For KMC

The Court:- An order dated November 30, 2023, passed by a learned Judge of this Court in the writ petition of the respondent no. 1 herein, being WPO/1235/2023, is under challenge in this appeal. The present appellant is the respondent no. 10 in the writ

petition. The order under appeal is interim in nature, in the sense that, the writ petition is pending before the learned single Judge and has been directed to be listed again on December 19, 2023.

This matter has a chequered history. The respondent no. 1 in this appeal had approached a learned single Judge of this Court earlier by filing WPO/2211/2022, with the allegation that the present appellant has raised illegal construction. However, in spite of complaints being filed, Kolkata Municipal Corporation (KMC) has not taken any step. The learned Judge noted that KMC had already issued a demolition order in respect of the impugned construction. The learned Judge directed implementation of such order.

The present appellant was not a party respondent in that writ petition. He came before a co-ordinate Bench by filing APOT/103/2022. By a judgment and order dated June 15, 2022 the co-ordinate Bench added the present appellant as party respondent to the writ petition and the matter was remanded to the learned single Judge having determination to hear the writ petition afresh.

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 Judge disposed of WPO/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 respondent no. 1 in this appeal, preferred an appeal being APO/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 and definitely within three months from the date of communication of the order to the Tribunal.

Thereafter the appellant herein approached a learned single Judge by filing WPO/1370/2023 challenging a notice of engagement issued by KMC under Sections 554 and 556 of the KMC Act, 1980, fixing June 30, 2023, as the date of demolition.

It is a matter of record 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, who was the writ petitioner in WPO/1370/2023

that steps were taken for recall of the order of dismissal of the statutory appeal. A restoration application was 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 observation:

“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 by that order, the writ petitioner in that proceeding, who is the present appellant, had come up before a co-ordinate Bench by filing APOT/217/2023. The said appeal was dismissed by a judgement and order dated August 16, 2023, the operative portion whereof reads as follows:

“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.”

A Special Leave Petition filed against the aforesaid judgement and order dated August 16, 2023 and registered as Special Leave to Appeal (C) No(s). 18584/2023 was dismissed as withdrawn by an order dated August 28, 2023.

In the present round of litigation the respondent no. 1 herein approached the learned single Judge for implementation of the demolition order in question. The learned Judge recorded the following order:

“Learned advocate representing the Corporation seeks time to produce an undated report.

Learned advocate representing the State respondents has obtained instruction from the concerned Officer-in-Charge wherein it is mentioned that dates have been fixed for demolition of the unauthorized construction by the Kolkata Municipal Corporation on 06.12.2023, 07.12.2023, 11.12.2023 and 12.12.2023. It has been submitted that the premises in question has been made vacant and is more or less ready for demolition.

List the matter once again on 19th December, 2023.

The updated report shall be produced before this Court on the adjourned date.”

Being aggrieved, the respondent no. 10 in the writ petition has come up by way of the present appeal.

Mr. Mukherjee, learned Advocate appearing for the appellant says that December 20, 2023, has been fixed as the date for hearing of the appellant's restoration application by the Municipal Building Tribunal. His only prayer is that the demolition be kept in abeyance till December 20, 2023. If the appellant is unable to have his appeal restored and unable to obtain an interim protective order, KMC may go ahead with the demolition programme.

This prayer made by the appellant is strongly opposed by the learned Advocate for respondent no.1/writ petitioner as well as learned Advocates for the State and KMC. It is submitted on their behalf that with a lot of effort the building in question has been vacated. Demolition schedule has been fixed on December 6, December 7, December 11 and December 12, 2023, as noted by the learned single Judge. The demolition programme should not be interfered with by the Court. It is also submitted that on July, 2023 the building was partly demolished.

We have recorded the history of this case above to highlight the conduct of the present appellant, which is far from

satisfactory. The appellant has raised a G+4 storied building without having obtained any sanctioned plan from KMC. After the demolition order was passed, the appellant filed a statutory appeal before the Municipal Building Tribunal. He allowed the appeal to be dismissed for default on January 30, 2023. Thereafter, whenever the matter came before the Court, his submission was that restoration application is pending. Once the appeal is restored, he will try to obtain an interim protective order from the Tribunal. Therefore, breathing space should be granted to him. It will be seen from the facts noted above that sufficient breathing space has been granted to the appellant. He is obviously not serious about prosecuting the appeal. The appeal was dismissed for default almost a year ago. Still it has not been restored. A litigant cannot be permitted to get away by shifting the entire blame on his lawyer. We have found no diligence on the part of the appellant.

A citizen, who has no regard for the law of the land deserves no sympathy or indulgence from a court of law and particularly from a court of equity which the writ court is. The unauthorized construction has been there for a long time now. It is high time that the same is demolished.

We find no merit in the appeal. The appeal and the connected application are dismissed. We were minded to impose cost on the appellant but persuaded by the eloquence of Mr. Mukherjee, we do not impose any cost on the appellant.

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)

(PRASENJIT BISWAS, J.)

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