

01.05.2024
Ct. No. 19
Sl. No.75
Cp

C.O. No. 943 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024

Manoj Sonkar
Vs.
The Executive Engineer, Civil (Borough II), Building Dept.
Kolkata Municipal Corporation & anr.

Mr. Jagannath Ganguly
... for the Petitioner.

Mr. Ankit Agarwal
Mr. Nilay Sengupta
Mr. Sujit Banerjee
.....for the Opposite Party no. 2.

1. Despite service, none appears on behalf of the Kolkata Municipal Corporation.
2. The revisional application has been filed seeking immediate intervention of this court to protect the property of the petitioner from being demolished pursuant to a notice issued by the Executive Engineer, (Borough II), Building Department, Kolkata Municipal Corporation. An order of demolition was suffered by the petitioner. The petitioner preferred an appeal. The said appeal was registered as B.T. Appeal No. 180 of 2023. Along with the said appeal an application for stay had also been filed.

3. The opposite party no. 2/applicant has filed a writ petition for implementation of the order demolition. By order dated October 10, 2023, a coordinate Bench disposed of the writ petition, WPO No. 1685 of 2023 with the following order:-

“The order of demolition is liable to implemented till the same is stayed/modified/set aside by the Court of competent jurisdiction.

The Corporation is directed to take steps to implement the order of demolition if the private respondent fails to obtain stay of the order of demolition by 22.12.2023.”

4. The stay application was heard on two occasions and lastly heard in part. Then, the learned tribunal stopped functioning in view of the non-availability of the quorum. The petitioner approached this court for a protection and an interim protection restraining KMC from carrying out demolition, was granted on March 14, 2024. The opposite party again approached the writ court by filing another writ petition being WPO No. 163 of 2024 and the learned coordinate Bench passed the following order on March 20, 2024:-

“It appears that the order of demolition was carried in appeal by the aggrieved party being B.T. Appeal No. 180 of 2023.

The matter was heard on several occasions but no stay was allowed by the appellate forum. On account of non availability of the forum at at present, a civil revision application has been filed before this Court being C.O. No. 943 of 2024.

A Coordinate Bench of this Court vide order dated 14.03.2024 has been pleased to restrain the Corporation from taking any coercive steps in terms of the order of demolition.

In view of the above, the prayer made in the instant writ petition cannot be entertained at this stage.

Liberty is granted to the petitioner to approach the competent forum for relief.

The writ petition is directed to go out of the list for the time being.”

5. Dr. Sanjay Gupta filed an application for vacating the order of this court dated March 14, 2024 by which the Kolkata Municipal Corporation was restrained from taking any coercive measure. Both the revision and the application for vacating are taken up for hearing.
6. The learned advocate for the opposite party no. 2 draws the attention of this court to the suppression of the order of Her Lordship passed in the writ petitions and also urged that the first order was not placed before the Tribunal. However, it appears that the Tribunal recorded such fact and directed expeditious hearing of the stay application, considering the gravity of the situation. By order dated January 3, 2024, the stay application was directed to be heard on January 5, 2024. The case records were called for and the matter was fixed on January 5, 2024. On January 5, 2024, the stay application was heard in part and it appeared to the building tribunal that the sanction plan was necessary to be perused and the same should be produced either by the corporation or by the appellant therein.

7. Mr. Agarwal, learned advocate for the opposite party no. 2, submits that the suppression of the order of the High Court dated March 1, 2024 passed in WPO No. 163 of 2024, was crucial.
8. I find that the hearing of the stay application could not be completed because the Tribunal was not available, and not for the negligence of the petitioner. On the dates fixed, the petitioner appeared and made the submissions. The tribunal could not dispose of the stay application as the tribunal deferred the hearing till the sanction plan was produced. At that juncture, the tribunal became non-functional.
9. It is submitted that on March 1, 2024, Her Lordship passed an order, inter alia, observing that as the tribunal was not functioning, the corporation should take instructions whether a plan had been sanctioned by the corporation or not.
10. As the learned writ court is already in seisin of the matter, which was not within the knowledge of this court, this court disposes of this revisional application, thereby restraining the Kolkata Municipal Corporation from demolishing the construction till further orders are passed in WPO No. 163 of 2024. When the stay application was being heard, the Tribunal became non-functional. The statutory remedy could not be availed of by the petitioner in the true sense of the

term. However, in due deference to the learned Bench who is already in seisin of the same issue, the revisional application should not be kept pending for further determination by this court.

11. The revisional application is disposed of.
12. There shall be no order as to costs.
13. With such disposal, connected applications being CAN 1 of 2024 and CAN 2 of 2024 are also disposed of.
14. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)