

ML 271
21.03.2024
Ct. No. 15
adeb

W.P.A. 15602 of 2014

**Rajesh Verma
Vs.
The Kolkata Municipal Corporation & Ors.**

Mr. Raghunath Chakraborty
Ms. Arpita Patra
...for the petitioner

Mr. Alak Kumar Ghosh
Mr. Swapan Kumar Debnath
Mr. Gopal Chandra Das
...for the KMC

The writ petition is heard in presence of the learned advocates representing the petitioner and Kolkata Municipal Corporation. However, no one represents respondent no. 7 though it appears that respondent no. 7 was represented by learned advocate previously on 16th November, 2023. Therefore, this Court proceeds to hear out the matter finally in absence of representation on behalf of respondent no. 7.

The grievance of the petitioner is refusal to condone delay in entertaining Building Tribunal Appeal No. 27 of 2014 preferred by the petitioner against the order dated 20th December, 2013.

It is submitted that in terms of Section 400(3) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the 'said Act of 1980') the person aggrieved by the order passed under Section 400(1) may within 30 days from the date of the order prefer an appeal against

the said order before the Municipal Building Tribunal which is constituted under Section 415. However, petitioner instituted the appeal on 11th March, 2013 thereby there was a delay of 50 days in filing the appeal which, according to the petitioner, ought to have been condoned in order to consider the grievance of the petitioner by deciding the appeal on merit.

Mr. Alak Kumar Ghosh, learned advocate representing the corporation has made an attempt to defend the decision of the Tribunal dated 27th May, 2014 whereby the appeal was dismissed since Section 5 application of the petitioner was not entertained as the delay was not condoned. It is submitted that in terms of Section 400(3) only 30 days has been prescribed for preferring an appeal but in the present case appeal has been preferred beyond the said period of 30 days and the Tribunal by assigning certain reasons has refused to register the appeal which may not be interfered with.

Having considered the submissions made on behalf of the parties and on perusing the order of the Tribunal dated 27th May, 2014 it is revealed that 50 days' delay occurred while instituting appeal along with Section 5 application seeking condonation of delay since the order was passed under Section 400(1) on 20th December, 2013 and the appeal was preferred on 11th March, 2013. The explanation offered in order to condone delay on behalf of the petitioner it was contended before the Tribunal that the order was not passed on conclusion of

hearing by the authority under Section 400(1) on 20th December, 2013 in presence of the parties and subsequently petitioner contacted the concerned authorities of KMC to ascertain the order passed in the said proceeding and ultimately was informed on 6th March, 2014 the order was passed by the authority on 20th December, 2013 on conclusion of hearing. Petitioner applied for the certified copy and obtained the same on 6th March, 2014 and thereafter preferred appeal on 11th March, 2014. The Tribunal while refusing to condone the delay has assigned certain reasons which are perused but Tribunal was required to take decision in consideration of the fact that there was delay of only 50 days and by virtue of Section 415(8), Part-II and Part-III of the Limitation Act, 1963 apply to the appeal proceedings before the Tribunal. Therefore, in consideration of Section 5 application filed by the petitioner before the Tribunal the relevant provisions of the Limitation Act, 1963 were required to be applied for the ends of justice and equity and for appraising the appeal preferred by the petitioner on merit. This is not a case where the proceeding which was instituted before the Tribunal does not attract application of Section 5 of the Limitation Act, 1963.

In view of aforesaid discussion the order passed by the Tribunal dated 27th May, 2014 stands set aside and appeal preferred before the Tribunal being Appeal No. 27 of 2014 stands revived and registered.

The Tribunal shall make endeavor to dispose of the appeal expeditiously and preferably not later than 6 (six) months from the date of communication of the order after granting due opportunity of hearing to the petitioner and the respondent no. 7.

Notice of this Court has been drawn to an order dated 29th May, 2014 passed by a coordinate Bench on this writ petition whereby KMC was directed to see that no unauthorized construction is made at the premises in question and the said order has been extended till disposal of the writ petition vide order dated 14th August, 2014 passed by another coordinate Bench.

In view of the interim order which has been subsisting as on date, the same shall continue till the appeal is disposed of by the Tribunal.

With the aforesaid directions and observations the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)