

19.02.2024  
Item No.10  
Court No.6.  
S. De

**M.A.T. 239 of 2024**  
**With**  
**I.A. No. CAN/1/2024**

**Hitesh Sharma.**  
**Vs**  
**The Kolkata Municipal Corporation & Ors.**

Mr. Siddhartha Banerjee,  
Mr. Rahul Karmakar,  
Mr. Abhisek Baran Das,  
Mr. S.N. Ghosh, ...for the appellant.

Mr. Rupak Ghosh,  
Mr. Vishwarup Acharyya,  
...for the respondent no.5.

Mr. Fazlul Haque,  
Mr. Gopal Chandra Das, ...for the  
K.M.C.

Read order dated February 7, 2024.

The material facts of the case briefly stated are that a complaint was made that certain persons had filled up a water body called 'Ukil Bheri' and had made unauthorized construction thereon. The matter was carried before the National Green Tribunal (in short 'NGT'). The NGT set up a eight member Committee for finding out the fact. The Committee returned a finding that indeed the water body had been filled up and the construction had been made thereon. The Committee recommended that appropriate action be taken in

respect of the unauthorized construction by Kolkata Municipal Corporation (in short 'KMC') and all other concerned authorities. The NGT passed an order in terms of such recommendation.

The present appellant challenged such order by way of appeal before the Hon'ble Supreme Court. One of his contentions was that he was not granted an opportunity of hearing by the NGT before the aforesaid order was passed. We are told that the Hon'ble Supreme Court disposed of the appeal granting liberty to the appellant herein to approach the NGT, by an order dated April 24, 2023.

In the mean time, the KMC authorities initiated proceedings under Section 397 of the KMC Act, 1980 for cancellation of the building plan that had been sanctioned in favour of the present appellant. The proceedings culminated in an order of cancellation of the sanctioned building plan. Such order was challenged by the appellant herein before the learned Single Judge in this round of litigation. The appellant's writ petition was dismissed. Hence this appeal.

Mr. Banerjee, learned advocate appearing for the appellant/writ petitioner says that in the mean time, the appellant has approached the NGT pursuant to the liberty granted by the Hon'ble Supreme Court.

Mr. Ghosh, learned advocate representing the respondent no.5 says that his client is not aware of the same.

We are of the view that if the appellant herein succeeds before the NGT, this appeal would become unnecessary. Similarly, if the appellant herein fails before the NGT, the present appeal will automatically fail.

Accordingly, we dispose of this appeal and the connected application reserving liberty to the appellant to challenge any order of the NGT that he may be aggrieved by, before the appropriate forum. We do not interfere with the order under appeal excepting that, taking a lenient view, we set aside the order imposing cost on the writ petitioner.

Mr. Banerjee, learned advocate for the appellant says that NGT may be requested to expeditiously dispose of the application that his client has filed before the NGT. The parties will be at liberty to make such prayer before the NGT.

We have not gone into the merits of the matter. NGT is requested to decide the appellant's application in accordance with law without being influenced by any observation in this order. All points are left open.

MAT 239 of 2024 is disposed of along with the application being I.A. No. CAN 1 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

**(Arijit Banerjee, J.)**

**(M.V. Muralidaran, J.)**