

APOT/435/2023  
with  
WPO/1728/2023  
IA NO:GA/1/2023

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE

SAHIN SULTANA  
Vs.  
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:  
The Hon'ble JUSTICE ARIJIT BANERJEE  
AND  
The Hon'ble JUSTICE M. V. MURALIDARAN  
Date : December 15, 2023.

*Appearance:*  
*Mr. Arif Ali, Advocate*  
*Mr. Sarban Bhattacharjee, Advocate*  
*...for appellant*

*Mr. Biswajit Mukherjee, Advocate*  
*Ms. Piyali Sengupta, Advocate*  
*...for KMC*

*Mr. Dinendranath Chatterjee, Advocate*  
*Mr. Partha Sengupta, Advocate*  
*Mr. Biswaroop Sengupta, Advocate*  
*...for respondent Nos. 11 – 13*

*Mr. Ovik Sengupta, Advocate*  
*...for State-respondent*

The Court: Affidavit of service filed, in Court today on behalf of  
the appellant, be kept with the records.

**RE : GA/1/2023**

This is an application for condonation of delay of 20 days in  
presenting the appeal.

Causes shown being sufficient, the delay in filing the appeal is  
condoned.

**GA/1/2023** is disposed of.

**RE: APOT/435/2023**

By consent of the parties, the appeal is taken up for hearing.

A judgement and order dated October 18, 2023, whereby the appellant's writ application being WPO/1728/2023, was disposed of by a learned Judge of this Court is under challenge in this appeal at the instance of the writ petitioner.

It appears, pursuant to complaint lodged by the present appellant that the private respondents herein have made unauthorised construction, a demolition case was initiated by Kolkata Municipal Corporation ( in short, "KMC") in respect of the impugned construction. Such proceedings culminated in an order of the Special Officer (Building), whereby the private-respondents were directed to demolish two floors which were not backed by any sanctioned plan and were allowed to retain certain other portions which had been constructed in deviation from the sanctioned plan.

The private-respondents herein carried such order of the Special Officer (Building), in so far as the same was adverse to them, in statutory appeal before the Municipal Building Tribunal. The appeal was dismissed for default.

Thereafter, the present appellant approached a learned Single Judge by filing a writ petition being WPO 1339 of 2023, praying for implementation of the demolition order.

It was submitted on behalf of the private-respondents that they had filed an application before the Tribunal for restoration of the statutory appeal along with an application for condonation of delay. The learned Judge disposed of the writ petition by an order dated July 7, 2023, observing that “in the event persons responsible failed to obtain any order of recall of the order of dismissal by 31<sup>st</sup> August, 2023, then it will be open for the Corporation to proceed with the execution of the order of demolition at the earliest.”

We are told that the Tribunal dismissed the application for restoration of the statutory appeal by an order dated August 23, 2023. We are also told that the private respondents herein have filed a civil revisional application before a learned Judge of this Court being CO/3040/2023, challenging the Tribunal’s order dated August 23, 2023. In that application, by an order dated October 6, 2023, the learned Judge directed service of the application on the opposite parties and directed the matter to be listed four weeks after the Puja vacation. Hence, the application should be listed before the learned Judge in a day or two.

Since there is no stay of the demolition order in the civil revisional application, the present appellant once again approached the learned Single Judge in the present round of litigation for implementation of the demolition order. The writ application was disposed of by the order impugned in this appeal, which reads as follows:

*“The petitioner seeks implementation of the order of demolition passed on 11<sup>th</sup> September, 2017.*

*Statutory appeal preferred against the order of demolition stood dismissed. A civil revision application is currently pending disposal before this Court being CO No.30340 of 2023. An order has been passed by a co-ordinate Bench of this Court on 06.10.2023 directing service of the civil revision application and the matter has been directed to appear in the list after four weeks after reopening of the Court after the Puja Vacation.*

*Admittedly, there is no stay of the order of demolition as on date.*

*If the order of demolition is implemented, then the cause of action will not survive any further.*

*In view of the above, the Court is not passing any order at this stage.*

*The writ petition stands disposed of with liberty to the petitioner to approach the appropriate forum after disposal of the pending civil revision application.”*

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

Mr. Ali, learned advocate, appearing for the appellant/writ petitioner, says that in effect, what the private-respondents did not achieve at the interim stage in the civil revisional application, they have achieved on the writ petition filed by the appellant. In other words, the order impugned in effect stays the operation of the demolition order till the disposal of the pending

civil revisional application. He says that his client would have been better off not filing the writ petition.

Mr. Ali has a point.

However, since the civil revisional application is likely to be taken up by the learned Single Judge soon, we deem it appropriate to grant a little breathing space to the private-respondents herein to obtain, if they can, a favourable order in the civil revisional application. Accordingly, we direct that the demolition order in question be not implemented till the end of January, 2024.

In the event, by that time the present private-respondents are able to obtain any order in their favour, naturally the same will prevail. However, if the private-respondents herein are unable to obtain any favourable order from the Civil Revisional Court or any other forum by the end of January, 2024, KMC shall forthwith implement the demolition order in question.

The order under appeal is modified to the aforesaid extent.

The appeal is disposed of.

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)