

19.04.2024
Sl. No.4(DL)
srm

C.O. No. 3040 of 2023

Gopal Gupta & Ors.

Versus

The State of West Bengal & Ors.

Mr. Dinendranath Chatterjee,
Mr. Partha Sengupta,
Mr. Biswaroop Sengupta

...for the Petitioners.

Mr. Biswajit Mukherjee,
Mr. Swapan Kumar Debnath

...for the Opposite Party Nos.2 to 4.

Mr. Arif Ali,
Mr. S. Bhattacharjee

...for the Opposite Party No.5.

1. The revisional application arises out of an order dated August 23, 2023 passed by the learned Municipal Building Tribunal, Kolkata Municipal Corporation, in B.T. Appeal No.68 of 2017.
2. By the order impugned, the learned tribunal rejected an application for restoration of the municipal appeal, as also the application for condonation of the delay in filing the restoration application. The learned tribunal was of the view that delay of 204 days could not be condoned in the absence of sufficient cause. The order impugned records the facts and the reasons why the tribunal was

not inclined to restore the appeal. The tribunal records that on January 15, 2019 an order of stay was passed directing the petitioners to deposit Rs.25,000/- towards cost. The case records showed that the petitioners had not deposited the amount. Since March 20, 2019, the petitioners had not taken any steps. On May 25, 2022, the tribunal received the records and a date was fixed on June 29, 2022 for fixing dates for peremptory hearing of the appeal. On June 29, 2022, the petitioners did not appear. They were asked to show cause. The petitioners neither file any show cause nor did they turn up before the tribunal. Ultimately, on December 9, 2022, the appeal was dismissed.

3. The tribunal further held that the letter on which the petitioners were relying with regard to the date of knowledge of the order of dismissal of the appeal, had not been produced before the tribunal. There was no evidence to support such claim of delayed knowledge. On the other hand, the High Court in WPO No.1339 of 2023 had directed the Kolkata Municipal Corporation to demolish the impugned structure, if the petitioners were not successful in getting the appeal restored within August 31, 2023. The delay in filing the restoration

application was also not explained. The reason was found to be too feeble. Under such circumstances, the learned tribunal rejected the applications.

4. The learned Advocate for the petitioners submits that the delay was of 179 days. Several litigations were continuing in the High Court and the petitioners were effectively contesting the same. Both the learned Single Judge and the Hon'ble Division Bench directed that the fate of the revisional application would determine whether the demolition should be effected or not. The cost, as directed by the court, had been deposited in the Treasury of the Building Tribunal on January 17, 2019. Thus, an opportunity should be given to the petitioners to get their appeal adjudicated.
5. Mr. Mukherjee, learned Advocate appearing on behalf of the Kolkata Municipal Corporation submits that in a writ petition, a co-ordinate Bench had allowed time till August 31, 2023 to the petitioners to get their appeal restored. Failing which, the corporation was directed to demolish the structure. The corporation is already facing a contempt. Secondly, nothing remains to be decided in the appeal as to two whole floors had been constructed without any sanction. The floors could not be regularised

in any manner and the illegality in such construction could not be ever corrected. Thus, no useful purpose would be served in directing the tribunal to hear out the appeal.

6. Mr. Ali, learned Advocate appearing on behalf the opposite party No.5/complainant submits that although the petitioners were contesting the writ petitions filed in the High Court, they did not appear before the learned tribunal on several dates. The learned tribunal, thus, directed the petitioners to show cause as to why the appeal would not be dismissed. Despite such direction, no answer to such show cause was filed. Ultimately, the appeal was dismissed. Still, no steps were taken for restoration, although the petitioners were appearing in the proceedings before the High Court. Further, the High Court also granted them a window to get their appeal restored, which they failed to do. Under such circumstances, no mercy should be shown to the petitioners, especially taking note of the rampant unauthorised construction that had been carried out.
7. This Court is of the view that the conduct of the petitioners has been deplorable. Initially, they got an order of stay and thereafter they did not bother to pursue

their remedy before the appellate forum. They have already suffered an order of demolition of two whole floors which were found to be without sanction. It is not a case that the petitioners have a sanction, but the hearing officer had misconstrued such permission. The petitioners have not been able to satisfy this Court with regard to the legality of the said construction. Unnecessary procrastination of the issue is not required. A learned co-ordinate Bench had already directed demolition in case the petitioners were unable to get their appeal restored within a particular time.

8. Next, upon perusing the application for condonation of delay and the restoration application of the appeal, there does not seem to be a single ground explaining why the delay in filing the restoration application accrued. The only reason is that the learned Advocate was informed that a writ petition had been filed. Filing of a writ petition could not in any way prevent the petitioners from pursuing their remedy before the appellate forum. Moreover, the delayed information with regard to dismissal of the appeal could not be established before the Tribunal.

9. It also appears that the petitioners contested the writ petition. Thus, there is no reason why the petitioners would not attend the appeal. The appeal was filed at their instance and onus was upon them to proceed diligently with their matter after having suffered an order of demolition.
10. The only other ground seeking condonation of the delay was that the petitioners had a possibility of success in the appeal.
11. As discussed hereinabove, the petitioners have not shown any document to this Court which would indicate that the constructions were either wholly or even partially authorised by the Corporation. Moreover, no grounds have been made out either explaining the reason why steps could not be taken before the Tribunal when the appeal had been fixed for hearing or explaining why the restoration application was not filed within the stipulated period.
12. Under such constructions, this is a fit case in which, the High Court under Article 227 of the Constitution of India should not exercise jurisdiction. The order impugned does not suffer from perversity. The conduct of the petitioners has been recorded in detailed. The fact that

the petitioners were not available to pursue their remedy before the appellate forum on various dates, are available from the order impugned.

13. Moreover, without any explanation or sufficient cause as to why the delay had occurred and why the appeal should be restored, this Court does not find any reason to interfere with the factual finding of the learned tribunal. Unauthorised construction, as already held by different decisions of the Hon'ble Apex Court, cannot be allowed to stand for a single day.

14. Reference is made to the following:-

(a) *Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.*, reported in (2021) 10 SCC 1.

(b) *Friends Colony Development Committee v. State of Orissa* reported in (2004) 8 SCC 733.

(c) *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai* reported in (2013) 5 SCC 357.

(d) *Priyanka Estates International (P) Ltd. v. State of Assam* reported in (2010) 2 SCC 27.

(e) *Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.* reported in (2013) 5 SCC 336.

15. Some of them are discussed below:-

16. In the matter of *Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.* (supra), the Hon'ble Apex Court held as follows:-

"24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer."

17. In the matter of *Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.* (supra), the Hon'ble Apex Court discussed the duties of the civic bodies and lamented the sorry state of affairs as under:-

“167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

18. In *Esha Ekta Apartments Coop. Housing Society*

Ltd. v. Municipal Corpn. of Mumbai (supra), the Hon’ble

Apex Court observed as follows:-

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

19. The revisional application is, thus, dismissed.

20. There shall be no order as to costs.

21. Although the petitioners deposited the cost in the Treasury of the Building Tribunal, the learned tribunal

was of the opinion that the costs were not deposited. This Court grants liberty to the petitioners to withdraw the amount of Rs.25,000/-, which was deposited as cost, on the basis of the server copy of this order.

22. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)