

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO:GA/3/2024
APOT/78/2024
with
WPO/71/2024

RAHUL KUMAR YADAV & ORS.
VS.
GOPINATH SIRCAR
AND
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : MARCH 22, 2024.

Appearance:

Mr. Srijib Chakraborty, Adv.
Mr. Sumitava Chakraborty, Adv.
Mr. Bijoy Bag, Adv.
Ms. Rupsa Sreemani, Adv.
....for Applicants
Mr. Anirban Majumdar, Adv.
Ms. Piu Karmakar, Adv.
....for Respondent
Mr. Biswajit Mukherjee, Adv.
Ms. Manisha Nath, Adv.
..for KMC
Mr. Subha Pathak, Adv.
Mr. Wasim Akthir Dafadar, Adv.
..for Respondent Nos. 11 to 14
Mr. Debangshu Dinda, Adv.
...for respondents

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

This application has been taken out in an appeal being APOT/78/2024, for extension of interim protection that was granted to the appellants at the

time of disposal of the appeal by a judgement and order dated February 27, 2024.

This litigation has a chequered history. We need not go into the same for the present purpose.

By the judgement and order dated February 27, 2024, a co-ordinate Bench disposed of the appeal with the following directions:-

- “ (i) *KMC shall not take any further coercive step in respect of the impugned construction for a period of one month from date.*
- (ii) *The appellants may approach the Municipal Building Tribunal challenging the demolition order in question. If they are successful in obtaining an interim protective order, the same shall have effect. If they are unable to obtain any interim order, the Corporation shall forthwith proceed to execute the demolition order. We clarify that if the appellants herein apply for interim order before the Tribunal, such prayer shall be considered by the Tribunal without being influenced by any observation in this order or by the fact that we have granted breathing space to the appellants. The Tribunal shall deal with such prayer independently and in accordance with law.*
- (iii) *The appellants are restrained from raising any further construction at the subject premises till the Tribunal decides the appeal, which may be filed by the appellants herein.*
- (iv) *The Officer-in-Charge, Jorabagan Police Station is directed to keep strict vigil and ensure that no further construction is made by the appellants or anybody else at the subject premises.*
- (v) *If the appellants approach the Municipal Building Tribunal with an appeal against the concerned demolition order with a photocopy of*

the demolition order as has been annexed to the stay petition, the Tribunal shall not refuse to entertain the appeal only on the ground of certified copy of the impugned order not being filed. However, the appellants shall undertake before the learned Tribunal to file certified copy in due course. The appellants will also be entitled to challenge the report dated February 12, 2024, of the Executive Engineer (Civil)/Building, Borough – IV & V, which was filed before the learned Single Judge. If any statutory appeal is filed by the appellants, the writ petitioner herein shall be made a party and the Tribunal shall grant full opportunity of hearing to the writ petitioner herein.

- (vi) In the event the appellants fail to file any statutory appeal within a month from date, the Corporation will implement the demolition order.”*

Learned advocate for the applicants says that in terms of the liberty granted by that order, a statutory appeal was filed before the Municipal Building Tribunal being BT Appeal No.41 of 2024 on March 8, 2024. A stay application has also been filed in the appeal. The matter was put up on March 20, 2024. Copy of an order passed by the Tribunal on that date has been produced before us. The same is kept with the records. It appears that on that date, the Judicial Member/Chairman of the Tribunal was absent and therefore, the matter could not be heard by the Tribunal. The Technical Member who was present fixed the matter on March 28, 2024.

Learned advocate for the applicants says that the interim protection that was granted on February 27, 2024, by the co-ordinate Bench, will expire by

efflux of time on March 27, 2024. The interim protection should be extended since the stay petition could not be taken up for hearing for no fault of the applicants.

Learned advocate for the respondents / writ petitioners says that the entire construction is unauthorised. Not for a single day the same should be allowed to stand.

Learned advocate for the writ petitioner may be right. We do not know. The matter is today pending before the Tribunal. We had permitted the applicants to exercise their statutory right of appeal. They have done so by filing an appeal before the Tribunal and a stay petition therein. The stay petition could not be taken up for hearing on March 20, 2024, since there was no coram. We do not find any fault on the part of the applicants. In fact, none of the parties can be faulted if the forum for adjudication is not available. For the ends of justice, we extend the interim protection that we had granted on February 27, 2024 till the end of April 2024. We ardently hope and expect that the stay application of the appellants will be disposed of by the Tribunal by April 25, 2024.

The application is disposed of.

(ARIJIT BANERJEE, J.)

(SUPRATIM BHATTACHARYA, J.)